



Jury Awards Geologist \$4.68M in Todd Lawsuit

A Brazoria County jury on October 24 found in favor of Houston geologist Donald Marlin in the case of *Marlin v. Cobra* in which Alton C. Todd and Robert A. Chaffin of Houston served as co-counsel.

Marlin was awarded \$3.68 million in compensatory damages and \$1 million in attorney's fees in his breach-of-contract claim against the well-driller, Cobra Exploration Company. Cobra allegedly shared his exclusive survey maps with another company that later drilled three successful gas wells without having to pay royalties to Marlin. In December 1997, Marlin said that he executed a confidentiality and noncircumvention agreement with Cobra in exchange for a 2 percent royalty on wells drilled in an area of mutual interest (AMI) near Arcola. Marlin also claimed that in 1998 Cobra partnered with Aspect Resources to drill in another ASMI. Cobra argued that Aspect's drill-site selection was based on knowledge gained independently.

The case has now settled for a confidential amount.

TODD LAW FIRM WINS VERDICT AGAINST OLDEST BANK IN TEXAS

Representing a minor, Porscha Rae Buck, The Law Firm of Alton C. Todd recently won a \$900,000 verdict against the oldest bank in Texas, the First National Bank in the city of Bryan, named for the bank's original owners.

A bizarre series of events culminating in the January trial was set in motion in 1994 when Karen and Alan Buck purchased a \$750,000 term life insurance policy on the life of Alan Buck. When the Bucks divorced in Arizona in 1995, Karen was given the option of paying the premiums on the policy as long as the Buck's six-year-old daughter Porscha was the beneficiary.

After Karen and her daughter moved to College Station, Texas, the life insurance premiums were paid by an electronic funds transfer from a savings account with First National Bank of Bryan set up in the name of Karen Buck as custodian for Porscha Buck.

On September 28, 1997, Karen Buck's car, containing her checkbook and savings account information, was stolen from her

driveway. The police suggested that she close the two accounts. The next day Karen went to the bank and advised them of the theft and that she needed to close the accounts and open new accounts so there would be no interruption in the electronic fund transfer payment of the insurance premiums. She was told that there would be no interruption, but when she contacted the bank at the end of October 1997 to make sure the premium payment had been made, she learned that it hadn't. The reason given was that these changes took time and everything had been set up properly to allow for payment.

At the end of November, Karen again called the bank and heard the same story. On December 18, she went to the bank and filled out forms to be faxed to the insurance company. On January 8, 1998, she got her first bank statement from the new savings account, which confirmed that no premiums on the policy had been paid. In follow-up communications with the bank and the insurance company, the latter refused to reinstate the policy because it had lapsed for non-payment on November 26, 1997. The only way coverage could be continued was if Alan Buck would request reinstatement and submit to a new life insurance physical. He declined. Karen then contacted her Arizona divorce lawyer to see if the court there could order him to file for reinstatement and submit to a physical, but she was advised that obtaining such an

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At Odds With Leadership

Strayhorn's Run for Governor Reflects Independence

Carole Keeton Strayhorn's decision to leave the Republican party and to run as an independent for governor leaves Gov. Rick Perry with only token opposition in the March primary.

The self-proclaimed "tough grandma" and mother of White House press secretary Scott McClellan and chief Medicare and Medicaid administrator Mark McClellan was attracting a lot of attention even before putting partisan politics aside to run as an independent. This is not the first time that the two-term state comptroller has changed her political status. She became a Republican in 1986 to run for Congress after working for Walter Mondale in his 1984 presidential campaign in Texas.

Although Strayhorn's defection from the GOP is viewed as another example of political opportunism by those in Perry's camp, the Democratic candidates see her exodus from the Republican party as a victory for their side, and her only independent opponent Kinky Friedman said that the

competition gives his candidacy new life. Both independent candidates must collect petition signatures from more than 45,000 registered voters.

If detractors see Strayhorn's gubernatorial bid as the wrong race at the wrong time and representing the wrong party, her decision both to enter the race and to run as an independent is entirely consistent with her character and disappointment in the leadership of the Republican party in Texas. Her ideas as comptroller have been largely ignored by the state's leaders, even though she has acted responsibly as guardian of fiscal responsibility, applying her strong, spending-conscious beliefs that were once a basic principle of the Republican party. In her first term she sought to reform the Texas Department of Transportation and to privatize the Texas Workers' Compensation Fund, both worthy goals for antiquated agencies. Lawmakers resisted her proposals,

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Unlikely Courtroom Alliance

Corporations Turn To Plaintiffs Bar

There's a new niche in commercial litigation, long the work of the defense bar, and it's being filled by plaintiffs firms.

Who would have ever thought that the inner circles of businesses and large corporations, historic proponents of "tort reform," would one day turn for help in litigation services to the very same people they've been bashing in the tort arena for years—personal injury lawyers?

In a legal phenomenon that perhaps should be less surprising than it is, corporations and plaintiffs lawyers are becoming new best friends. In the past, business-to-business lawsuits would have been handled by law firms who charge by the hour and had strong ties to the business community.

Pro-Defendant Bias Continues In Texas High Court Decisions

In its 9th annual year-in-review report entitled *Obstacle to Justice*, Court Watch, the Texas Supreme Court monitoring project of the Texas Watch Foundation, reviewed 62 consumer-related cases decided by the Texas Supreme Court in the 2004-2005 term and analyzed their impact on Texas families, consumers and small businesses.

"Once again, the Texas Supreme Court has distinguished itself as an activist defender of insurance companies and special interests," said Alex Winslow, Executive Director of the Texas Watch Foundation.

According to the report, consumers prevailed in only 21 percent of the cases during the Court's 2004-2005 term, while insurance, government and corporate interests won 76 percent of their cases. The Court overturned 78 percent of jury verdicts favorable to consumers, ignoring legal precedent and improperly usurping the role of citizen juries.

The report's statistical analysis of the Court's bias against consumers yielded the following disturbing conclusions:

- Justices agreed an average of 92 percent of the time, signaling an utter lack of judicial independence.
- Insurance companies prevailed in 87 percent of cases and medical and government interests each won more than two-thirds of the time.

Court Watch has published an annual report on the Texas Supreme Court since 1997, describing the Court's major decisions and its jurisprudence. "The current Court reflects a level of conformity that we have never seen before," said Winslow, adding that Texas families are paying the price for its consistent lack of judicial independence.

Now, big businesses are waking up to controlling litigation costs and seeing the strength of hiring plaintiffs' firms that know how to try cases and operate on a contingency fee basis.

Alton C. Todd sees his trial experience of over three decades as an asset in the increasing number of business-to-business cases he is called upon to litigate. His personal injury skills are especially useful in presenting complex business matters before juries.

A contingency fee model, where the lawyer gets money only if he wins, also makes sense for small companies who want to sue other companies but can't afford to. Attorneys representing smaller companies are going to be efficient, offering the company the same access to the court house that they would provide to an indigent individual.

Relying on personal injury litigators to handle complex business matters has in recent years proven to be an effective corporate tactic. In the top jury verdict to an individual plaintiff in 2005, Florida billionaire Ronald O. Perelman, represented by personal injury lawyer and lead counsel Jack Scarola, won a \$1.4 billion award in a securities fraud suit against investment banker Morgan Stanley. Accustomed to explaining complicated procedures in his personal injury cases, Scarola was prepared for the challenge. The jury returned with a verdict of \$850 million in punitive damages and \$604.3 million in compensatory damages against Morgan Stanley.

Three of the last five cases successfully tried by The Law Firm of Alton C. Todd were in the area of business litigation. Services in the commercial cases that Todd selects to represent are always provided on a contingency basis.

Frist's Furtive Action Politically Motivated

Late on a Sunday night in December (12/18/05) when no one was watching, Senate Majority Leader Bill Frist surreptitiously slipped a huge favor to corporate friends in the drug industry.

After House and Senate negotiations had already signed a Defense Department appropriations conference report and it was announced that the report was final, Frist added a provision giving sweeping immunity to drug companies (like Merck and Co.) who commit gross negligence and show reckless disregard by putting dangerous and deadly drugs (like Vioxx) on the market.

Frist's furtive provision would protect drug companies even if they recklessly included a live bird flu virus in a vaccine and gave the contaminated vaccine to the public, causing a pandemic and resulting in thousands of deaths.

To justify this massive giveaway to drug companies, Frist claimed that a flood of lawsuits have hindered flu vaccine production, even though the Journal of the American Medical Association reported only 10 flu vaccine lawsuits over the last 20 years.

Because Frist, himself, has admitted that certain vaccines are unsafe, his unprecedented last-minute maneuver is a hypocritical exploitation of national security. Clearly, the protection of Americans with a safe vaccine is not the Senator's priority, yet his actions are easily explained: Frist's ties to drug companies are substantial. The entire pharmaceutical and health products industry was one of the largest contributors to the National Republican Senatorial Committee, the political arm of Senate Republicans headed by Frist in 2001 and 2002.

TODD LAW FIRM WINS VERDICT

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order was highly unlikely. Accordingly, no motion was filed with the Arizona court.

Karen returned to the bank, and, after an investigation, a bank officer wrote a letter to the insurance company, explaining that the failure to pay the premium was due to a "processing error" of the bank and that there had been adequate funds at all times to pay the premiums. The insurance company still refused to reinstate the policy. In July 2002, Alan Buck died.

The lawsuit filed against First National Bank of Bryan was based on the bank's failure to pay the life insurance premiums

and allowing the policy to lapse. The bank claimed that new and independent causes prevented the premiums from being paid, resulting in the lapsed policy, due to simple miscommunication and misunderstanding on Karen Buck's part as to who was to take the necessary steps to continue the wire transfers. The jury found that that the bank was negligent in allowing the policy to lapse and breached its agreement to continue to pay the premiums. Damages of \$750,000 were awarded for the face amount of the policy and \$132,000 in attorney fees.

Strayhorn's Run

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including TexasNextStep, which would provide free tuition and books for all students attending community colleges, helping to ensure an educated future workforce.

Although Strayhorn has stated publicly that she loves the independence of her current job, it is the way she views her constitutional role as comptroller—she sees her responsibility to be to the people, not to the legislature—that has earned her the most criticism and direct payback. The provision in a 2003 catch-all bill to strip the comptroller's office of its power to review state agencies and school districts for ways to save money was a revenge tactic for Strayhorn's refusal to certify a budget that she knew did not balance. She finally certified the budget only after her claims had been validated.

Strayhorn's family and political background are equally impressive. Page Keeton, her late father and hero, was esteemed by Texas lawyers and respected as the dean of the University of Texas law school for 25 years. Strayhorn's name appears on the Women's Chamber of Commerce of Texas's list of the state's one hundred most influential women of the 20th century. She was president of the Austin school board, president of the Austin Community College board, mayor of Austin and state railroad commissioner.

Tough, ambitious, defiant and determined to control spending in her position as comptroller, Strayhorn, enforcer of what she knows to be right, would be likely to bring the same sharpened focus to the Governor's seat. Perry has the support of the Republican party base and the power to raise millions that Strayhorn can't match, but far more important are the assets demonstrated in Strayhorn's integrity and determination to challenge the "good-old-boy" network, and, as stated in her announcement address, to "do what's right for Texas" by putting partisan politics aside.

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Seth Park, 18, votes in 1st Election

A Young Man's 1st Vote Recalls Centuries of Struggle

Exercising a fundamental American right guaranteed by the 26th amendment, our son Seth, who turned 18 on August 17, 2005, voted for the first time in an October Friendswood election of school board members.

In 1970, after widespread anti-war and resistance protests to the military draft, the voting age was lowered to equal the draft age. While the 26th amendment marks the most recent legislation related to voting rights, the history of achieving those rights reflects two centuries of freedom struggles and political pressure.

Whether a newcomer to the polls like Seth or a seasoned voter, few of us ever consider the long and hard-fought battles that brought us to the point where we so easily take for granted a privilege once denied to a majority of Americans.

In the past, not only birthdays determined if one could vote. The harsh reality that bears remembering is that voting rights for all citizens did not happen overnight and were once determined by gender, economic status, race and national origin.

Although Abigail Adams asked the Continental Congress in 1776 to support women's rights, by 1807, even the four states that had previously allowed women to vote rescinded those rights.

Because the Constitutional Convention could not agree on a voting-rights standard, it was left to the individual states to decide who could vote. The system that evolved in most states limited voting to white males who owned a certain amount of property, and it was estimated that less than 5 percent of the population was eligible to vote in the election of 1800.

Through trumped up "voter eligibility" laws, Texas and other southern states denied voting rights to African and Mexican Americans, both before and after the Mexican-American and Civil wars. Neither were Asian immigrants eligible to

vote because of the "whites-only" clause of the 1790 Naturalization Law.

Finally, in 1856, North Carolina became the last state to eliminate the property ownership qualification to vote.

By 1867, the 14th amendment required all states to recognize black males as citizens, but women of all races were explicitly excluded from full citizenship in regard to voting. While adoption of the 15th amendment theoretically extended voting rights to black males, it did not include Native Americans, Asians or Mexican-Americans.

The end of Reconstruction by 1877 also signaled the end of enforcement of civil rights laws. New state laws were passed to sabotage the 15th amendment, including "literacy tests" and "grandfather clauses" that made it impossible for descendants of slaves to vote. High poll taxes also restricted voting to affluent white males.

After an epic 72-year struggle, the Women's Suffrage Amendment was eventually passed and ratified in 1920, giving women the right to vote.

African and Native-American veterans of World War II and Korea returned to the country for which they had fought but where they could not vote. GIs fought a new battle to eliminate the poll tax and to win the right to vote. The Civil Rights movement of the 1960s exploded in the deep South demanding the right to vote for blacks.

In 1964 the 24th amendment ended poll taxes in federal elections. Thousands of African Americans attempting to register to vote in Selma, Alabama were viciously attacked but refused to back down, and the movement grew, culminating in the triumphant march to the Statehouse in Montgomery, involving 25,000 Americans from all walks of life and races.

Passage of the landmark Voting Rights Act in 1965 after a long and bitter fight

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Texas Gulf Coast Called 'Judicial Hellhole'

Since its inception, the corporate front group called the American Tort Reform Association (ATRA) has orchestrated unscientific studies targeting judges and juries who are willing to hold reckless corporations accountable for their actions.

This year, the ATRA hit a new low with its release of *Judicial Hellholes 2005*, an annual report started in 2002. Heading the *Hellholes* list, defined as “places that have a disproportionately harmful impact on civil litigation,” are the Rio Grande Valley and Gulf Coast of Texas.

The other five “Hellholes” include three counties in Illinois, the state of West Virginia and the southern part of Florida.

The ATRA laments that *Judicial Hellholes* can destabilize an entire region, citing a litigious environment in Illinois, causing doctors and businesses to stay away and resulting in both a medical liability crisis and a suppressed economy. To indicate how inaccurate this “study” really is, the Center for Justice and Democracy pointed out that Illinois ranked as the 13th most desirable state in the country to locate a business. Site Selection’s annual ranking of state business climates was based on

executive surveys, new plant performance and other criteria.

Identifying the entire state of West Virginia as the site of significant lawsuit abuse problems, ATRA proudly quoted a sympathetic judge who called his state a “field of dreams for plaintiffs’ lawyers. We built it and they came.”

Claiming as its mission to reform the civil justice system, the ATRA was founded in 1986 by the American Medical Association and American Consulting Engineers Counsel to Council. It is supported by major industries and Fortune 500 companies.

In keeping with its habit of targeting poor communities with minority populations, the ATRA, this year, even added a “Watch List” of areas to be closely monitored “due to negative developments in the litigation environment.” Appearing on that list is the nearly ruined Orleans Parish of Louisiana.

Attacking jurisdictions like the hurricane ravaged Gulf Coast of Texas undermines the only place left in this country where individual injured citizens can confront powerful industries and force changes in their dangerous behavior. The shameless *Judicial Hellholes* endangers a tradition which has served and protected American citizens for over 200 years.

A Young Man’s 1st Vote

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marked the end of voting “requirements” such as “literacy tests” designed to deny the vote to African, Native and Mexican-Americans, as well as Asians, and determined that fluency in English could not be made a voting requirement. In 1966 the last remaining poll taxes were outlawed in state elections.

The long history of struggle and resistance, discrimination, repression, violence, economic retaliation, beatings, burnings and ruthless violence, leading to the voting freedoms we enjoy today is a story of injustice powered by political and financial interests. We are eternally indebted to the brave men and women whose hard-earned victory in that incendiary era of our nation’s history gave us the lifetime right to vote without fear of reprisal.

Texas Lawyer’s Talent Evident in Debut Novel

You don’t have to be a lawyer to appreciate my latest favorite novel. I recommend *The Color of Law* unreservedly; however, the book held a special appeal because the author, Mark Gimenez, grew up in Galveston County.

After finishing *The Color of Law*, a provocative legal thriller, I sent a complimentary note to the author and received, in turn, a prompt and appreciative acknowledgment.

Once a partner at a major Dallas firm, Gimenez gave it up to start his own solo practice and to write. Through every page of his premiere novel to its stunning courtroom conclusion, it’s abundantly clear that his decision to write was the right one.

CLOSING STATEMENT

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Thank you for the opportunity to represent
your interest and for recommending
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