



## Aftermath of BP Explosion

### RESTRICTIONS CONFRONT ACCIDENT VICTIMS

Safety concerns, investigative delays and questionable control of the blast site, as well as legislation, litigation and compensation issues follow the fatal March 23 accident at BP's refinery in Texas City.

A bill designed to protect businesses from lawsuits for work-related deaths and injuries has been shelved by the legislator who filed it. Houston Rep. Joe Nixon, long known for singing the praises of tort "reform" and sponsor of the infamous medical reform bill of 2003, respectfully decided to drop the bill on the day of the refinery explosion, in which 15 contract workers were killed and more than 100 injured. Nixon did not say whether the bill will be revived in another legislative session.

**Had Nixon's bill passed prior to the BP tragedy, the families of those killed or injured in the explosion would have been left without any legal remedy. The new law proposed by Nixon would have limited the ability of contractors to sue for workplace injuries, making an underfunded workers' compensation system that pays inadequate benefits and does not allow for punitive or pain and suffering damages the sole remedy for work-related accidents ending in death or injury. As it stands, BP injured employees cannot sue the energy company because of a 2004 Houston-based 1<sup>st</sup> Court of Appeals decision that says a single workers' compensation policy can cover all employees at a work site.**

The restrictive legal climate today is decidedly stacked against injured victims in Texas and especially in the 14 counties, including Harris and Galveston, affected by that appellate decision. In addition to not being able to sue in court outside the workers' compensation system, injured workers now have fewer choices of courts in which a lawsuit can be filed. The standards for punitive and pain and suffering damages favor employers and insurance companies, plus there are more avenues for appeal even if a plaintiff wins a verdict.

In the aftermath of the refinery explosion, delays in investigation and negotiations over how evidence would be gathered have added to the sadness and

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## 1 of Top 100 Verdicts in United States in 2004

### Alton Todd Represents Top Shareholder in Lawsuit Against Cox Communications

Alton C. Todd served as lead counsel for a primary stockholder in one of the top 100 verdicts in the United States in 2004. In a Galveston County suit against Atlanta-based Cox Communications Inc., a probate jury awarded over \$18 million to the McDaniel Charitable Foundation estate and several shareholders. With prejudice, the verdict exceeded \$23 million.

Todd represented John L. Muralgia who, next to the McDaniel family, held the second largest interest in the company, which awards scholarships to Galveston County students and provides grants to area colleges.

The estate of the late Moran McDaniel, who opened the first movie theater in Texas City, owned drive-in theaters there until the 1970s and later invested in three cable television companies near Austin, was represented by Jack C. Brock and Maureen Kuzik McCutchen of the Galveston firm of Mills Shirley, where Todd began his legal career and practiced from 1971-1975.

After McDaniel's death in 1997 followed a period when larger cable companies were offering substantial prices for smaller companies in order to get into certain markets and increase their subscriber base. Muralgia, who was experienced in the oil and gas industry, banking and the sale of cable companies, selected the field of bidders before placing the cable companies up for auction. When the bidding came down to Time Warner and TCA Cable of Tyler, shareholders favored TCA because of its small town values and quality of service to its subscribers. A Letter of Intent, to be followed by an official and provision specific document, was signed in April 1999 with TCA who agreed to buy the stock of the three cable companies in exchange for TCA stock. While lawyers were working on the language of the more formal sales agreement, Cox Communications, a publicly traded company like TCA, offered the latter a stock swap with a market value of \$4 billion. Although a

confidentiality agreement was in effect prohibiting TCA from even discussing with Cox the details of their Letter of Intent, during secret negotiations in Dallas, TCA violated that agreement. Testimony at trial revealed that Cox representatives told TCA that the Letter of Intent was not enforceable and that they were paying too much for the cable companies' stock anyway.

TCA and Cox entered into a formal agreement of sale and the cable companies learned about it in a press release. Muralgia called TCA to congratulate them on the sale and for the first time learned that TCA was not going to buy the cable companies. The value of the stock that the cable companies would have received was approximately \$100 million. A flurry of legal activity ensued and an agreement was reached. The cable company shareholders understood that TCA would agree to pay a lesser price which TCA contended was more consistent with the market value of approximately \$84 million, and they could close and litigate, if necessary, whether the Letter of Intent was in fact enforceable. TCA claimed at trial that there was no such agreement and that the final signed agreement had a "merger clause" that prevented any further litigation.

After a four-week trial, the jury found that Cox had illegally interfered with the sale of the companies in 1999 and agreed with the plaintiffs that the Letter of Intent was indeed an enforceable contract and that instead of the \$84 million TCA paid for the small cable systems, the estate and shareholders should have received \$101 million. In the total award, the jury also included \$295,146.23 as an accounting adjustment and \$1,786,945 in attorneys' fees.

The Law Firm of Alton C. Todd handles complex business and commercial litigation for clients from Galveston to Houston, including communities in the counties of Galveston, Harris, Brazoria, Montgomery, Liberty and Fort Bend.

# Why is Workers' Compensation System Still in Crisis?

The 1989 Texas Workers' Compensation Act basically barred attorney involvement in injured workers' claim disputes. The act called for disputes to be resolved in an internal administrative process, including hearings and reviews by a three-judge appeals panel, and created an Ombudsman program, providing free assistance to system



Aussie Attorney

## AUSTRALIAN BARRISTERS DISTINGUISHED BY DRESS

*The Altlaw* editor recently had an opportunity, during a tour of Australia and New Zealand, to observe some of the barristers of Melbourne in the courts district of Lonsdale Street. (The barrister pictured above, Attorney Middleton, graciously approved the use of his photo in *The Altlaw*.) The barristers, because of the garments they wear, which emphasize the dramatic nature of their calling, are very easy to distinguish.

The required work dress of the barristers, when appearing in court as advocates, is very traditional: a horsehair wig and a black gown and dark suit with a white shirt with strips of white cloth called "bands" hanging before a wing collar.

Barristers, the specialized trial lawyers in the Commonwealth, operate one step removed from the clients, acting as consultants and advocates while solicitors deal with clients and prepare the briefs which tells barristers about specific cases. Usually, barristers (all are independent) will specialize further in one or two legal areas.

In Australia, the states of New South Wales, Queensland, South Australia and Victoria observe the separation of barristers and solicitors. In Western Australia, where the profession is described as a "fused" profession, the practice has been for all persons to be admitted as barristers, solicitors and proctors of the Supreme Court of Western Australia.

participants who **had not hired attorneys to represent them**. Attorneys' fees were limited to time and actual expenses, up to a maximum of 25 percent of an injured worker's total recovery.

This Workers' Compensation Act was adopted in response to complaints about high insurance costs and low benefit rates. A legislative Joint Committee Study noted that almost 50 percent of all compensable lost-time claims in Texas were filed with the help of attorneys. The study also concluded that insurance rates were among the highest in the nation and that workers' compensation-related medical costs were higher than in other states.

**Intent on ensuring that claim disputes would no longer be resolved in the courts while touting "quality care to injured workers and controlling medical costs," the reform legislation of 1989, taking away many incentives for attorneys, led to a new law enacted on January 1, 1991. Today, 14 years later, no one—insurers, employers, health care providers, or employees—is happy, the Texas State Report Card for Workers Compensation in 2004 got a D, the bill is a bust and the system is a national disgrace.**

Many doctors in Texas no longer accept workers' compensation patients. A Texas Medical Association Survey of Texas Physicians last year showed that 23 percent of the physicians in the state would accept them, compared to 46 percent in 2002. In 2002, acceptance for general surgery was 65 percent; two years later that figure had dwindled to 30 percent.

How to repair a broken system is once again the focus of the 2005 legislative agenda in the form of Senate Bill 5, which would replace the Texas Workers' Compensation Commission with an agency led by a single commissioner, and employ networks similar to those used for group health care to provide care to injured workers. To revamp the system, TMA would disband the Texas Workers' Compensation Commission and move its function to the Texas Department of Insurance.

This is not the first major effort to correct the mistakes of the 1989 legislation. In June 2001, HB 2600 was enacted to control costs and utilization of services. The bill directly addressed concerns about escalating medical costs and quality of care provided to injured employees.

Now, a study by Texas' Department of Insurance's Research and Oversight Council maintains that over-utilization of services is a problem. Doctors say it is the amount of medical treatment provided, not the price of individual treatment and services, that drives higher medical costs in Texas than

anywhere else in the country. Providers cite inadequate reimbursement for services, and employees don't trust employer motives and inadequate access to quality health care. Texas remains the only state where participation by employers in workers' compensation coverage is voluntary, and, like providers, many have opted out of the system.

**The Workers' Compensation System in Texas is clearly in crisis. The exclusion of lawyers 14 years ago didn't fix the system, and the reform rhetoric is as ambiguous today as it was then. The emphasis remains on cutting costs, not helping employees who are hurt.**

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uncertainty surrounding BP's third fatal accident in less than four years. The environmental watchdog group Public Interest Research Group reported that figures from OSHA (Occupational Safety and Health Administration) show that BP had more than 3500 accidents or spills from 1990 to 2004. Added to an already dangerous industry is the hazardous trend to outsource union jobs to contractors to save money. PACE (The Paper, Allied-Industrial, Chemical and Energy Workers International Union) says that it is conducting its own investigation.

Because a safety assessment had not been completed and access was prohibited by BP and OSHA, It took more than a week for federal investigators from the U.S. Chemical Safety and Hazard Investigation Board to enter the blast site. Two weeks after the accident, investigators of lawyers representing workers injured or killed were still denied access to the site. Citing dangerous substances and their lack of expertise to investigate an explosion of this nature, police largely left control of the blast site in the hands of BP, whose personnel rationalized restrictions on plant visits as standard procedure. The investigation then became a civil affair run by CSB, OSHA and EPA (Environmental Protection Agency), and eventually an Evidence Preservation Protocol was signed by BP, CSB and OSHA. Under this agreement an independent third party will photograph and videotape all entries into the blast site and oversee tagging and collection of evidence and ensure a secure location.

Injured workers were not allowed to follow OSHA onto the site and would be permitted to view it only after that agency's investigation.

## Research Proves Malpractice 'Crisis' Falsely Diagnosed

Malpractice payouts in Texas (identified by the AMA as one of more than a dozen states suffering from a malpractice "crisis") have remained fairly stable over the past 14 years. That conclusion, the results of a study by University of Texas researchers, proves what many have known all along—the medical malpractice crisis that tort reformers promised to fix was a myth in the first place.

"What we found is a sea of calm," in Texas malpractice claim cases from 1988 to 2002, said David Hyman, professor of law and medicine at the University of Illinois and co-author of a report examining insurance data provided by the Texas Department of Insurance. By any measure—from claims filed to damages paid—the data reflect stability in the tort system, according to the peer-reviewed paper that will appear in the May issue of the *Journal of Empirical Legal Studies*.

Interestingly, a similar study led by a Duke University law professor and an ophthalmologist at Duke's medical school found that malpractice insurance claims have not increased in Florida, based on insurance claims filed between 1990 and 2003. The researchers also found that the majority of payouts of \$1 million or more were not awarded by juries, but the parties settled out of court.

Still another study supports the fact that "tort reform" is not the answer for any perceived medical malpractice crisis. A University of Connecticut professor, Tom Baker, who specializes in insurance law, said he found that the amounts malpractice insurance companies nationwide are paying out for claims have not increased. "When we're getting the same answer using completely different research methods, you can be pretty sure we're right," Baker said of the two studies. "If what you want to do is protect doctors from the next malpractice insurance crisis, tort reform is not going to do it."

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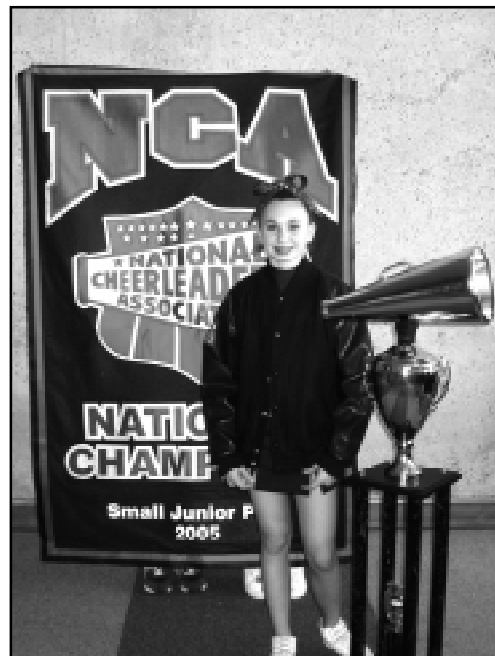
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## Lil Air Force One 1st in Nation

Right: Kamilah Todd, proudly, triumphantly displays the grand trophy and National Champions banner, symbols of victory for her cheerleading squad

Kamilah Todd's Lil Air Force One team achieved what no other Houston area team ever has. On February 6 in Dallas, they won the NCA (National Cheerleaders Association) national title in the elite division—the most coveted and prestigious award cheerleading has to offer and the pinnacle of an undefeated season. Lil Air Force One also took home national championships from Cheer Power and Cheer America, as well as every regional competition. We are very proud of Kamilah, her squad of 20 tough and determined 5<sup>th</sup> and 6<sup>th</sup> graders and her coaches.



## Winning NCA Coach Weds at Brown House



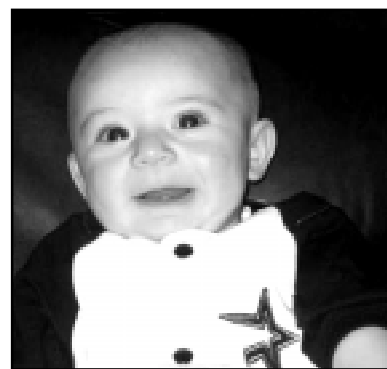
Left: Newlyweds Edgar and Ruthie Ruiz with Jim Woltz, Justice of the Peace, Precinct 8, who performed the ceremony

It's been a whirlwind year for Coach Edgar Ruiz of Lil Air Force One. He bought his first home, won the national NCA title and married Ruthie Reyes on March 19 at the Brown House. Edgar and Ruthie's wedding was the first to be observed in this historic setting since it became the home of The Law Firm of Alton C. Todd.

## TODD FAMILY ENJOYS CARIBBEAN CHRISTMAS

The Todd family—Alton, Nari and their children Seth and Kamilah, spent Christmas 2004 at sea aboard the Voyager of the Seas, one of Royal Caribbean's cruise line's largest ships, complete with ice skating rink, rock climbing wall etc.

The Todds sailed from Miami on December 24 and returned to Houston on January 3. Also enjoying the Eastern Caribbean ports of call of Haiti, St. Thomas, St. Marteen, San Juan and the Bahamas and welcoming the New Year with the Todd family were Nari's mother and stepfather, Diane and Donald Podnar of Dunedin, Florida, as well as Nari's sister Yasmin, her son Caleb, and Robert Cheetham of Friendswood.



## TODD ATTORNEYS WELCOME NEW SON

Alton and Nari Todd's second grandson, Tyler Nash, was born November 29, 2004. Both of Tyler's parents, Jeff and Dana Todd, are attorneys living in League City. Jeff is associated in practice with the Bay Area Houston Office of Greer, Herz and Adams, L.L.P.

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until they know we care.

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## Flawed Tracking System Demands Change

Before 9-year-old Jessica Lunsford was abducted from her bedroom in Homosassa, Florida, sexually assaulted and killed, her confessed murderer had already violated the terms of his probation as a sexual offender. Not only had he not been residing at the address registered for him on the state's sex offender database, but he proceeded to move to Georgia and was preparing to go to Tennessee when apprehended by authorities.

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### Recommended Reading

For an enlightening look at how extreme political views can seep into the American culture, read *The Hammer: Tom Delay: God, Money and the Rise of the Republican Congress*. Written by veteran Texas journalists Lou Dubose and Jan Reid, this hard-hitting biography of the Republican majority leader from Texas vividly depicts the former pest-controller's, bold Congressional agenda, driven by extraordinary powers and matching ambition.

The book is a compelling account of the amazing rise to power of the former small town exterminator from Sugar Land, a man of limited talents but quick to express his strident positions on issues he champions. One week after denouncing judges in the Terri Schiavo case in Florida, Delay declared that the judicial branch is out of control and Congress should reassert constitutional authority over the courts. He called the Environmental Protection Agency "the Gestapo of government" and is said to have defended not serving in Vietnam because too many minorities had signed up, leaving no room for people like him.

**John Evander Couey is one of many sex offenders who has beaten a flawed system but one of the few to be caught and charged. Statistics also show a huge likelihood of sex offenders repeating their crimes.**

Under the Code of Criminal Procedure, Texas law provides that information pertaining to sex offenders be accessible to the public. With the click of a mouse, anyone can find out if a registered sex offender is living in their neighborhood. In most cases a user can even view a mug shot. But the list is far from foolproof. The Florida database includes more than 34,000 sex offenders and predators, but the number not living at a registered address is unknown.

The accuracy of registries depends on how aggressively local law enforcement agencies track offenders. Some are pursued only if they don't sign and return yearly address verification cards.

The Jessica Lunsford Act, approved by the House Criminal Justice Committee in Florida, which would require sexual offenders to wear GPS (Global Positioning System) tracking devices should be implemented in all states. The devices can track an offender's movements using satellite technology.

**In Texas, 42 districts, including 14 in the Houston area, have adopted the computer program called V-soft to identify visitors to schools who are known sex offenders. The system scans photo identification cards and cross-references them against sex offender databases.**

Installation of the visitor tracking program is a good move but only as reliable as the database. While lawmakers weigh proposals aimed at changing the way

sexual offenders are monitored, some communities are exploring grass-roots techniques for alerting residents that a sexual offender has moved into their neighborhood. One Florida city is considering putting a notice in monthly water bills to keep people updated on the location of predators. Recorded messages on answering machines and even door-to-door neighborhood alerts are also being discussed.

**At the very least, all Texans should access the Department of Public Safety's website at <https://records.txdps.state.tx.us/> for a searchable database of where registered sex offenders and predators live in the state. For one small Texas town special to *The Altlaw*, this site showed the names and photos of 19 X-rated characters (+ twice that number in alias listings) that no child should ever, ever face.**

Additionally, parents can register to receive a free child's ID kit at [www.childsafenetwork.org](http://www.childsafenetwork.org), the website of the Child Safe Network, whose mission is to protect our nation's most precious asset from the likes of the convicted child molesters of Laura Smithers of Friendswood, Megan Kanka of New Jersey, Polly Klaas and Danielle van Dam of California and Jessica Lunsford of Florida.

### CLOSING STATEMENT

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