



'His Word Is His Bond'

Alton C. Todd Voted Best As Personal Injury, Trial Lawyer

The September 22 issue of *Texas Lawyer* reported the results of a survey of Galveston lawyers, based on anonymous interviews with 34 attorneys.

Of eight categories, **Alton C. Todd was named the top Personal Injury Lawyer for Serious Suits and also the Best Civil Trial Lawyer.**

Galveston lawyers overwhelmingly picked Todd as the go-to PI lawyer for really big suits, even though his offices are off the island in nearby Friendswood: "He's a very, very good trial lawyer. His word is his bond," one lawyer said. Lawyers say Todd picks suits with merit and has worked some miracles in the courtroom. "He's prepared [and] willing to spend the money," another lawyer said.

Todd also got the most mentions for Best Civil Trial Lawyer, along with Jack Brock, a partner in Mills Shirley.

Amendment to Cap Damages Narrowly Approved

A divisive and costly battle over a craftily phrased 24-word amendment disguised as a cure for medical malpractice woes ended in a very close special election on Sept. 13. Only 12 percent voted. The voting minority's passage of Proposition 12, by a 51-49 percent margin, gave constitutional authority to legislation passed in June capping noneconomic damages in all medical malpractice lawsuits. That new civil justice law became effective Sept. 1; passage of the amendment simply gave the politicians permission to change the Constitution.

The most visible and effective advocates of *Yes On 12*, Texas physicians softened the hardest edge of the opposition with a strong grassroots campaign which involved lobbying of patients with pro-Proposition 12 materials and recorded phone messages.

The amendment passed because it sounded as if it were concerned with medical malpractice. Twelve percent of Texas voters, representing the entire

electorate, relinquished their rights as future jurors because of a perceived crisis regarding the availability and affordability of medical malpractice insurance.

Proposition 12 had little to do with malpractice premiums. What it was really about was clearing the way for the legislature in future sessions to limit damages in *all* civil suits. And—this was accomplished by the huge insurance industry and other special interest groups, using the popularity of physicians to sneak constitutional changes past voters.

Proposition 12 appeared on the ballot as "the constitutional amendment concerning civil lawsuits against doctors and health care providers, and other actions, authorizing the Legislature to determine limitations on non-economic damages." It was the words "and other actions," buried midway in the phrase that provoked strong opposition from a diverse coalition including lawyers, judges, law enforcement officials, consumer groups, low wage earners and senior citizens, plus an organizational array of unlikely allies from both ends of the political spectrum: Texas Association Against Sexual Assault, Mothers Against Drunk Driving, Texas Federation of Teachers, AARP, the Sierra Club, the Eagle Forum, the Green Party, and even two former justices of the Texas Supreme Court. Both Republicans, the justices lent their concern over the measure as a legislative power grab to *Save Texas Courts*, the leading political effort to defeat the amendment.

Even some physicians, dismissing their own potential for personal financial gain, saw Proposition 12 as extending legislative authority too far. Supporting *Texans Against Proposition 12*, a Dallas physician, Victor L. Vines, M.D., wrote "By thus removing the responsibility to award damages from a jury and handing it to our legislature gives our legislative branch power over the judicial branch in a manner inconsistent with the principle of checks and balances enacted by the writers of our Constitution. And yet not a single clause in Proposition 12 prohibits the filing of frivolous lawsuits."

Under Proposition 12, lawmakers can't consider expanding limits to all other litigation until after January 1, 2005. The narrow passage of the amendment is an indication that people oppose capping damages in civil cases other than medical malpractice suits and that any move in that direction would be interpreted as a serious threat to the preservation of our civil justice system.

754 NEW LAWS REGULATE WHAT TEXANS CAN, CAN'T DO

Beginning September 1, more than 700 new laws took effect in Texas, including the most publicized and controversial cap on noneconomic damages in medical malpractice lawsuits.


Results of the 78th Legislature's regular session saw the passage of measures governing various aspects of Texans' lives from conception to the grave.

One of the most basic new statutes changes the definition of an *individual*. Under the old legal definition, the word meant "a human being who has been born and is

alive." The new definition removes "has been born" and adds this phrase to the end: "including an unborn child at every stage of gestation from fertilization to birth." Someone who injures or kills a fetus can now be criminally prosecuted or sued for wrongful death, excepting legal abortion.

A new law affecting all Texas public schools requires that a minute each day be set aside for silent prayer, meditation or reflection following recitations of pledges of

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Family Links

Galveston County Sheriff Gean Leonard kicked off his re-election bid with a golf tournament at South Shore Harbor on October 6. The Todd team was the only team composed of father and three sons. Pictured from left to right are Alton Todd, Mike Todd, Sheriff Leonard, Matt Todd and Jeff Todd. Consistent with the attorney-client privilege, the team score is confidential.

PROPOSITION 12 PURCHASED WITH SPECIAL INTEREST MONEY

A recent analysis of the 2002 election cycle by Texans for Public Justice shows the power of special-interest campaign money, revealed specifically in the passage of Proposition 12.

PACs and businesses supporting the amendment contributed \$5.3 million to Governor Rick Perry, Lt. Governor David Dewhurst and current members of the legislature, enabling placement on the September 13 ballot of the constitutional amendment to limit, without judicial review, damages on all civil lawsuits.

In other key findings, lawmakers who voted for Proposition 12 received four times as much money (\$3,612,676) as those who voted against the measure (\$863,869), and the average legislator voting for the amendment received twice as much money from the Pro-Proposition 12 interests as those voting against the measure.

Detailed results listed the total received by each legislator and the individual contributions of Proposition 12 interest groups, leading TBJ Director Craig McDonald to conclude that "legislation is for sale in Texas and these special interests know where to buy it."

754 NEW LAWS PASSED IN TEXAS

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allegiance to the United States and Texas flags. Under the previous law, a school district had the option of providing for a period of silence at the beginning of the first class of each school day during which students might reflect or meditate.

The long list of what Texans can and can't do bans some things that most may have assumed were already illegal, such as performing medical procedures while under the influence of drugs or alcohol, a judge's taking a gift or fee for referring legal business, having sexual relations with under-18 students by school employees and aiming a laser pointer at a police officer.

Texas lawmakers also increased penalties for some illegal activities. Assaulting a sports official is now a Class B misdemeanor. It is intended to protect more than 15,000 sports officials in Texas who have been subjected to increasing verbal abuse and physical confrontation.

Additional fines will now apply to drivers repeatedly cited for traffic violations. Among new provisions are a \$1,000 fine per year for up to three years for motorists convicted a first time for drunk driving. Fines go up to \$1,500 for a second driving-while-intoxicated offense.

The new laws also include some things Texans can now do legally for the first time. Drivers can now carry passengers in all-terrain vehicles on public property if the vehicle has a passenger seat and drive their Segway scooters on sidewalks, bike paths and roads with speed limits of 30 mph or less.

Addressing the significant gap between the percentage of Hispanics and African Americans in Texas medical schools and their percentage in the population at large, a new law calls for the establishment of an undergraduate Medical Academy at Prairie View A&M University to serve as an educational "pipeline" for qualified minority applicants to Texas medical schools.

In a marriage-related measure, the Defense of Marriage Act bans recognition in Texas law of same-sex civil unions formed in other states.

An anti-terrorism provision expands the state's capital punishment law to permit the death penalty for murders intended to intimidate large numbers of people or to paralyze government.

A growing problem in Texas addressed by a new law establishes state regulation of the burgeoning mold assessor and mold remediation industry, eliminating the costly headache that some have experienced in dealing with unregulated people in that industry.

One of the nation's fastest growing crimes—identity theft—is addressed by a new law which says that the crime can be prosecuted in any county in which the offense was committed or in the home county of the victim. Aimed at a popular tool for identity theft, the law now makes it a crime to use an electronic credit card reader to make illegal versions of customers' credit card information. Similarly, credit or debit card receipts can now include no more than the last four digits of an account number or the card's expiration date.

Focus on Damages Cap Diverts Attention From Real Malpractice Reforms Needed

A surgeon amputated the wrong leg.

A patient, told he had cancer, had his prostate removed. The operation, which left him incontinent and impotent, was unnecessary. The medical lab had given him another man's diagnosis.

A woman needlessly underwent a double mastectomy and experienced severe postoperative complications because a biopsy sample from her healthy breast had been confused with that of a patient who did have cancer.

A woman had a large part of her mouth and jaw removed following a lab mixup leading to a false diagnosis of terminal cancer.

A 17-year-old girl died in a hospital after receiving a heart and lung transplant from a donor with an incompatible blood type.

These are not the subjects of medical dramas or soap operas but documented cases, all deserving, by misfortune, of the right to realize a form of nebulous compensation called *noneconomic damages*. These are innocent people whose need for medical attention cost them unnecessary, incalculable pain and suffering, disfigurement, humiliation and loss of normal life. Only through the ability of

the four who lived (and the survivors of the one who didn't) to sue for medical malpractice can negligent parties be held accountable and future patients protected from similar misfortunes.

That right was greatly diminished with the June passage of a civil justice law establishing a \$250,000 ceiling on noneconomic damages and the September 13 approval of Proposition 12, giving the Texas legislature constitutional authority to apply the new law. Proponents of the amendment stressed that it affected only noneconomic damages—as if pain and suffering don't count. In reality, the category of noneconomic damages may be the most deserving of compensation and, for some, the only source of recovery. In litigation for wrongful injury or death, people who have little or no income would be hard-pressed to prove any economic damage beyond the cost of their care. The most vulnerable—the elderly, the very young, full-time homemakers and the unemployed—are disproportionately affected because of the difficulty of retaining lawyers whose cost of preparing a case for trial could exceed allowable damages.

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THE ALTLAW™

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Amazing Macchu Pichu, Enchanted Galapagos Islands Mark Memorable Summer Adventure for Todd Family

Summer vacation 2003 for Alton and Nari Todd and their children Seth and Kamilah promised and proved to be an unforgettable experience. Our first visit to South America began with our July 30 arrival at the cultural and business center of **Lima, Peru**. Although we spent only one day in the capital city, it was long enough to

sample some of the best ice cream we've ever tasted and to discover that Peruvians like their tips to be in new dollars, not old or wrinkled or torn or taped. There were money changers exchanging dollars for Soles on every street corner. They examined Western currency with a fine-toothed comb, wanting bills only in pristine condition.

In our brief sojourn as Lima pedestrians, we observed rather quickly that bus drivers (actually drivers in vans hawking customers) always have the right-of-way, and sorry the traveler that doesn't get out of their way pronto.

The next day we arrived in **Cusco**, which means "center or navel of the world," located 11,000 feet above sea level. Here, many tourists discover that altitudes in the Andes may have an adverse effect if one is not used to such heights. (Oxygen is provided if needed and even a special tea served for altitude sickness).

We walked the tiny streets and enjoyed a ride back in time in this original Inca capitol. Our "home" here was the Hotel Monesterio, the former San Antonio Abed seminary and the only museum hotel where visitors can experience a unique encounter with Cusco's Inca and Spanish traditions. The Orient Express bought the hallowed colonial structure in 1995 and turned it into a hotel offering a wonderful restaurant and the quality and comforts of a modern 5-star hotel.

Taking advantage of "Adventure in Cusco" advertised in travel posters as "the best thing," we rode horses on the highway and over very steep mountains up to the Inca ruins called Tipon. Parts of our adventure were primitive. Travel tips advise tourists to carry their own toilet paper. Not only is it

not a fixture in public bathrooms, but horse-back riders in the Andes "find" their bathrooms—previously and frequently used—along the side of a road.

On August 3 we departed at 4 a.m. on a 50-mile train ride to the fortress city of the ancient Incas—**Macchu Pichu**. Almost four hours later we arrived at the foot of the moun-



Machu Picchu – The Todds in the sacred ruins

tain of Machupijchu and from there were transported over an 8 kilometer road of 13 zigzag hairpins in an acrobatic bus. The ride was scary and ended with our first incredibly beautiful view of the ruins.

Macchu Pichu, built between 1460 and 1470 AD, means "old mountain or old peak." The integration of the architecture into the landscape is unique. Sculptures are carved into the rock, water flows through cistern and stone channels, and temples hang on steep precipices. The water system is reminiscent of the Roman aqueducts, rocks reflect the mountain in the background, and here there is a room where psychics from around the world come for initiation because of the energy from the ruins.

In this amazing evocative city we stayed at the Sanctuary Lodge,

also owned by the Orient Express. The lodge is located in the Inca Citadel ruins 8100 feet above sea level with easy access to the ruins and breathtaking scenery.

Seth climbed **Huayna Picchu**, meaning "new or young peak". The trail starts at an altitude of about 7875 feet followed by a 1300 feet drop. From the base, one climbs 1000 feet in a series of switchbacks and steeply pitched rock steps—at some points requiring one-person-at-a time crawling through a cave. All climbers must sign in on a book at the beginning so that all are accounted for at the end of the day.

On August 5, the last day in Macchu Pichu, we watched the sun rise over the Andes mountains and followed its brilliant signal of a new dawn through the windows of the Temple of Three Windows and onto the head of the condor in the Condor Temple.

Leaving Macchu Pichu, we understood, perhaps for the first time in our lives, the truth of Edgar Allan Poe's poetic claim that "the highest beauty always excites tears," all agreeing that we would probably never again witness an earthly site comparable to this sacred and spiritual place.

On August 6 we flew Aero Continente to **Guayaquil, Ecuador** and left the next day to fly to the **Galapagos Islands**. A trip to the Galapagos is the trip of a lifetime, the "enchanted isles" surely like nowhere else on earth.. After the 1½ hour flight we went by small boat to our ship which had once served as a floating hospital in Germany. There were 92 passengers, including a family that we called the "Greatful" Dead. The two boys, one very sick girl and a friend of the family, constantly called attention to themselves with their aggressive, pushing-to-the-front-of-the-line behavior, especially if it were a food line.

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Cusco, Peru – Seth and 'Kamillamas'

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Galapagos Islands – Kamilah and 150-year-old playmates

Memorable Summer Vacation

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Although hiking was rough on the volcanic rock, we toured several of the islands, swam with the seals, went snorkeling and saw sea lions and penguins, a land iguana, flamingos, hump-back whales, tortoises in the wild, sting rays, sea turtles and could have watched for hours the captivating sight of pelican diving for fish. We went to the Darwin Center and saw the turtle called Lonesome George believed to be 150 years old. We were told that whalers would eat the turtles in small portions, putting them through a slow death. At 10:20 p.m. on August 10, we went to the bridge of the ship and watched the compass go from North to South as we crossed the equator.

The extreme isolation of the Galapagos, the fascinating fauna and flora and diversity of unique wildlife inspired Charles Darwin's theory of evolution after he visited the islands in 1835. Having lived for thousands of years without the danger of predators, many of the

animals are unafraid of human contact and often come close to the curious.

Vacationing in a country where the seasons are our opposite, the sunny days and cold nights of the dry period provided a perfect August respite from the **Houston** heat. Immersed in the glory of the Incas, we were able to "sharpen the senses and forget for some minutes the small and transcendental problems of our lives," which Napoleon Polo Casilla wrote is essential in visiting Machupijchu. We will not soon forget the striking volcanic landscape and beautiful beaches of the Galapagos Islands that marked the end of our trip nor the great natural beauty of Peru and that country's remarkable archaeological heritage.

ALT-RUISM
A smile is an inexpensive way to improve your looks

Focus on Damages

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Will the ceiling on noneconomic damages, with its intent to inhibit jury awards and settlements, make the cost of medical care and medical malpractice insurance more affordable? Will the insurance companies share any of their rewards with their medical clients? Why are so many doctors so willing to place their faith in their historic adversary, the insurance industry?

If physicians and state examiners would remove the few incompetent, impaired and irresponsible doctors from the profession, the malpractice crisis would abate. But the medical community continues to resist policing its own. Recommendations by the Institute of Medicine to establish a system allowing physicians to report fatal medical errors without punishment and a compromise proposed by former President Clinton that would permit hospitals to publicize medical error data have all been rejected.

The focus on limiting noneconomic damages diverts attention away from serious reform of malpractice insurance. Everyone—especially the health care industry—needs to mitigate the basic reason malpractice cases are filed: if there were less malpractice, there would be less litigation.

CLOSING STATEMENT
We value your trust and your referral. Thank you for the opportunity to represent your interest and for recommending
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