



LAWSUITS FILED, CASES SETTLED BY TODD LAW FIRM

On January 19, The Law Firm of Alton C. Todd filed a lawsuit in Kleberg County, Texas on behalf of a client recently returned from two tours of duty in Iraq. On October 15, 2008, he was on his way to work at the U.S. Naval Air Station in Kingsville, traveling in an eastbound direction on Senator Carlos Truan Boulevard in Kingsville when an oilfield service company truck driver failed to yield the right of way and struck the vehicle operated by our client.

Also in January, the firm settled the case of a widow whose husband was killed in a charter aircraft crash. On September 15, 2008, a group of government dignitaries from the United States and Mexico left El Paso International Airport in a small charter aircraft on their way to Presidio to survey flooding in the area. Unfortunately, the pilot flew the plane into the side of a mountain in the Sierra Madre approximately 23 miles northwest of Presidio and 13 miles into Mexico, and all aboard the Cessna 421-B aircraft were killed. An aviation expert who had previously served as a NASA astronaut and flown five missions, as well as private and commercial aircraft, was immediately retained as an expert witness. In this case, for the first time, Alton C. Todd had the opportunity to work with his sister, Teresa Todd-Wetzel, a West Texas lawyer.

In December 2008, a case was settled in which the defendant claimed a medical excuse for an accident which occurred when, for unexplained reasons, a vehicle crossed three lanes of travel and collided with our client, who received serious foot injuries. Denying liability, the defense contended that an unexpected medical condition must have caused the accident. Our firm retained a toxicologist, accident reconstruction expert and forensic pathologist and was able to show from the autopsy of the deceased driver, along with medical records, that there was no medical condition to explain the decedent's conduct. Further medical records showed that the decedent had suffered from day time sleepiness and from a neck condition for a number of years but

(Continued on Page 3)



Alton and Nari Todd at the Great Pyramids of Giza

Election Day in Egypt Memorable Part of Educational, Cultural Adventure

"From atop these pyramids, forty centuries look down upon you."

With eloquent precision, Napoleon Bonaparte conveyed an immortal message to his soldiers before the Battle of Giza in 1798. More than two centuries later, I had the opportunity to witness this amazing work of engineering skill, a testament of man's monument to man, that is the Great Pyramids of Giza and even to venture inside the chambers.

There is a tunnel on one side of the pyramids that leads to the King's burial chamber. The tunnel is just over 3 feet tall and 3 feet wide and descends about 150 feet to the Queen's chamber. The floor has wooden grating, and there are metal handrails to prevent slipping. I observed the expressions on some pale and sweaty faces of those coming out before I entered the chamber, not crawling, but crouching in going down the steps into the heart of the pyramid.

Arriving at the Queen's chamber, it was refreshing to be able to stand, as its dimensions are approximately 18' x 17'. From there, one enters a passageway similar in dimensions to those used to access the middle chamber but now ascending upwards about 150' to reach the Great or King's Chamber. It is believed that these tunnels were not meant to be entered but to relieve the massive pressure from the tonnage of

rocks. It was a little eerie to trespass where the architects of the pyramids had forbidden.

This trek is not for the claustrophobic, but I had determined that I was not going to travel that far and miss out on what proved to be a fascinating experience.

Under the People to People Ambassadorial program, I was one of 25 American attorneys, who, in November, journeyed with their spouses to Cairo, where we met with Egyptian lawyers and law professors. We later traveled on the Desert Road to Alexandria on a three-hour trip that transported us from Egypt's past to its future. The dust-shrouded Giza pyramids, facing luxurious hotels, are just a few kilometers south of Cairo.

Along the Desert Road tollway were glimpses of the past as men worked the fields, and women were completely covered in burkas. Egypt's emphasis on international trade was evident as we got closer to Alexandria. Pharmaceutical companies, Pepsi, Ikea and General Motors are there, as well as thriving gas and gasoline refineries; yet, nearby, hand-poled boats are still used to harvest marsh reeds for baskets making, as in the time of Moses.

(Continued on Page 4)

New Administration Acts to Rebuild International “Rule of Law” Image

As promised in his inaugural address, President Obama has moved quickly to distance himself from the policies of his predecessor and to reshape U.S. national security strategy, rejecting a “false choice between our **safety** and our **ideals**.”

His act of ordering, on his second full day in office, the closing of the Guantanamo Bay prison camp, as well as remaining CIA secret prisons overseas, and banning harsh interrogation practices serves as a signal that U.S. re-engagement with the rule of law, domestically and internationally, is a clear priority of the new administration.

Restoring the capacity of the United States to fulfill its historic leadership standard on the rule of law is the hope of this nation and the peace-loving world. We heard that hope expressed in Egypt. It was “breaking

the paradigm,” one said of the election, trusting that finally we could complete the agreement between the Palestinians and the Israelis.

How U.S. lawyers abandoned the Geneva Conventions and other international protocols after the 9/11 attacks is examined by Philippe Sands, renowned British professor and practitioner of international law in *Torture Team: Rumsfeld’s Memo and the Betrayal of American Values*. Interviewed by the *Am Law Daily*, Sands also welcomed with hope the “no more torture” intent of President Obama. Sands added that the damage created by wrongdoing and criminality can be reversed “pretty expeditiously” with “a return to a U.S. that recognizes international rules as a useful means for addressing global problems and not as a threat to American sovereignty.”

Judicial Appointments Crucial Issue for President

President Obama’s progressive vision for the American judiciary played a significant role in his election, helping to deliver a sweeping mandate for the appointment of federal judges faithful to the Constitution and its promise of equal justice for all.

Key endorsements of Obama emphasized the importance of the Supreme Court in supporting his candidacy. “I would have difficulty with two more conservative appointments to the Supreme Court, but that’s what we’d be looking at in a McCain administration,” Colin Powell stated. Many newspaper and magazine editorial boards pointed to judicial appointments as a crucial issue, and exit polling made clear that the future of the Supreme Court was also a

determining issue among voters themselves. Voters who said that the Supreme Court was a factor went for Obama 53-45. Those who said the Supreme Court was the most important factor gave Obama a 57-41 victory.

For his part, Obama formalized, on January 29, his commitment to the Court’s role in protecting the vulnerable by signing his first piece of legislation, the Lily Ledbetter Fair Pay Act, an official act of repairing the damage done by the Supreme Court’s 2007 employment discrimination decision in *Ledbetter v. Goodyear*.

The new president may have the opportunity to nominate two or three Supreme Court justices and many more lower federal court judges. Because the Supreme Court hears only a tiny fraction of cases, the appeals courts are usually the courts of last resorts for most Americans. Of the 13 federal circuit courts of appeals, 10 have a majority of judges nominated by Republican presidents.

The ability to appoint those judges is an extraordinary power, impacting decisions that shape our nation and affect our lives and liberties for years to come.

THE ALTLAW™

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ALT-RUISM

The liberties of none are safe unless the liberties of all are protected.

Texas Supreme Court To Test Nationwide Policy

Texas voters are or should be watching closely a case before the Texas Supreme Court of the Tanner family vs. Nationwide Insurance. A 1999 accident left 7-year-old Roney Tanner in a coma for a week, hospitalized for a month and in physical therapy for five years.

Richard Gibbons, holder of a \$300,000 Nationwide policy, was evading San Marcos police when his truck smashed into Greg and Maribel Tanner’s car at an intersection. Gibbons had been speeding at about 100 mph, crossed into incoming traffic, raced through stop signs and fishtailed around corners during the chase. Nationwide maintains that Gibbons violated his insurance contract by fleeing police and ignoring traffic laws. So far, two courts have sided with the insurer.

Nationwide, in refusing to pay for the family’s injuries, contends that Gibbons’ behavior was foreseeable to deliberately cause an accident and therefore his coverage is voided because his policy included a standard intentional acts exclusion. At issue is how to interpret that policy, bought in Ohio, which has a wider definition of “intentional” than Texas. Ohio’s exclusion voids coverage for “willful acts” that the driver should know will result in an accident.

The Tanners’ lawyer argued that Gibbons hit his brakes to try to avoid the crash and never *intended* to hurt anyone. Nationwide’s argument that any driver going too fast to stop at a red light or stop sign is no longer covered by their insurance means that a lot of traffic accidents are caused by people who lost their coverage at that moment, stated an editorial in the *Austin American-Statesman*: “The injustice was compounded by gross negligence by Hays County prosecutors. Gibbons was jailed on eight felony counts, but he made bail and skipped town, eventually landing in Akron, Ohio, his hometown. Instead of chasing Gibbons down and placing him back in jail, prosecutors dropped the charges and left Gibbons a free man.”

The outcome of this case is especially significant in view of the Texas Supreme Court’s record of ruling in favor of insurance companies in an overwhelming majority of cases. The court’s unanimous decision to grant Entergy Gulf States Inc. immunity from a lawsuit filed by an injured worker was such a blatant example of inconsistency with established law and legislative intent that vociferous protests led to the court’s rehearing the case. In Tanner vs. Nationwide, the court has a chance to rule on the side of justice for a change.

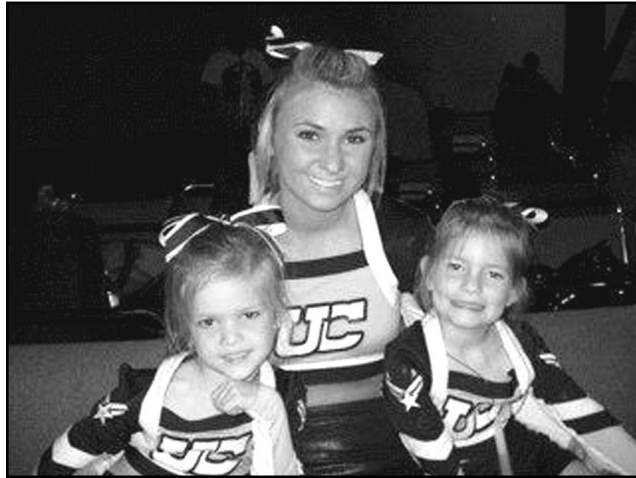
LAWSUITS FILED

(Continued from Page 1)

continued to drive. The case settled on the eve of the trial.

In ongoing cases, the firm has been retained to represent a family who sustained serious injuries when a Michelin tire blew out, causing the vehicle to roll over. Suit has not been filed, but earnest settlement negotiations are proceeding.

The firm has also been retained to represent a heavy equipment operator injured while moving a piece of heavy equipment. Unknown to our client, certain grating had been removed, and he fell into scalding water, sustaining serious burn injuries. The case is pending and scheduled for trial in the summer of 2009.



Avery Evans, Kamilah Todd and Presley Evans. As Kamilah, who is on the Air Force One squad, enjoys her final seasons with University Cheer, her six-year-old nieces are loving their first cheering year with the Bombers. The twins are daughters of Chris and Jennifer Todd Evans.

Trouble in Long-Term Care Industry

Thousands of Elderly Policyholders Victims of Insurers' Bureaucratic Denial Tactics

When lawsuits are filed against long-term-care insurers, the public doesn't hear too much about them. Often, the companies are willing to pay millions in exchange for confidentiality. Settlements require that depositions, documents and terms be kept private, and only a few states have even conducted meaningful investigations.

More than eight million Americans have bought into the multi-million dollar business of long-term-care policies, and thousands of those policyholders have filed grievances and lawsuits because of excuses invented by the insurers not to pay on long-term-care claims. Insurance companies make money when they don't pay claims, and, apparently, some figure if they wait long enough, the claimant will eventually die.

Last November, Consecos Inc., a major insurer, dumped its long-term-care policies into a state trust fund in Pennsylvania, putting, according to A.M. Best Co., the insurance-rating firm, 140,000 of its policyholders at risk of reduced benefits or premium increases. The unprecedented Consecos transfer was defended by Pennsylvania Insurance Commissioner Joel Ario, who said that Consecos had already plowed more than \$900 million into its senior health insurance, and no more money was coming.

In 2007, the *New York Times* reported on unnecessary delays experienced by Consecos clients. The company denied an 81-year-old widow benefits, even though she had paid into a long term insurance policy since she was 65. In the end, her family had to pay about \$70,000 to a long-term care facility, and Consecos paid nothing. First, Consecos said she had waited too long to file a claim and later argued that despite dementia and dozens of hospitalizations for hypertension and diabetes, she was not sufficiently infirm.

The *Times* account also cited the case of an 85-year-old woman suffering from dementia whose claim was denied by Bankers Life and

Casualty, a subsidiary of Consecos, because of improper paperwork. In another lawsuit, Penn Treaty American, undeterred by the patient's forgetfulness, anxiety and doctor's orders for continued care, decided that a 92-year-old man had so improved that he should leave his nursing home. A company owned by the John Hancock Insurance Company tried to rescind the coverage of a 72-year-old man when he was diagnosed with Alzheimer's disease four years after buying the policy.

A recent news article told the story of a 95-year-old Texas woman who was denied long-term-care benefits even though she couldn't walk or take her medications without help. However, she *could* remember her name, and, therefore, Consecos said she wasn't "cognitively impaired" and didn't qualify for benefits.

In multiple lawsuits, policyholders allege that claims have been rejected for many reasons including failure to submit unimportant paperwork, filing of incorrect forms received from the insurance companies, and insurers' judging facilities as inappropriate even though licensed by state regulators. In some cases, policyholders were not even given a reason.

In depositions conducted on behalf of policyholders and sealed in settlement agreements obtained by the *Times*, Consecos employees described bureaucratic obstacles that prevented payment of claims. One adjuster said that she denied claims because of missing records but was prohibited from calling nursing homes or physicians to request the documents. When a claim was denied, she said, she was not allowed to phone the policyholder but had to use a time-consuming mailing system.

Consecos's long-term-care violations, involving its two subsidiaries—Consecos Senior Health Insurance Company and Bankers Life

(Continued on Page 4)

PAYBACK TIME FOR DEMOCRATS REVIVES JUDICIAL SELECTION ISSUE

The dramatic election sweep of Democratic judges in Houston trial courts is an obvious result of straight-ticket voting, a measure of President Obama's popularity. In 1994, Republicans won all but one civil court seat in Harris County. This time, Democrats won all but four of Harris County's 26 district court races, and the margin of victory for the four incumbent Republican judges was razor thin. In Dallas County, Democrats won all six district-court races.

An accompaniment of the massive judicial face lift is the continuing issue of whether partisan elections are a good way to select judges.

Republican Chief Justice of the Texas Supreme Court Wallace Jefferson, who was re-elected on November 5, has denounced partisan judicial races for years. Following the election, he indicated that he will convene a summit of public officials, interest groups and media to explore the issue of judicial selection and present conclusions to the Legislature.

The Judicature Society, a nonpartisan research group, favors a nominating commission approach, with candidates vetted, recommended and appointed by a governor or elected body. Another source of debate, however, centers on who would appoint the committee to appoint the judges other than the party in power, resulting in the selection of lawyers on the side of that party and, ultimately, in no real change.

Those who favor the status quo suggest that if the Republican party wanted to change the form of judicial selection that they had that chance when they controlled the state Senate, the state House and all the statewide offices. It is the opinion of *The AltLaw* that the responsibility of selecting judges can be more objectively fulfilled by Texas voters than by a commission appointed by some politician.

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RETURN SERVICE REQUESTED

Updated Web Site Offers Informative View of Firm

The updated web site at <http://www.altontodd.com> contains detailed information relevant to The Law Firm of Alton C. Todd that can be addressed only briefly in this newsletter format.

The website, in both English and Spanish, identifies, by educational background and professional experience, Alton C. Todd and associate attorneys Jeffrey N. Todd and Clint E. McGuire. Interactive videos highlight not only the expertise but the human approach that typifies this law firm.

Each of our significant practice areas is clearly explained, and the Help Center and Frequently Answered Questions section provide valuable assistance to new clients.

The trust and confidence gleaned when faces are attached to the following expressions of the firm's attorneys, as seen in living color on the website, clearly outdistance the printed word.

"We try to practice law as if we were sitting on the opposite side of the table and our client was sitting where we are...." Alton C. Todd

"I can't stand in front of a jury and argue for accountability if I'm not accountable, myself...." Jeff Todd.

"He treated me like a friend more than a client, and he will resolve your situation...." client Cornelious O'Bryant referring to Clint McGuire.

CLOSING STATEMENT

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

THE LAW FIRM OF ALTON C. TODD.

Trip to Egypt

(Continued from Page 1)

In a hotel room in Cairo I watched Barack Obama's acceptance speech on November 5, 2008, the first time in my lifetime that I missed the election of an American president.

On that election day we were received by Dr. Ahmed Fathi Sorour, president of the People's Assembly, a position equivalent to our speaker of the house, who congratulated our delegation on the election of Obama as a victory for human rights.

At the stunning Alexandria Library, the jewel of the coast, which aspires to become the center of Middle Eastern learning and Arab reform, the staff expressed "great joy" on the election. The Harvard-educated director, citing the four acts of abridgment of civil liberties in U.S. history, considered only Lincoln's suspension of habeas corpus legitimate. Guantanamo's preventative detention cannot "square" with the presumption of innocence, and the right to silence cannot "square" with torture, he said.

Living under "emergency law," the legal community in Egypt looks to the American experience to guide them in their quest for more civil rights. They are encouraged by the election of Obama, particularly because of his background as a constitutional law professor. They are full of hope about what his presidency might mean for their nation and the world.

Our trip to Egypt was a unique cultural and professional exchange opportunity. We came home, not only enriched as eyewitnesses to the rich history of a 5,000-year-old civilization, but with a new understanding of the impact of the United States as a global player.

Insurers' Tactics

(Continued from Page 3)

and Casualty Insurance Company—have cost the company dearly. A multi-state investigation led by Florida, Illinois, Indiana, Pennsylvania and Texas resulted in a \$2.3 million fine and \$30 million in claims-handling improvements and restitution. Conseco is also obligated to pay an additional \$10 million in fines if problems are not corrected.

Coming on the heels of the Conseco settlement is an investigation by the Texas Attorney General's Office on Genworth Financial's long-term-care insurance practices. These investigations may be a portent of the future for long-term-care insurers nationwide. Introduced in the 1970s, the policies, purchased to cover the costs of assisted-living facilities, nursing homes and at-home care, became by the 1990s one of the insurance industry's fastest-growing products. But, when early purchasers lived longer and generated higher medical expenses, insurance executives began to issue new rules to limit benefits, tighten eligibility and raise premiums, sometimes as much as 40 percent a year.

Twenty-three of the 52 state guaranty associations guarantee long-term-care insurance policies up to \$100,000, six cover policies to at least \$500,00, and the rest cover to a limit of \$300,000, according to the National Organization of Life and Health Insurance Guaranty Associations.

Still, the dismal record of some companies instills fear in policyholders and their children who worry that the policies will not pay off when needed. Critics say that Conseco's transfer of policies to an independent trust may set a precedent for other financially troubled insurers. The situations experienced and mostly unpublicized by too many policyholders offer poignant proof that new buyers must exercise care in choosing a financially stable insurer, checking daily benefits, benefit and elimination periods, inflation protection, ratings, and records of premium increases.