



Appellate Court Reverses Trial Court Judgment in Cash Rent-A-Car v. Old American Insurers

On January 14, Attorneys Alton and Jeff Todd realized a significant appellate victory for their client, Cash Rent-A-Car, Inc. in a case appealed for the legal principle involved. The case was appealed from the 270th District of Harris County. The opinion was authored by Justice Terry Jennings for the Houston First Court of Appeals.

The appellant, Cash Rent-A-Car (RAC), challenged the trial court's rendition of summary judgment in favor of the appellees, Old American County Mutual Insurance Company (Old American) and Affirmative Insurance Services, Inc. (Affirmative), in RAC's suit against them for conversion, trespass, fraud, negligent misrepresentation, breach of contract and bailment agreement and violations of the Texas Theft Liability Act, the Texas Deceptive Trade Practices and the Texas Insurance Code. RAC contended that the trial court erred because the summary judgment evidence presented a genuine issue of material fact on all of RAC's claims and because appellees did not address all of RAC's claims.

The crux of the case hinged on the identity of the insured. The appellant alleged that when Joseph Dominick IV rented a car from RAC he presented an insurance identification card indicating that the rented vehicle would be insured by Old American and that coverage was confirmed through Old American and Affirmative's agents. Joseph Dominick IV was subsequently involved in an accident while driving the car. Following the agent's acknowledgment of RAC's claim, Affirmative took possession of the rented vehicle, a total loss. After settling the claims of multiple passengers who were riding in the car, Old American and Affirmative asserted that Joseph Dominick IV was not insured under the policy and refused to pay for damages to the car. They also refused to return the car to RAC; allegedly, the vehicle had already been released for sale at auction.

Old American's argument was that only Joseph Dominick, whose name was on the insurance card presented by Joseph Dominick IV, was insured under an Affirmative policy. After the appellees learned that the two

Dominick men were different people, they contradicted their earlier confirmation of coverage, taking the position, after towing the car to its storage yard, that there was no coverage.

In its claim of misrepresentation and fraud, RAC asserted that the only driver for which a premium could have been paid was Joseph Dominick IV because the alleged insured, Joseph Dominick, whose name appeared on the insurance card, was disabled and unable to drive. In the affidavit of RAC's owner, Joseph Edmond, Edmond testified that when "Joseph Dominick" came to rent the car, he contacted the insurer who confirmed that Dominick was insured but needed to purchase UM/UIM coverage, which Dominick subsequently did and returned with proof of coverage with Old American. Edmond further testified that after the accident, despite repeated inquiries, he was never given the location of the car and received no payment for its total loss.

The trial court's granting Old American and Affirmative's summary judgment stated that RAC was not entitled to recover any damages.

Based on new factual allegations by RAC, the appellate court found that Old American and Affirmative presented no evidence of what happened to the car after denying coverage for RAC's property claim and held that the trial court had erred in granting summary judgment for RAC's breach of a bailment agreement and contract claim. The court further held that the trial court erred in its summary judgment for Old American on RAC's claims for conversion, theft and trespass based on the coverage question and control of the vehicle after the accident.

In sum, except for a portion of two issues challenging the trial court's judgment on the DTPA (Deceptive Trade Practices Act) and Insurance Code claims, the appellate court sustained the remainder of RAC's claims for fraud, negligent misrepresentation and for Insurance Code violations based on provisions outside of Chapter 542.

SIGNIFICANT CASES TRIED, SETTLED

On November 17, 2009, Attorney Jeff Todd successfully settled the case of a toddler who had sustained a serious burn on her arm at an area day care center.

On August 19, a Harris County jury returned a verdict for Eric Boss, represented by the Todd Law Firm, of \$57,941.07. Eric was injured when another driver, pulling out from the right, collided with his vehicle. The jury found no negligence on Mr. Boss, whose left knee was injured and required surgery. While the verdict is not large by its numbers, it is twice the amount offered by State Farm on behalf of its insured.

Campaign Finance Decision Gives Special Interest Groups Free Rein

In a lopsided victory for free political speech, the U.S. Supreme Court ruled 5-4 on January 21 that corporations and unions have the First Amendment right to make independent expenditures to support and oppose candidates for office.

The landmark decision in *Citizens United v. Federal Election Commission* radically reversed the law of the land that has been upheld by both conservative and liberal courts for more than 100 years, granting to special interest groups more control over political contests, unleashing unlimited corporate and union money into a system already contaminated by powerful lobbyists.

In a 90-page dissent, led by Justice Paul Stevens, the decision was criticized for overturning precedent without justification and according corporations the same speech rights as individuals. The dissenters agreed that the decision will have an impact beyond federal elections, also affecting state judicial and legislative elections.

The majority made a mistake in this opinion. The idea that corporations, which exist to make money and get special tax breaks, should be treated identically to actual persons under a false flag of free speech is not a constitutional mandate. The court

could have decided the case for *Citizens United*—whether the corporate funding prohibition was unconstitutional as applied to them in a narrow fact situation—without going so far beyond the issue at the heart of the case.

While Texas is one of 24 states that prohibits corporations or unions from running advertising campaigns that directly attack or promote a candidate, some businesses circumvent the law by framing their ads and mailings as issue rather than candidate-focused. The Supreme Court's ruling will allow them to be more direct in their appeals and will not hurt the long-running case of former U.S. House Majority Leader Tom DeLay, accused of siphoning corporate money through the Republican National Committee in Washington and then distributing it to Texas candidates.

Todds To Attend Spring Conventions

Alton and Nari Todd will attend the spring meeting of the American College of Trial Lawyers in Palm Desert, CA from March 4-7. The meeting will be held at the J.W. Marriott Desert Springs Resort and Spa.

The Todds will also attend the annual convention of the International Academy of Trial Lawyers to be held April 7-11 in Phoenix, AZ.

Eclectic Lineup for Texas Governor

Governor Rick Perry, seeking re-election for an unprecedented third 4-year term, faces opposition in his own party from U.S. Senator Kay Bailey Hutchison and activist Debra Medina, as well as a slew of Democratic candidates, libertarians and independents whose names will appear on the March 2 primary ballot.

On the Democratic slate, there is **Star Locke**, 70, a home builder who ran for Texas governor in 2006 as a Republican. That was the year, according to the *Houston Chronicle*, that he challenged Libyan leader Moammar Gaddafi to hand-to-hand combat while swimming in the Gulf of Sidra. San Antonio **Dr. Alma Aguado**, 47, a single mother of two, said that the hardships she sees in her medical practice prompted her to run for governor. **William C. "Bill" Dear**, 72, runs a detective agency and campaigns as "an average individual" who complains about "foreigners" running convenience stores and motels.

Prairie View A&M associate professor **Clement Glenn**, 54, who describes himself as a teacher of teachers, hopes to build a network of connections through his alumni associations, community activities and former students. **Felix Alvarado**, 67, is a Fort Worth area teacher who says he is running because he can do better for the working class and for seniors. **Farouk Shami**, a naturalized U.S. citizen from the West Bank, is a hair-care magnate who has accused opponents, the media and fellow Democrats of racism.

Houston Mayor **Bill White**, fighting special interest groups and politics of the past, is a successful lawyer-businessman and former Deputy U.S. Energy secretary. A pragmatic problem solver, he has cut tax rates five times, in his six years of running the state's largest city, and earned high marks for promoting parks, libraries and improved traffic flow. Emphasizing a strong education and energy efficiency agenda, White is the best qualified Democratic candidate for governor of Texas.

University Cheer to Compete in Orlando World Competition

Two years ago, Houston's University Cheer Junior Air Force One, the program in which Kamilah Todd, then 15, has participated since she was eight years old, won first place in the Junior International Junior Coed Gold World Championship in Orlando, Florida. Cheerleaders from 34 countries competed.

Now, Kamilah, 17, is in the senior division, and once again, Air Force One is going for the gold. The international championship competition will be held in Orlando April 24-26.

University Cheer Junior Air Force One, under the leadership of Coach Edgar Ruiz, were NCA (National Cheerleaders Association) national champions in 2005, 2006 and 2007, the first to win an NCA title in this area and, in 2008, the first Houston area team to win a world title.

Bill Seeks To Restore Open Access To Courts

A bill recently introduced in the U. S. House of Representatives will restore standards required to file court cases and strengthen Americans' basic legal protections. The "Open Access to Courts Act of 2009" addresses U. S. Supreme Court decisions that raised the bar for plaintiffs seeking justice in employment, discrimination and other civil cases.

Since 1938, individuals and businesses could file suit by submitting a short and plain statement, called a complaint, which described the facts of the case, but the high court's 2007 decision in *Bell Atlantic v. Twombly* created a new interpretation of these rules. The ruling heightened the pleading requirement for Federal civil cases, requiring that plaintiffs include enough facts in their complaints to make it plausible—not merely possible or conceivable—that they will be able to prove facts to support their claims. In *Ashcroft v. Iqbal* in 2009, the Supreme Court held that top government officials are not liable for actions of their subordinates absent evidence that they ordered allegedly discriminatory activity.

The vague and subjective legal pleading standards established in the Court's new interpretation have resulted in cases being dismissed even before the plaintiff can obtain evidence to confirm allegations, effectively requiring them to know more information than they could possibly have access to. Since many cases are proven because of documents uncovered in discovery, these new standards allow negligent corporations to avoid accountability while weakening Americans' basic legal protections.

"Without this bill, access to justice will be denied before people even reach the starting line," said American Association for Justice President Anthony Tarricone. A bill sponsored by Sen. Arlen Specter (D-PA) has already been introduced in the U.S. Senate to return these pleading standards to their prior precedent established in 1957 by the Supreme Court in *Conley v. Gibson*.



Honoring Lucille Todd are friends and family members. Front row (L-R) Tyler Todd, Avery Evans, Shadix Wetzel, Presley Evans, Haden Wetzel. Middle row (L-R) Marc Wetzel, Teresa Todd-Wetzel, Lucille, Alton and Nari Todd. Third row (L-R) Dana, Cooper and Jeff Todd, Jennifer and Chris Evans, Kamilah Todd, Seth Park and Yasmin Zughni.

Lucille Todd Celebrates 90th Birthday

It was the year that Walt Disney began to make his first animated cartoon, crude "little puppet things," and the year that women finally were granted the right to vote. KDKA in Pittsburgh started broadcasting as the first commercial radio station with its initial broadcast the results of the U.S. Presidential election of Warren G. Harding as president. The Treaty of Versailles was ratified, ending World War I. A decade of entertainment, known as the Roaring Twenties, would end with the Great Depression. In 1920, the first Miss America contest was held, a new Pooh bear story by AA Milne became a big hit, the NFL was organized in Canton, Ohio, and the Boston Red Sox sold Babe Ruth to the New York Yankees for \$125,000 and a loan of more than \$300,000.

It was the year that the U.S. Postal Service ruled that children could not be sent by parcel post. As unbelievable as it may seem today, in pre-war days, children could be sent parcel post, traveling within a state for 17 cents in a container marked "Live baby." Out-of-state shipments to custodial parents or for visits with grandparents cost slightly more.

On a farm home near Hollis, Oklahoma, 1920 was also the year that Lucille Harris, mother of Alton C. Todd, Dennis Todd and Teresa Todd-Wetzel, was born on January 22. Recalling the story of her birth, she said, "It was snowing and my cowboy daddy rode horseback to meet the doctor. Daddy found the doctor stuck in the snow. He pushed him out of a drift and they arrived just after I was born."

Lucille Todd observed her 90th birthday in the style of her preference—with family—as close relatives gathered for a celebratory dinner on January 30, followed by a special birthday party at the Friendswood home of Alton and Nari Todd.

In these 90 years, Lucille has experienced the advent of technology and inventions in all strata of society from entertainment to medicine—in toys from bubble gum, Slinky and Silly Putty to Frisbee, hula hoops and Barbie dolls, Cabbage kids and roller blades. In the 20th century, she witnessed a remarkable range of exciting new developments—a diverse sample including the opening of McDonald's, frozen foods, credit cards, aerosol cans, ballpoint pens, computers, kidney dialysis machines, synthetic cortisone, microwave ovens, mobile phones, the atomic bomb, iPods and hybrid cars.

Foreshadowing by a decade the inclusion of women in athletics, Lucille Harris played basketball on a winning team, as well as volleyball, and served as pitcher on her school's baseball team during her scholastic years.

Lucille has two sisters, Nola, 95, who lives in Dallas, and Winnie, 85, of Tulsa, Oklahoma. She recalls how her wonderful parents managed to care for the three children during the depression. During those years, she says, if family came by, "Mother always prepared a very good meal—usually fried chicken. Always had vegetables from the garden. I really did not know we were in a depression. No one had much money."

"To me, family means more than anything. I know a Christian home is why Ruel and I were together for 71 years."

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Jennifer Evans Winning Runner

Representing The Law Firm of Alton C. Todd, a sponsor of the annual Holiday Hustle in Friendswood, Jennifer Evans won first place in her age group (30-39) at the December 5K Fun/Run/Walk and Kid's K.

Jennifer is the daughter of Alton Todd and receptionist at the law firm.

Proceeds of more than \$6,000 of the event, which hosted over 200 runners and walkers, benefit the Laura Recovery Foundation for Missing Children. The Laura Recovery Center is a 501 (c)3 non-profit organization found in loving memory of Laura Kate Smither, who was abducted near her Friendswood home in April 1997. More than 6,000 volunteers participated in a massive nationwide search, and her body was recovered in a pond 10 miles from her home three days before her 13th birthday. The Center exists to prevent abductions and runaways and to recover missing children by fostering a Triangle of Trust among law enforcement, the community and families of missing children.

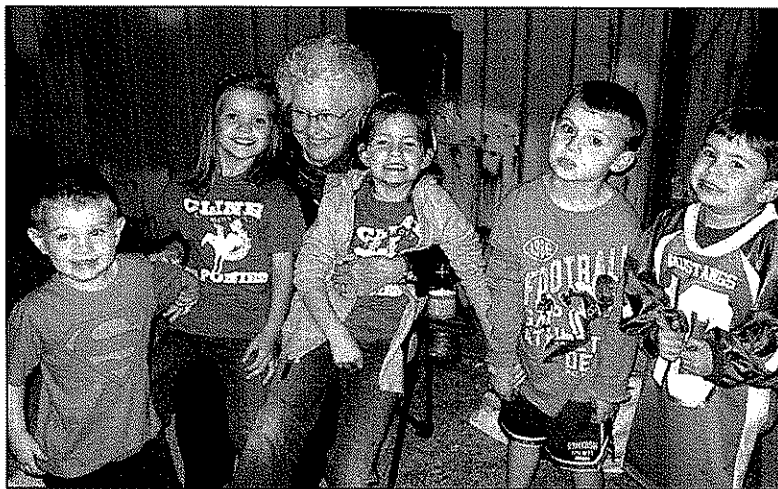
ALtruism

*The Harder I Work, The More
Luck I Seem To Have.*

CLOSING STATEMENT

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THE LAW FIRM OF ALTON C. TODD.



At her first-ever tailgate party, Lucille Todd is lovingly surrounded by five of her great-grandchildren.
L-R: Cooper Todd, Avery and Presley Evans, Tyler and Kai Todddd.

Lucille Todd Celebrates Birthday

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"I met my darling Ruel when I was 14 years old. On Our first date, Ruel and I rode along with my older sister and Ruel's older brother home from church. We married when I was 18 and Ruel was 21. Ruel got a job with the Dallas Street Car Company and earned \$115 a month. He volunteered to serve during World War II. He wanted to fly and was in CPT (Civilian Pilots Training.) Dennis was 4 years old and we followed him everywhere but California. He washed out in flying and became an airplane mechanic."

Despite the normal ups and downs of any union, "I wouldn't trade my life and the family I have with anyone," Lucille says. "I miss Ruel so much. Ninety years doesn't seem long except the time since May 27, 2009 when I had to give him up."

Today, Lucille spends time crocheting, knitting and sewing. She recalls the privilege

of sewing for "my beautiful daughter," even when she was in college and how she and Ruel enjoyed following their two sons in football. Dennis got a scholarship to SMU, and Alton was quarterback all through four years of high school. "It was very hard seeing them go away to college. Of course, we wanted them to go, but we missed them so much. We never missed a football game."

"My greatest honor," Lucille says, "is to have the husband I had for 71 years, three children, each one so special, to be grandma to 11 wonderful grandchildren and 8 great grandchildren. When you live to be 90, the joy continues." Interestingly, her comment echoes the sentiment expressed by American writer Ray Bradbury, also born in 1920: "If you enjoy living, it is not difficult to keep the sense of wonder."