



A Review of the 2003 Texas Legislative Session

By JONATHAN M. BAILEY

If you followed media reports during the recent legislative session, you know that partisan politics ruled supreme. Once the dust settled on the first Republican-controlled session in modern times, many important new laws were revealed. You can review new legislation at www.capitol.state.tx.us, but a few highlights follow:

Social – new laws banning same-sex marriages or civil unions; further restricting abortion rights and requiring a 24-hour waiting period; and requiring school classrooms to pledge allegiance to the U.S. and Texas flags and observe a daily moment of silence.

Congressional Redistricting – Republicans were determined to address this issue, but the Democrats’ escape to Oklahoma thwarted them for the time being. Stay tuned for the special session called by the Governor that will give Republicans another chance.

Tort Reform – new laws will severely restrict civil and medical malpractice lawsuits, and revolutionize the procedures and remedies available in civil litigation. The legislature also passed resolutions that will allow them to establish limits on jury awards for noneconomic damages. These resolutions will become law if voters approve a constitutional amendment during an election scheduled for September 13, 2003. This important issue will likely affect all of us at some point in our lives, so you are encouraged to educate yourself and exercise your right to vote!

Education - the allotment for teachers’ health insurance premiums was cut and retirement contributions increased to balance the state budget; universities will be allowed to set their own tuition rates without state regulation beginning in January 2004 (better start saving for your kid’s college tuition).

State Taxes – were not raised, but balancing the budget required termination of health care and other social services for many low-income families, rejection of reduced limits on local property tax appraisals, and reduced spending on some educational programs.

78th Legislature – Regular Session
Congressional Activity for Denton County Officials

	BILLS INTRO-	BILLS SIGNED	BILLS VETOED
<u>Rep. Crownover</u>	27	7	0
<u>Rep. Denny</u>	45	18	2
<u>Rep. Solomons</u>	82	24	2
<u>Rep. Marchant</u>	38	14	1
<u>Senator Nelson</u>	114	32	0
<u>Senator Harris</u>	88	15	1
<u>Senator Estes</u>	41	5	0
<u>TOTALS</u>	9,234	1,319	48

Diminished Value

By Stephen Howard

“What is diminished value, and is it something I should get for my car?” We get frequent calls asking this question. Unfortunately, there’s no easy answer. This article attempts to define the concept of diminished value, and give some guidance as to when seeking such damages is appropriate.

Diminished value is when your car had one value before an accident and after it was repaired, it is worth less than it was before the wreck. Most of the time you won’t be aware that the value is different until you decide to sell the car. The typical reason given for diminished value is that the car is no longer worth its full value solely because of the perception that a repaired car is never as valuable as a car that never needed repair.

Texas Courts are split regarding the validity of diminished value claims. The Houston Court of Appeals has held that insurance companies are not liable for diminished value due to factors such as the marketplace perception that a fully repaired car is inferior to an undamaged car. The Corpus Christi Court of Appeals has held that diminished value can be recovered if the repairs did not, or could not, restore the vehicle to substantially the same condition and value it had before the wreck. Until the Texas Supreme Court hears this issue, it will remain an unsettled area of law.

To attempt a diminished value claim, you must prove that the property cannot be restored to substantially the same condition it was prior to the wreck. To do so, you have to show the market value before the wreck, the market value immediately before the vehicle was repaired, the cost of repairs, and the market value after the repairs were made.

The process of proving the value of a vehicle at each of these stages requires more than a researching the Blue Book or NADA value of the vehicle. Insurance companies often require that independent appraisers be hired at your cost to determine the value of the vehicle. If the insurance company disagrees with that appraised value, they reserve the right to hire their own independent appraisal service. If an agreement cannot be reached, then a lawsuit may be necessary so that a jury can decide which appraised value is appropriate.

The decision of attempting to collect diminished value often comes down to a matter of how far you are willing to go. If the difference in the value offered and the value you determined is less than one thousand dollars, it would be difficult to justify the cost of both an independent appraisal and a trial to collect that sum. The greater the difference the more logical the decision to go through the process. As a result, older cars, or cars that were wrecked once before, often do not have a high enough potential diminished value (unless they are old enough to be collectors items). Factors such as high mileage, low value retention, or pre-existing damages can also undo a diminished value claim. The decision of when a diminished value claim is appropriate is therefore always a case-by case matter.

Got a Problem, Call Us!

Okay, so not every problem requires a lawyer. But sometimes a lawyer can help you sort things out, and decide on a direction or plan of action. If you are dealing with family issues, problematic neighbors, people who owe you money, problem children, barking dogs, or other situations, we may be able to help. There are a lot of things we can do besides file suit. Sometimes, all it takes is a letter laying out the law to straighten out a situation. We’re here to serve you.

We’re on the web at www.kuzmichlaw.com

The Meaning of Malpractice

First in a series of articles about Medical Malpractice

By Janice Fulks

Malpractice is actually a specific type of negligence and is usually applied to professionals. Negligence occurs when someone does, or fails to do, something that another reasonable person would do in a similar situation. The basis for every medical malpractice lawsuit is the claim that the healthcare provider failed to maintain or violated the “standard of care.” The standards specify the minimum level of conduct to which a doctor or nurse should be held accountable. Both doctors and nurse have their own standards of care in their specialty (obstetrics, surgery etc.) Any time they fall below this standard they risk being sued for medical malpractice. A violation of the standard of care by a doctor or nurse isn’t the only consideration in medical malpractice.

In the next newsletter, we will explore the issues surrounding actually proving a claim of malpractice.

How Insurance Companies Use Credit Information

By Jacob McLain

In addition to facts about a customer’s age, claims history, home or vehicle, county of residence, ZIP code, and marital status, insurance companies use credit ratings when evaluating applications and setting premiums. Insurance companies do not consider income or credit worthiness, but they do look for bankruptcies, collections, and delinquencies.

If the inclusion of credit information strikes you as odd, you may be surprised to learn that insurance companies, psychologists, and demographers have found that credit scores are an accurate predictor of insurance losses. On the whole, those with poor credit are substantially more likely to file insurance claims than those with better credit scores.

The Fair Credit Reporting Act allows companies to access your credit reports without your permission if used in connection with an insurance transaction. This means that your credit reports will probably be ordered when you ask an insurance company for a rate quote or your current company recalculates your premium.

To ensure that you get the best insurance rates possible, you can order copies of your credit reports and check them for accuracy. The three major credit-reporting agencies are Experian, TransUnion, and Equifax. The cost of a report from each agency is \$9.00 for Texas residents, with Experian charging an additional state tax in the amount of \$0.66. Though mistakes on credit reports are extremely rare, this small investment could mean substantial insurance savings. To order reports, contact:

Experian: www.experian.com or 888-397-3742

Trans Union: www.transunion.com or 800-916-8800

Equifax: www.equifax.com (all 3 reports and score, \$39.95) or 800-685-1111

To learn more about insurance ratings, visit www.choicetrust.com or the Texas Department of Insurance at www.tdi.state.tx.us.