Texas Personal Injury Law Reporter

Butterworth Legal Publishers, Austin, Texas

Volume 3, Number 4 November 1985

CONTENTS

Preparing for the Tardive Dyskinesia Epidemic

By Jeffrey C. Anderson*

Nancy began showing symptoms of schizo-affective disorder in her early twenties. As the suggestion of schizophrenia became more pronounced, her doctor undertook drug therapy to control the disorder by prescribing 400 mg. of Thorazine. Drug therapy was virtually the only alternative available to treat Nancy's condition, since her psychotic episodes were infrequent and nonviolent. When Nancy's condition did not readily improve with this initial treatment, the dosage of Thorazine was increased. Over the next several years, Nancy's psychotic episodes became more frequent and progressively worse. Her physician responded accordingly by increasing her daily intake of Thorazine, which at times during her treatment amounted to more than *1300 mg.* From time to time her physician would also prescribe Stelazine or Mellaril in addition to or as a substitution for Thorazine. For several years Nancy was continuously kept on Thorazine or alternate neuroleptic medications, with no breaks or prolonged drug-free periods. Subsequently, Nancy developed some minor involuntary repetitive movements of her orofacial, buccal, and lingual musculature, and one physician noted that she showed movements characteristic of the early stages of Parkinson's disease. In view of her continuing diagnosis as an undifferentiated schizophrenic, however, she was maintained on heavy dosages of antipsychotic medications. These Parkinsonian-like movements increased in severity and spread to her trunk and limbs. By this time, it was too late; Nancy had developed tardive dyskinesia. The real tragedy was that Nancy did not have a schizo-affective disorder, for which she was originally treated. Her condition was later accurately diagnosed as temporal lobe epilepsy: a condition for which neuroleptic/antipsychotic medication is not indicated. Despondent over her condition, Nancy committed suicide a year later by setting herself on fire.

Nancy is just one of the great number of persons who will contract tardive dyskinesia as a result of both the proper and improper use of neuroleptic/antipsychot-

*Jeffrey C. Anderson is equity owner of Southers & Lyons, Inc., San Antonio.

ISSN 0264-4770

The *Texas Personal Injury Law Reporter* is published six times a year by Butterworth Legal Publishers, 11004 Metric Boulevard, Austin, Texas 78758, telephone (512) 835-7921. Subscription price is $72.00 per year.

EDITOR IN CHIEF
Frank R. Southers

MANAGING EDITOR
Jamie L. Fuller

Frank R. Southers is an attorney with the firm of Southers & Lyons, Inc., San Antonio, Texas. Jamie L. Fuller is a staff member of Butterworth Legal Publishers and is licensed to practice law in Texas. The editors welcome suggestions for making this *Reporter* more useful.

This *Reporter* may be cited as 3 *Tex. Pers. Inj. L. Rep. xx* (1985).

The following citation form is used for court of appeals cases not yet appearing in *Southwestern Reporter 2d;* Smith v. Jones, No. 40,000, Op. Serv. —Civil, T6-89-23-146 (Beaumont, May 12, 1985). This form does not include a writ history because in many instances the time for filing an application may not have expired.

ic medications. Although at the present time there are very few reported medical malpractice cases involving tardive dyskinesia, there appears to be little doubt that these cases are just a trickle before the floodgates open. Dr. Paul S. Appelbaum, writing in the *American Journal of Psychiatry*, recently declared that the pending epidemic of tardive dyskinesia was possibly "our next mass accident," similar to the previous asbestosis, Agent Orange, diethylstilbestrol (DES), Dalkon Shield and swine flu/guillian barre syndrome man-made epidemics.[1] Since tardive dyskinesia is almost exclusively an iatrogenic disorder and since neuroleptic drug therapy is currently the only effective method of controlling the psychotic episodes of schizo-affective disorder, one author noted: "the impending flood of Tardive Dyskinesia litigation has begun. I think that there is an enormous backlog of cases that are going to plague us for years."[2] Articles have already been written by physicians urging that alternate compensation symptoms be set up to deal with the patients who become victims of tardive dyskinesia. Since the medical profession seems to be preparing for a flood of litigation involving this disorder, we need to understand more about its etiology.

ETIOLOGY

Neuroleptic drugs were first introduced into clinical psychology around 1952. Soon after their introduction, it became apparent that these drugs were capable of producing a variety of unexpected extrapyramidal side effects, including rigidity and acute dystonic reactions. These unexpected conditions were observed to occur primarily in early treatment, usually after days to weeks; to be transient, remitting spontaneously in some cases; and frequently to respond well to anticholinergic agents. These conditions were also reported to disappear after neuroleptic dosage reduction or discontinuation of the drug therapy.

Initial reports of tardive dyskinesia appeared in Europe in the late 1950s. The first public description of the disorder is attributed to an article written by Dr. M. Schonecker in 1957 in a paper entitled "A Peculiar Syndrome in Oral Region as the Result of the Administration of Megaphen."[3] In the article, Dr. Schonecker described three patients who had developed involuntary movements similar to a Parkinsonian disorder after having been on a prolonged course of a neuroleptic medication. Although these movements occurred earlier in treatment than what generally became associated with the concept of tardive dyskinesia, the fact that they persisted following drug withdrawal suggested that the condition was a different phenomenon from the previously recognized "Parkinsonian" side effects.

Subsequent articles in the 1960s continued to report types of neuroleptic-induced dyskinesias, some of which persisted long after the discontinuation of the neuroleptic drug therapy.[4] At this time the term "tardive dyskinesia" was suggested to describe these Parkinsonian-type movements associated with neuroleptic withdrawal. By the early seventies the consequences of prolonged neuro-

leptic drug therapy were becoming evident as the number of patients with tardive dyskinesia increased dramatically. In 1980 a task force set up by the American Psychiatric Association published its findings formally recognizing a direct relationship between the prolonged use of neuroleptic drugs and the development of tardive dyskinesia.[5]

MANIFESTATIONS

Tardive dyskinesia is an abnormal, repetitive movement disorder that affects some individuals who have been treated for a prolonged period of time with antipsychotic/neuroleptic medications, such as Thorazine or Mellaril. The initial physical manifestations of the disease usually involve choreic movements of the face, which include movements of the mouth, tongue rolling, chewing or gnawing motions, lateral jaw movements, twitches, and repetitive tongue protrusions (a condition referred to as "serpent's tongue"). There may also be audible grunts, whistles, or swallowing sounds. As the disorder progresses, the dyskinetic movements commonly extend to the extremities, such as the arms, fingers and toes. There may be twitching or jerking of the fingers or toes or forceful constant choreic movements. The condition may also result in incapacitating dystonic posturing.

Today, the initial diagnosis of tardive dyskinesia may not be a difficult one. Though there are no pathognomonic signs or symptoms, a presumptive diagnosis of tardive dyskinesia should be made for any patient with abnormal involuntary movements who has a history of taking neuroleptic medication for a period of at least three months. A physician should also be suspicious if a patient demonstrating dyskinetic movements has recently undergone a reduction in his neuroleptic drug dosage or a discontinuation of his medication prior to the onset of his involuntary movements.[6]

INCIDENCE, PREVALENCE, AND RISK FACTORS

Both the incidence (new cases occurring in a defined population during a given period of time) of tardive dyskinesia and its prevalence (the proportion of patients with tardive dyskinesia in a treatment facility during a given period of time) appear to be highly variable, ranging from a low of 1 percent to a high of 57 percent in chronic drug-treated patients.[7] The prognosis of patients with tardive dyskinesia is also highly variable.

There are a number of risk factors. Age appears to be the single most important of these. Generally, it is thought that younger patients who have not been chronically institutionalized and who have received low doses of antipsychotic medication over a short period of time are at less risk of developing tardive dyskinesia than elderly patients with prolonged exposure to antipsychotic drugs. Elderly patients are also more likely to develop irreversible tardive dyskinesia than are younger patients who have been taken off the medication upon demonstration of the first symptoms.

Being female is the second most frequently suggested risk factor. Tardive dyskinesia appears to be substantially more prevalent in women than in men, even after the age factor is discounted. It also appears from the studies that women are more likely than men to develop irreversible tardive dyskinesia, as well as the more severe forms of the disorder.[8]

Drug dosage and duration also seem to be major risk factors in developing tardive dyskinesia. It is generally considered that high dosages of neuroleptic drugs increase the risk of the disorder, as does prolonged administration of the drugs. The risk of tardive dyskinesia is directly related to the cumulative neuroleptic drug exposure, which is a combination of drug dosage and duration of drug administration. Generally, the higher the cumulative drug exposure, the greater the risk of developing tardive dyskinesia.[9]

Drug type does *not* appear to be an important risk factor in the development of tardive dyskinesia. The drugs implicated in the etiology of tardive dyskinesia are numerous and include the following:

Generic Name	*Trade Name(s)*
Chlorpromazine	Thorazine
Promazine HC1	Sparine
Triflupromazine	Vesprin
Fluphenazine	Permitil/Prolixin
Perphenazine	Triavil/Trilafon
Prochlorperazine	Compazine
Trifluoperazine	Stelazine
Thioridazine	Mellaril
Chlorprothixene	Taractan
Haloperidol	Haldol
Thiothixene	Navane
Molindone	Moban
Mesoridazine	Serentil
Lithium Carbonate	Cibalith-S/Eskalith/ Lithane/Lithobid/Lithotabs/Lithonate
Loxitane	Loxitane
Piperacetazine	Quide

None of the above-listed drugs appears to be more likely to produce tardive dyskinesia than the others; however, there does not appear to be sufficient research to completely rule out drug type as an important risk factor.

TREATMENT

There is no known cure for tardive dyskinesia. Some individuals recover spontaneously over a period of time after being taken off the medications. Dr. Norman M. Bacher reported some promising results in using a low dose of propranolol in an April 1980 issue of the *American Journal of Psychiatry*, but the treatment has been far from universally effective.[10] In some patients, lithium has been used to treat the symptoms, but there have been conflicting reports that lithium may actually aggravate the involuntary dyskinetic movements.[11] Other drugs investigated for use in the treatment of tardive

dyskinesia include sinemet, tryptopan, morphine, haloperidol, atropine, and naxolone. Though many drugs have been tested, the overall value of all these treatments remains to be established.[12]

MEDICAL DILEMMA

The dilemma facing physicians regarding tardive dyskinesia is that there is no satisfactory alternative to the use of neuroleptic/antipsychotic medication in the treatment of schizo-affective disorders at the present time. Neuroleptic drugs are the mainstay of both acute and maintenance treatment of schizophrenia. In other words, physicians must use antipsychotic medication to prevent the psychotic aspects of schizophrenia, but in so doing, they unavoidably subject their patients to the very real risk of tardive dyskinesia. By attempting to control the psychotic manifestations of a schizophrenic patient, the physician may at the same time cause his patient to sustain a permanent incapacitating injury.

LEGAL DILEMMA

Tardive dyskinesia also presents a dilemma for attorneys representing patients who have developed the condition as a result of drug therapy. At the present time, the treatment of choice for a schizophrenic patient in a psychotic state is the use of neuroleptic drug therapy. Uncontrolled schizophrenics in a psychotic state present an unreasonable danger to themselves and others. At the present time, this danger can be minimized only through the use of neuroleptic drug therapy, since the use of institutionalization and surgery is severely limited to chronically psychotic, highly dangerous individuals. What makes the tardive dyskinesia epidemic different from previous mass accidents caused by such man-made products as diethylstilbestrol (DES), the Dalkon Shield, and the guillian barre-producing swine flu inoculation is that the physician has no choice in many instances but to place his patient at some risk of developing tardive dyskinesia in order to control his psychotic outbreaks. This lack of treatment alternatives, however, does not completely shield the physician from responsibility for causing his patient to suffer tardive dyskinesia as the result of neuroleptic drug therapy.

CAUSES OF ACTION

Informed Consent?

A great deal of attention has been focused in the medical literature upon informing prospective drug therapy patients of the possibility of developing tardive dyskinesia. The literature goes to great lengths to recommend that physicians disclose all risk factors and possible treatment alternatives to their patients before undertaking neuroleptic drug therapy.[13] This concern regarding the legal consequences of failing to obtain a patient's informed consent before a drug treatment may be exaggerated in view of recent developments.

A cause of action based upon a physician's failure to obtain the patient's informed consent to administer neuroleptic medication may not exist in Texas under the present state of the law. In *Barclay v. Campbell*, 683 S.W.2d 498 (Tex. App.—Dallas, 1984, writ granted), 2 Tex. Pers. Inj. L. Rep. 88 (1985), the Texas Court of Civil Appeals in Dallas affirmed a trial court's instructed verdict in favor of the defendant on the issue of informed consent. In *Barclay*, the plaintiff filed suit against the defendant physician, alleging that the doctor had negligently prescribed certain neuroleptic medications in connection with his psychiatric treatment of the plaintiff, and that the doctor negligently failed to disclose to the plaintiff the risks of tardive dyskinesia associated with the medications. During the course of his treatment, the plaintiff developed tardive dyskinesia. The evidence was undisputed that the defendant failed to warn the plaintiff of the risk of developing the disorder associated with the use of neuroleptic medication. During the trial various expert witnesses were called. Plaintiff's expert, a neurologist with a special interest in tardive dyskinesia, testified that the drugs administered by the defendant could cause the condition, but on cross-examination he stated that the risk was small. The defendant's expert witnesses also testified that although the drugs administered to the plaintiff could cause tardive dyskinesia, the risk was extremely small; furthermore, the plaintiff was suffering from a medical condition in which virtually the only treatment was drug therapy utilizing antipsychotic medication. A psychiatrist called by the defendant went further and testified that it would have been *poor* psychiatric practice to tell a patient like the plaintiff of the risk of the side effects of tardive dyskinesia because it would probably have kept him from taking the medication. The defendant himself testified that a possible consequence of informing the plaintiff of the risk of tardive dyskinesia was that it would have been more difficult for him to take the medication and the information "might very well have made him uncooperative." *Id.* at 501.

The court of appeals, in affirming the trial court's instructed verdict in favor of the defendant on the issue of informed consent, stated that its decision was controlled by provisions of the Medical Liability and Insurance Improvement Act, Tex. Rev. Civ. Stat. Ann. art. 4590i (Vernon Supp. 1984). That Act changed the common-law rule concerning a physician's duty of disclosure from that of a "reasonable medical practitioner" to that established by a panel of experts to determine and list which risks related to medical care should be disclosed. Provisions of section 6.07(a) of the Act created a rebuttable presumption of negligence when a physician failed to disclose one of the risks which the panel listed among those that must be disclosed. For some reason, tardive dyskinesia was not on the section 6.07(a) list of risks to be disclosed before undertaking neuroleptic drug therapy. In citing from the Act, the court stated that a physician's "failure to disclose may be found not to be negligent if there was an emergency or if for some other reason *it was not medically feasible* to make a disclosure of the kind that would otherwise

have been negligent." (Emphasis added.) *Id.* at 501. The Dallas court affirmed the district court's instructed verdict on the issue of informed consent by finding, in effect, that it was not medically feasible to disclose the risk of developing tardive dyskinesia to the plaintiff because it could have caused him to become uncooperative in his drug therapy and to refuse to take the neuroleptic medication prescribed for him by the physician. *Id.* at 501-2. In other words, the trial court and the Dallas Court of Appeals determined that under certain circumstances the risk of developing tardive dyskinesia as a result of neuroleptic drug therapy is so small that it does not exist as a matter of law. It appears that the court of appeals created its own "benefit to risk ratio" in determining which risks related to medical care must be disclosed under the Act. Although the supreme court has granted a writ in this case, at the present time there may not be any cause of action for a physician's failure to warn of the risk of tardive dyskinesia when prescribing neuroleptic/antipsychotic drugs.

Misdiagnosis

If a physician at the present time has no duty to advise his patients of the possible risk of developing tardive dyskinesia incidental to neuroleptic drug therapy, he still must exercise reasonable medical care in screening those patients selected for administration of neuroleptic drugs. Neuroleptic medication must be limited to those patients diagnosed as suffering from a schizo-affective disorder of a moderate to severe nature. Its use must be limited to conditions which, in all reasonable medical probability, will result in severe aggression or self-abuse. *See Clites v. State*, 322 N.W.2d 917 (Iowa Ct. App. 1982). Neuroleptic medication must not be administered in the presence of any preexisting movement disorder or to patients in which such disorders may be masked by the use of other medications. In the case recited in the beginning of this article, Nancy had been erroneously diagnosed as suffering from a schizo-affective disorder for a number of years. Neuroleptic drug therapy was undertaken based upon this misdiagnosis. Even though the risk of tardive dyskinesia was never related to Nancy, that issue is not material, since Nancy's ultimate cause of action will be one based upon inadequate screening, misdiagnosis, and inappropriate medical treatment.

There is also a potential cause of action when the error in diagnosis relates to the failure of the defendant physician to timely recognize the initial physical manifestations of tardive dyskinesia or to confuse those manifestations with another disease process. In the case of *Faigenbaum v. Oakland Medical Center*, 373 N.W.2d 161 (Mich. App. 1985), the plaintiff filed suit on behalf of his minor daughter against the Clinton Valley Center and the doctors and staff of the Oakland Medical Center. He alleged that his daughter had been initially misdiagnosed as being mentally ill and that she was improperly admitted to the Clinton Valley Medical Center. *Id.* at 162. Shortly after the initial misdiagnosis, the plaintiff's daughter was begun on neuroleptic drug therapy with Thorazine and Mellaril. The prolonged use of these drugs subsequently caused her to develop tardive dyskinesia, which was manifested by the classical movement disorders of her face, mouth and limbs. Although she demonstrated the classical symptoms, she was again misdiagnosed, this time as suffering from Huntington's Chorea, and was subsequently prescribed yet another neuroleptic drug, Haldol, to control the disorder. It was determined too late, after a prolonged course on Haldol, that she did not have Huntington's Chorea. The Haldol she received aggravated her condition and contributed greatly to the severity of her tardive dyskinesia, rendering the condition irreversible. *Id.* at 163.

The case was subsequently settled against some defendants for $378,000 and a verdict returned against the remainder in the total sum of $1,000,000. Although the case was reversed on the issue of governmental immunity under the Michigan Tort Claims Act, it is one example of a cause of action that would be actionable under the Texas Medical Liability and Insurance Improvement Act.

Mistreatment

Even though physicians may be faced, unavoidably, with a risks-versus-benefit consideration when prescribing neuroleptic drug therapy, the dilemma posed by the risk of tardive dyskinesia will not excuse a physician from his obligation to follow accepted standards of medical care in the treatment of the condition. In the case of *Clites v. State*, 322 N.W.2d 917 (Iowa Ct. App. 1982), a twenty-eight-year-old retarded man who developed tardive dyskinesia as the result of prolonged treatment with major tranquilizers in a state hospital school was awarded a judgment in excess of $760,000.

The plaintiff was admitted to the Glenwood School, a state-owned hospital school, in early 1963. Upon admission, he showed no signs of abnormality other than mental retardation. He was completely ambulatory upon admission, had sufficient manual dexterity to care for himself, and could interact with his peers. Although the plaintiff had a poor speech pattern, he could make himself understood. In 1970, he was placed on Mellaril, a neuroleptic, after unsubstantiated reports of sexual misconduct and aggression. Over the next several years, the plaintiff continued to receive this drug therapy in ever-increasing dosage levels. In 1975, he developed hyperkinetic, involuntary movements of his mouth, face, and limbs. At that time he was diagnosed as suffering from tardive dyskinesia.

The plaintiff filed suit under the Iowa Tort Claims Act, alleging negligence in the improper use of drugs and the failure to moderate the dosage levels. He also alleged that he was given this treatment merely for the convenience of the staff and not as the result of any medical necessity.

In its decision, the trial court found that the long-term use of neuroleptic medication, under the facts of this case, was medically unwarranted, that the plaintiff

was improperly monitored and restrained, and that the staff was medically negligent in failing to discontinue the drug therapy upon the development of the tardive dyskinesia manifestations. In arriving at these conclusions, the trial court set out the basic medical standards to be followed when utilizing neuroleptic/antipsychotic drugs:

1. Limiting the use of neuroleptics or major tranquilizers to situations in which the patient has demonstrated severe aggression or self-abuse.
2. Regularly monitoring patients under neuroleptic drug therapy through the use of regular visits to a physician and regular physical examinations, including the use of the appropriate laboratory tests.
3. Temporarily interrupting drug therapy, i.e., drug holidays to monitor a patient's progress while he is not under the effect of major drugs. Though the court noted that there was some disagreement in regard to the use of "drug holidays," their use as part of a treatment regimen should be considered.
4. Consulting periodically with drug therapy specialists or periodically using peer review.
5. Altering or timely halting drug therapy when the manifestation of tardive dyskinesia first develops.
6. Restricting the concurrent use of major tranquilizers and neuroleptics to only those circumstances where the use of multiple drugs is the least intrusive means of treatment.

Id. at 920-21.

The decision of the trial court was affirmed by the Iowa Court of Appeals on June 29, 1982. *See Clites v. State*, 322 N.W.2d 917 (Iowa Ct. App. 1982). Although there are no reported cases involving the treatment standard applicable to patients suffering tardive dyskinesia in Texas at the present time, the standard set out by the Iowa court certainly comports with the recommendations contained in the current medical literature and should certainly apply to physicians in Texas and elsewhere.[14]

CONCLUSION

Although there are few reported medical malpractice cases dealing with tardive dyskinesia as a consequence of drug therapy, many cases should be appearing in the Reporter system very soon. The medical community has recognized the problem and has been gearing up for the tardive dyskinesia epidemic for several years. Although the condition is a necessary risk of an equally necessary procedure, the medical community recognizes that the risks can be minimized and probably the prevalence of the disorder reduced. The legal profession must be equally prepared to deal with the pending tardive dyskinesia epidemic. We must be thoroughly familiar with the disorder in order to fulfill our duty of distinguishing the victims of an unavoidable medical consequence from the victims of avoidable medical mismangement.

NOTES

[1] Appelbaum, Schaffner, & Meisel, *Responsibility and Compensation for Tardive Dyskinesia*, 142 Am. J. Psychiatry 807 (July 1985).

[2] Baker, *Expect a Flood of Tardive Dyskinesia Malpractice Suits.* Clin. Psychiatry News, Jan. 1984, at 3.

[3] Schonecker, *Ein Eigentumliches im Oralen Bereich bei Megaphen Applikation*, 28 Nervenarzt 35 (1957).

[4] Uhrbrand & Faurluye, *Reversible and Irreversible Dyskinesia after Treatment with Perphenazine, Chlorpromazine, Reserpine and Electroconvulsive Therapy*. 1 Psychopharmacologia 408-18 (1960).

[5] R.J. Baldessarini, J.O. Cole, J.M. Davis et al., *Tardive Dyskinesia: A Task Force Report of the American Psychiatric Association* (1980).

[6] Gardos, Cole, & LaBrie, *The Assessment of Tardive Dyskinesia*, 34 Arch. Gen. Psychiatry 1206-12, (1977).

[7] Gardos & Cole, *Overview: Public Health Issues in Tardive Dyskinesia*, 137 Am. J. Psychiatry, no. 7 (July 1980).

[8] J.M. Kane, M. Woerner, J. Lieberman, B. Kinon, *Tardive Dyskinesia Neuropsychiatric Movement Disorders* 98.

[9] Kane & Smith, *Tardive Dyskinesia: Prevalence and Risk Factors, 1959-1979*, 39 Arch. Gen. Psychiatry 473-81 (1982).

[10] Bacher & Louis, *Low-Dose Propranolol in Tardive Dyskinesia*, 137 Am. J. Psychiatry, no. 4 (April 1980).

[11] Bacher, *supra* at 495.

[12] Kane, Rifkin, Woerner et al., *Low-Dose Neuroleptic Treatment of Outpatient Schizophrenics*, 40 Arch. Gen. Psychiatry 893-96 (1983); Gardos, Perenyi, & Cole, *Tardive Dyskinesia: Changes after Three Years*, 3 J. Clin. Psychopharmacol. 315-18 (1983).

[13] Tuardy, *The Issue of Malpractice in Psychiatry*, 1979 Med. Trial Tech. Q. 161; J.M. Kane, M. Woerner, J. Lieberman, B. Kinon: *Tardive Dyskinesia Neuropsychiatric Movement Disorders* 98.

[14] Kane et al., *supra* at 98.

Case Notes

GROSS NEGLIGENCE
NEGLIGENT ENTRUSTMENT

The owner of a vehicle cannot be found grossly negligent in entrusting that vehicle to another unless there is evidence that he had actual knowledge that such person was a dangerous driver and posed an

extreme risk to others. Such knowledge would reflect a conscious indifference to the welfare of those who might be affected by the entrustment.

Williams v. Steves Industries, Inc., No. C-3666, 29 Tex. Sup. Ct. J. 47 (Nov. 13, 1985).

FACTS: On July 30, 1981, Mrs. Renee Williams was driving her car on Interstate 35 in Austin when she ran out of gas and stalled in one of the center lanes. She restarted the car, but it stalled again before she had gone very far. There was testimony that shadows from an overpass hid the car from approaching traffic. Robert Robinson, an employee of Steves Industries, was driving an eight-ton truck owned by Steves and hit Mrs. Williams from behind. She and her two children, who were riding in the back seat, were injured, and the children later died. Mr. and Mrs. Williams sued Steves for personal injuries and for the wrongful death of the children. They alleged that Steves was negligent and grossly negligent in allowing Robinson to drive the truck. The jury found Steves both negligent and grossly negligent and awarded the Williamses $250,000 in punitive damages. The trial court limited the award to actual damages, and the appeals court affirmed in part and reversed and rendered in part. 678 S.W.2d 205; 2 Tex. Pers. Inj. L. Rep 64 (1984).

DECISION: The supreme court affirmed the appeals court's judgment. Focusing on the issue of gross negligence, the court observed that punitive damages "may be awarded against the owner of a vehicle if the driver was unfit and the owner was grossly negligent in entrusting the vehicle to the driver." The Williamses based their claim for punitive damages on the theory that Steves Industries was grossly negligent in entrusting the truck to Robinson. After receiving the definitions of "gross negligence" relied on by courts in other jurisdictions, including conduct that exhibits "an entire want of care" and "reckless disregard for the rights and safety of others," the court cited the definition used in Texas: "[T]hat entire want of care which would raise the belief that the act or omission complained of was the result of a conscious indifference to the right or welfare of the person or persons to be affected by it." *Burk Royalty Co. v. Walls*, 616 S.W.2d 911, 920 (Tex. 1981). The court noted that although the defendant's state of mind distinguishes negligence from gross negligence, the plaintiff need not prove this subjective state of mind by direct evidence. He may prove gross negligence by showing that the defendant had actual knowledge that his conduct posed an extreme risk or that under the circumstances a reasonable person would have been aware of such risk.

Stating that there is no exact line between negligence and gross negligence, the court went on to observe that the same is true of negligent and grossly negligent entrustment. Texas courts that have imposed punitive damages for negligent entrustment have required more than a mere showing that the driver was unlicensed. Rather, they have required evidence that the driver was incompetent on habitually reckless and that the owner knew or should have known these facts. In the present case, Robinson had moved to Texas from Tennessee and did not have a Texas commercial operator's license at the time of the accident. The court acknowledged that a jury could reasonably infer that Steves should have known Robinson did not have a valid license, but it pointed to the lack of evidence that he had any prior speeding tickets, had caused any other accidents, or was inexperienced, or that Steves had actual notice that he was a dangerous driver. In view of this fact, the court held that there was no evidence of gross negligence.

The court also upheld the jury's findings that Mrs. Williams was 25 percent negligent in failing to have enough gasoline in her car and that such negligence was a proximate cause of the accident.

DISSENT: Justice Ray dissented from the majority opinion, arguing that there was evidence to support the finding that equipping Robinson with a loaded truck when he had no commercial license showed a reckless disregard for the rights of others on the part of Steves Industries. This state of mind, not causation, was the central issue, and it was sufficient to support a finding of gross negligence.

MEDICAL MALPRACTICE STATUTE OF LIMITATIONS

The statute of limitations in the Medical Liability and Insurance Improvement Act is not unconstitutional as applied to a plaintiff who has a chance to discover her injury within the two-year limitations period. The Legislature's intent in passing this section was to abolish the discovery rule in cases governed by the Act.

Morrison v. Chan, No. C-3085, 29 Tex. Sup. Ct. J. 29 (Oct. 29, 1985).

FACTS: Betty Gray sued Dr. Rafael Chan, two radiation centers, and a radiation therapy group, alleging that their negligence caused a hole in her bladder. After receiving radium treatments from Dr. Chan for cervical cancer in February 1980, Mrs. Gray developed urinary problems. In September 1980, her urologist discovered a hole between her bladder and vagina that had not been revealed in an earlier examination. Gray sued all the defendants for damages allegedly caused by negligence in administering the radium treatments. In July 1982 Gray mailed a letter with statutory notice of claim, more than two years after the date of the last treatment, and she filed her petition in October 1982. After Gray's death, Hannah Morrison, administratrix of her estate, was substituted as plaintiff. The trial court granted summary judgment for the defendants on the basis of the two-year statute of limitations in the Medical Liability and Insurance Improvement Act, Tex. Rev. Civ. Stat. Ann. art. 4590i, § 10.01 (Vernon Supp. 1985), providing that a health care liability claim must be filed within

two years from the occurrence of the breach or tort or the date of the medical treatment, and the court of appeals affirmed. 668 S.W.2d 483 (Tex. App.—Fort Worth 1984).

DECISION: The supreme court affirmed the appeals court's judgment. Morrison presented two arguments dealing with the constitutionality and construction of the limitations statute. In discussing her contention that the two-year limitations provision violated the "open courts" provision of the Texas Constitution, the court cited its earlier decisions in *Nelson v. Krusen*, 678 S.W.2d 918 (Tex. 1984), and *Neagle v. Nelson*, 685 S.W.2d 11 (Tex. 1985), holding that the predecessor to art. 4590i, § 10 was unconstitutional insofar as it cut off a cause of action before the plaintiff knew a cause of action existed. The court distinguished those cases from the present one, pointing out that Gray had discovered her injury well within the limitations period and thus had ample time to bring suit. The court found the limitations statute constitutional as applied to Gray.

Morrison also argued that the statute of limitations begins to run with the occurrence of the last of three events—the occurrence of the breach, the occurrence of the tort, or the completion of the treatment made the basis of the claim. She contended that the "tort" in this case did not occur until September 1980, when a hole was discovered in Gray's bladder. Morrison further claimed that the word "tort" as used in the Medical Liability Act requires the *accrual* of a right to a judicial remedy. The supreme court, after examining the legislative history of the statute, rejected this argument. It pointed out that the term "accrual" was used in article 5526, which was before the Legislature when it adopted art. 5.82, § 4, predecessor to art. 4590i, § 10.01, but that the word was excluded from both subsequent acts. Thus, said the court, the Legislature presumably did not intend "tort" to refer to the time a cause of action accrues. "We hold that the Legislature's intent in passing Art. 4590i, § 10.01, was to abolish the discovery rule in cases governed by the Medical Liability Act." In the present case the act or omission that was the basis of the suit occurred in February 1980, and Gray learned of the hole in her bladder six months later. Since she failed to bring suit within the remaining eighteen months of the limitations period, she was barred from recovery.

MALICIOUS PROSECUTION LIBEL AND SLANDER

Summary judgment for the defendant is proper in an action for malicious prosecution if the summary judgment proof shows that the defendant did not act with malice to cause a criminal prosecution of the plaintiff. The one-year statute of limitations governing an action for libel and slander arising out of a claim for malicious prosecution begins to run at the time of publication, not at the conclusion of the prosecution.

McHenry v. Tom Thumb Page Drug Store, 696 S.W.2d 664 (Tex. App.—Dallas 1985).

FACTS: Raymond McHenry was prosecuted and ultimately acquitted of passing a forged prescription at Tom Thumb Page Drug Store pharmacy. Two police officers, in conducting a routine inspection of prescription files at the pharmacy, discovered that a prescription that had been filed by pharmacist Shyla Thomas was a photocopy. At the officers' request, Thomas gave a description of the person who had presented the prescription and subsequently identified McHenry's photograph from a police lineup. McHenry then was arrested on a complaint filed by the police. McHenry sued Tom Thumb and Thomas, claiming that he had been maliciously prosecuted. He was eventually acquitted. The trial court granted a summary judgment in-favor of the defendants.

DECISION: The court of appeals upheld the summary judgment decision of the lower court. It listed the four elements of an action for malicious prosecution —that the defendant acted (1) with malice, (2) without probable cause, (3) to cause a criminal prosecution of the plaintiff (4) that ended in acquittal and resulted in damages—and held that the summary judgment proof showed that in this case the elements of causation and malice were absent. The court observed that McHenry did not present any evidence to counter Thomas's evidence for summary judgment that showed that she had fully and fairly stated the facts in good faith to the officers and allowed them to decide whether an arrest was warranted. Summary judgment was also proper because McHenry did not show how the testimony might differ if the case were to proceed to trial. Moreover, the court stated that the mere allegation of conspiracy, raised by McHenry for the first time on appeal, would not have been sufficient to prevent summary judgment. A conspiracy may be proved by circumstantial evidence, but that evidence must be of such probative value that it raises more than a mere suspicion. The court stated that this case was controlled by its decision in *Yianitsas v. Mercantile National Bank*, 410 S.W.2d 848 (Tex. Civ. App.—Dallas 1967, no writ). In *Yianitsas*, the court stated that citizens have the duty to cooperate with law enforcement authorities in detection and apprehension of crime. Not only did McHenry fail to raise an issue as to lack of good faith on the part of Thomas but he also failed to provide any evidence of malice on the defendant's part. The court defined malice as ill will, evil motive, or reckless disregard of the rights of others.

McHenry also contended that Thomas libeled and slandered him by identifying him in August 1980 as the person who passed the forged prescription and later by testifying against him at trial in February 1981. McHenry brought this action in August 1982. Both parties agreed that libel and slander actions are governed by the one-year statute of limitations but disagreed as to when the statute began to run. McHenry argued that it should

begin to run only on the conclusion of the resulting prosecution in October 1981, but the court declined to adopt this view. It pointed out that in an action for malicious prosecution, it is proper to run the limitations period from the date of acquittal because acquittal is an essential element of proof in such an action. However, McHenry could have begun his action for defamation immediately upon publication. The discovery rule is applicable to defamation actions, but McHenry must have discovered any false statements by Thomas not later than the time of trial in February 1981. Since he failed to begin his suit within one year of this date, the action was barred.

DEFAMATION

A published account of official proceedings authorized by law is conditionally privileged as a matter of law if the account is at least substantially true.

Crites v. Mullins, No. 13-84-379-CV, Op. Serv.—Civil, T2-85-33-187 (Corpus Christi, Aug. 30, 1985).

FACTS: Fredrick Mullins, Jr. is owner and publisher of the *Toast of the Coast Herald*, a weekly newspaper published in Rockport. As part of the newspaper's operations, Mullins produced a telephone "News Line," which played news headlines and digests selected by Mullins. On June 11, 1980, both the newspaper and telephone service carried a story about an assault against Mildred Crites, wife of appellant Carl Crites. The stories said that a warrant had been issued for Carl Crites, charging him with aggravated assault. Crites contended that the article and the telephone news digest were defamation of his character and were slanderous and libelous per se. The trial court rendered summary judgment that Crites should take nothing.

DECISION: The court of appeals affirmed the award of summary judgment. The court held that the digest and news article published by Mullins were at least substantially true and were conditionally privileged as a matter of law. The court stated that hospital records affirmatively reflected the published accounts of the incident and in fact strongly suggested that the accounts even downplayed the appellant's involvement in the incident. The court stated that the published reports clearly fell under the provisions of Tex. Rev. Civ. Stat. Ann art. 5432 (Vernon 1958), which states that a fair, true, and impartial account in a newspaper of any official proceeding authorized by law in the administration of the law is privileged.

The court stated that to determine whether the newspaper's account was fair, true, and impartial, it must be interpreted as an ordinary reader would understand it. The requirement of truth may be met if the account is substantially correct: "A showing of substantial truth will defeat an allegation of libel, even where the misconduct charged may be exaggerated, if no more opprobrium would be attached to appellant's actions merely because of such exaggeration." The court pointed out that if the effect on the mind of the reader or listener would be the same, "any variance between the actions *charged* and the actions *proved* should be disregarded."

LEGAL MALPRACTICE

An attorney who drafts an ordinary supply contract that violates Texas antitrust laws by requiring sale of a product exclusively to one buyer may be found liable for legal malpractice if his actions result in damages to the party for whom he drafted the agreement.

Cooper v. Fortney, No. B14-85-149-CV, Op. Serv.—Civil, T2-85-41-297 (Houston [14th Dist.], Nov. 7, 1985).

FACTS: Duncan Cooper, Dennis Hoerr, and Valley Land & Cattle, Ltd., who mined lignite in Brewster County, contracted to sell lignite to Arnold & Clarke Chemical Company. When they disagreed over the contract's terms, Valley sought legal advice from an attorney, David Fortney, who then drafted a new document. The parties disagreed again, and Arnold & Clarke defaulted, whereupon Valley sued in state district court, alleging breach of contract, fraud, and promissory estoppel. Arnold & Clarke countersued and removed the case to federal court. After being informed by another attorney that the contract violated state antitrust laws, Arnold & Clarke moved for summary judgment on the breach-of-contract claim. When Valley did not oppose this motion, the federal district court granted summary judgment on this issue, thus eliminating from the federal suit any claim for breach of contract. Valley recovered a portion of its damages under the other two theories but did not recover its lost profits under the contract. It then filed a legal malpractice suit against Fortney, seeking to recover damages resulting from his negligence in drafting the contract. Fortney moved for summary judgment, alleging that the contract did not violate antitrust laws and that even if it did, his actions were not the cause of Valley's damages. The trial court granted the motion.

DECISION: The appeals court reversed. It first examined the contract to determine whether it violated the Texas antitrust law, Tex. Bus. & Com. Code Ann. §§ 15.02, 15.03, and 15.04 (Vernon 1968). This required ascertaining whether the document was an output contract, requiring the seller to sell all of his good-faith output to the buyer, or an ordinary supply contract, which states a specific, fixed amount to be sold. The court pointed out that an output contract is usually valid but that an ordinary supply contract requiring sale of a product exclusively to one buyer may violate antitrust laws. In the present case the contract stated that Valley would sell a specific amount of lignite (65,280 tons) to Arnold & Clarke, to be delivered at a minimum

rate of 1088 tons per month for 60 months; it did not state that Valley would deliver the mine's total output or that 65,280 tons was an estimate of the mine's output for 60 months. On the basis of these terms, the court concluded that the document in question was an ordinary supply contract.

It next examined several provisons in the paragraph entitled "Exclusive Purchaser," under which Valley was not to sell lignite from any property in Brewster County to anyone in the oil and gas drilling fluids business except Arnold & Clarke. The court found this to be anticompetitive and a restraint on the lignite trade. In addition, other portions of the paragraph limited Valley's pursuit of lignite markets outside the drilling business because they required Valley to seek Arnold & Clarke's permission to pursue such markets. The court also noted that this paragraph supported the conclusion that the contract was not an output contract, since it provided that Valley would increase production to satisfy Arnold & Clarke's requirements for any new venture. As the court pointed out, if the agreement were an output contract limited to the Brewster mine, Arnold & Clarke would not be able to buy *additional* lignite over and above Valley's good-faith output.

Having decided that the document violated Texas antitrust laws by restraining free trade and inhibiting competition in the lignite industry, the court next addressed Valley's challenge to the trial court's ruling. Since it had decided that the contract was invalid, the court had disposed of Fortney's first argument. It likewise rejected the argument he advanced to support his second contention that even if the contract was invalid, his actions in drafting it were not the cause of Valley's damages. Fortney claimed that Valley's failure to recover lost profits in federal court was due to its own election of remedies—its decision to abandon the breach-of-contract claim in federal court. The court stated that since the contract was void and unenforceable, Valley never possessed a valid breach-of-contract claim; unless a party has two valid remedies at the time he makes an election, the doctrine of election does not apply. Because Fortney's summary judgment evidence did not establish that his conduct did not cause Valley's damages, the court reversed and remanded the case for a trial on the merits.

DUTY TO WARN OF DANGEROUS CONDITION

A landowner is not liable for injuries to a licensee or trespasser if he has no actual knowledge of the dangerous condition that resulted in the injury and if his conduct has not been wanton, willful, or grossly negligent.

Mendoza v. City of Corpus Christi, No. 13-84-371-CV, Op. Serv.—Civil, T2-85-41-189 (Corpus Christi, Oct. 31, 1985).

FACTS: The survivors of Hector Mendoza sued the city of Corpus Christi and pier owner J.W. Lanphier after Mendoza drowned in Lake Corpus Christi. Mendoza had been working for Lanphier Construction Company, removing debris from Lanphier's land, which adjoined the lake. He told his coworkers he was going swimiming, but failed to return to work after a lunch break. His body was later found in two and a half feet of water about ten yards from Lanphier's pier. He had suffered a broken neck and died from drowning. The plaintiffs alleged that Mendoza died when he dived off the pier into shallow water and that the city was negligent in failing to post signs warning that the water was shallow. The jury found that the city had knowledge of the dangerous condition, failed to give adequate warning, and was thus guilty of negligence and of causing Mendoza's injuries. It also found that Mendoza was 49 percent negligent. The trial court granted the city's motion for judgment non obstante veredicto.

DECISION: The appeals court affirmed the lower court's judgment, holding that the evidence did not support the jury's finding that the city had actual notice of a dangerous condition at the pier. It pointed out that the city's duty to Mendoza was directly related to his status as either trespasser, licensee, or invitee at the time of the accident. The evidence in this case showed that Mendoza was on the property to remove debris and left the area in which he was conducting business for Lanphier to proceed on a venture of his own. He did not have permission from the landowner, his supervisor, or the city to dive off the pier. Moreover, the permit issued by the city to construct the pier was for fishing or loading only, not diving or swimming. Mendoza's venture off the pier was in no way connected with a business relationship with the city. Thus the court concluded that Mendoza was not an invitee, a status that would have demanded a higher standard of care on the part of Lanphier and the city, but was either a trespasser or a licensee.

The court stated, however, that it was not necessary to determine which status he had because under either theory the evidence did not show that the city had actual notice of the shallowness of the water near the pier, nor was there any evidence that the city's conduct was willful, wanton, or grossly negligent. Although the evidence showed that a representative from the city visited the accident site four times, there was nothing to indicate that any of these visits occurred before the accident. There was testimony that the city had measured the level of the lake above sea level but not its depth. The plaintiffs also argued that the city was aware of other drownings on the lake, a fact that imputed knowledge by the city of a dangerous condition at the pier. However, the court pointed out that there was no evidence that any of these deaths resulted from diving accidents.

DISSENT: Justice Dorsey wrote a dissenting opinion in which he pointed out that the lake is a municipal

reservoir owned and operated by Corpus Christi and used by the public for recreational purposes. In view of this fact, he disagreed with the majority's apparent characterization of Mendoza as a trespasser. According to Justice Bonner, there was some evidence to support the jury's verdict, and he would reverse the trial court. The city's representative took readings of the lake level twice daily and thus the city was aware that the level was falling even if it did not know the exact depth of the water off Lanphier's pier. Pointing out that it "is not necessary for a citizen to abandon his common sense and reasoning when he takes the oath as a juror," Bonner stated that the jury could logically have reasoned that because of its knowledge of the falling level, the city would also know that the water near the pier was shallow and constituted a dangerous condition.

EVIDENCE

Evidence videotaped out of court without the presence of the opposing party must show a substantial similarity to the conditions existing at the time of the event giving rise to the litigation.

Sinko v. City of San Antonio, No. 04-84-00387-CV, Op. Serv.—Civil, T2-85-36115 (San Antonio, Sept. 30, 1985).

FACTS: Abigail Sinko brought this suit for negligence for personal injuries she suffered after falling into a hole at a city construction site. On October 15, 1979, Sinko drove to work in a van and parked it near the building where she worked. The passenger side of the van was near an excavation made by a contractor for the city. When she walked around the side of the van to get a thermos, she felt the dirt give way beneath her, and she fell into a hole. Sinko sustained injuries requiring a surgical implant of a steel support in her leg. At trial, she called two expert witnesses to the stand who testified concerning proper safety precautions to be taken around excavations. She also tried to introduce as evidence a videotape which showed a person running against a "safe" barricade constructed by the plaintiff. This video experiment showed that the person in the experiment did not stumble or fall into the hole. This experiment was conducted out of court, without the presence of the defendants' counsel.

DECISION: The court held that the trial court properly excluded the videotape as evidence. The court stated that the general rule concerning evidence made out of court requires that the conditions existing at the time of the experiment must bear a substantial similarity to the conditions surrounding the event that prompted the litigation. The videotape in this case did not purport to be a reenactment of the accident or to accurately portray the scene of the accident. It simply portrayed a scene arranged to support the plaintiff's contention and thus was inadmissible. In addition, the court held that the videotape was cumulative of evidence which was already fully developed by the expert witnesses at trial.

INTOXICATION. JURY INSTRUCTION

The evidence of ingestion of an intoxicating liquor is merely an evidentiary issue in a case of gross negligence and should not be used as the ultimate, controlling issue in the case; thus a trial court should not call attention to intoxication in a jury instruction.

Harris v. Cantu, No. 13-84-350-CV, Op. Serv—Civil, T2-85-33-177 (Corpus Christi, Aug. 30, 1985).

FACTS: On May 29, 1983, Ramon Cantu and his family were returning from a visit to Matamoros, Mexico. While driving on the main highway at about 50 mph, the Cantu family car was struck from behind by one driven by defendant Max Young Harris, Jr. Although there were no casualties, Cantu later went to a neurosurgeon, who discovered that he had a complete lack of motion in his back and tenderness and pain in the lower back. Cantu brought this suit, seeking actual and punitive damages as a result of the accident. At trial, the evidence showed that Harris had consumed alcohol on several occasions on the day of the accident. In addition, a police officer testified that while Harris was talking to officers at the scene of the accident, he passed out and fell across the hood of his car. The lower court awarded Cantu $16,200 as actual damages and $35,000 as punitive damages.

DECISION: The court of appeals affirmed the decision of the lower court but stated that the trial court erred in calling attention to intoxication in the gross negligence instruction. However, this error was not of such a nature as to constitute reversible error. It has long been the rule that although a jury may consider intoxication in determining whether or not a party was negligent in some respects, it is not the ultimate, controlling issue in the case. The court stated that the trial court acted improperly in including driving under the influence as an element of gross negligence. However, it pointed out that it would have been impossible for the jury to erase the fact that Harris passed out while talking to the police officers just minutes after the accident even if the court had instructed them to do so.

SETTLEMENT. CONTRIBUTION

Under Tex. Rev. Civ. Stat. Ann. arts. 2212 and 2212a, there is no right of contribution to a joint tortfeasor who settled with the plaintiff unless the settlement was incorporated into the judgment.

Beech Aircraft Corp. v. Jinkins, No. 01-85-0183-CV, Op. Serv.—Civil, T2-85-36-23 (Houston [1st Dist.], Sept. 26, 1985).

FACTS: Doctors Jinkins and Weiner were injured in the crash of a Beech aircraft piloted and owned by Jinkins. The plane crashed as a result of engine failure even though Beech had just provided and installed a new engine. Jinkins and Weiner filed lawsuits against the manufacturer and supplier, alleging identical theories of negligence and strict products liability. Weiner then entered into a settlement agreement that released the defendants and Jinkins from further liability. The court granted a motion for nonsuit and order of dismissal, but these did not contain the terms of the settlement. The defendants then filed counterclaims against Jinkins, seeking contribution and/or idemnity from Jinkins on the settlement. Jinkins filed and was granted a summary judgment on the indemnity/contribution question. The defendants brought this action, contending that they were entitled to both statutory and common law contribution, that they were judgment debtors, and that their rights to contribution could not effectively be decided until a jury had passed on the causation issues. In support of the trial court's judgment, Jinkins asserted that the defendants had no common law or statutory right of contribution or indemnity. Further, he contended that the settlement agreement between Weiner and the defendants extinguished any right to contribution that they might have had against him.

DECISION: The court of appeals agreed with Jinkins and upheld the summary judgment. First, the court stated that the defendants lost their claim to common law indemnity because their pleadings and evidence did not establish that Jinkins breached a duty to both the injured party and the co-tortfeasor, as required by Texas case law. The defendants were not denied the right to present such a claim in the summary judgment proceedings. Second, the court held that the defendants should be denied statutory contribution because the parties did not reach a judicial settlement as required by Texas case law. The court stated that because the order for nonsuit did not incorporate the terms of the settlement agreement, it did not satisfy the requirements of Tex. Rev. Civ. Stat. Ann. art. 2212 or art. 2212a. The court stated that these articles do not provide any right of contribution to a joint tortfeasor who simply settles with a plaintiff.

The court further held that the defendants were not entitled to common law contribution because common law presumes that the settling tortfeasor settled only his percentage of liability. Finally, the court ruled that the trial court properly granted Jinkins's request for summary judgment. Assuming that the appellants were allowed to proceed to trial on their cross-claims, they could not have been granted recovery for common law contribution against Jinkins because of the presumption that the appellants settled only their prospective percentages of liability. Under these circumstances, no true cause of action existed.

Updates

This section brings up to date cases noted in previous issues of the *Texas Personal Injury Law Reporter.* Included are new citations to *South Western Reporter 2d,* applications for writs of error filed in the Texas Supreme Court, and writs pending, refused, or dismissed.

Carrell v. Richie, 697 S.W.2d 43 (Tex. App.—Austin 1985); 3 Tex. Pers. Inj. L. Rep. 33 (1985).

Cavnar v. Quality Control Parking, Inc., 696 S.W.2d 549 (Tex. 1985); 3 Tex. Pers. Inj. L. Rep. 17 (1985).

Ortale v. City of Rowlett, 696 S.W.2d 640 (Tex. App. —Dallas 1985); 3 Tex. Pers. Inj. L. Rep. 33 (1985).

SHARE INFORMATION WITH OTHER READERS OF THIS REPORTER . . .

We hope that you will send the managing editor your comments on cases, topic ideas, and suggestions for making this *Reporter* more useful to Texas lawyers. If you have or need information on a specific topic of interest to personal injury attorneys, send your name, the name and address of your firm or company, and a brief description of the information available or sought. If you are involved in a significant county or district court case, send us a copy of the opinion. At the editors' discretion, we will summarize appropriate cases.