

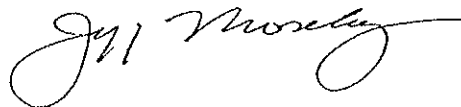
**Resolution of the Board of Directors in Support of the Governor's
Omnibus Tort Reform Package**

The Greater Houston Partnership supports the Governor's Omnibus Tort Reform Package. Implementation of the Governor's Package would discourage meritless lawsuits and would allow for Texas to be an even more attractive destination for business.

Ensuring that large and small businesses as well as doctors and other medical professionals are protected from the cost of defending themselves against junk or questionable lawsuits will further strengthen Texas' economy.



Larry Kellner, Chairman



Jeff Moseley, President and CEO



Tony Chase, Secretary

BACKGROUND MEMORANDUM

DATE: April 6, 2011

TO: Greater Houston Partnership Board of Directors

FROM: Charles Swanson, Chair, Business Issues Committee

SUBJECT: Resolution of the Board of Directors in Support of the Governor's Omnibus Tort Reform Package

RECOMMENDATION

The Greater Houston Partnership supports the Governor's Omnibus Tort Reform Package. Implementation of the Governor's Package would discourage meritless lawsuits and would allow for Texas to be an even more attractive destination for business.

Ensuring that large and small businesses as well as doctors and other medical professionals are protected from the cost of defending themselves against junk or questionable lawsuits will further strengthen Texas' economy.

BACKGROUND:

The structure of the civil justice system is costly. In many instances, filed lawsuits are perceived to be excessive and unjust. The legal fees and expenses brought on by lawyers on both sides of a lawsuit are overly expensive. These cases are harmful to small businesses that must settle if they hope to avoid financial damages towards their business in legal costs.¹

Nearly every Western democracy follows the loser pays model. Also called "English rule," loser-pays requires the loser of a civil suit to compensate the winner for their lawyers' fees. In "American rule," even when a defendant wins a lawsuit, he/she loses. Loser-pays could be an important movement in Texas to reduce litigation costs, better compensate prevailing parties and reduce financially harmful conduct towards business. Implementation of the loser-pays rule would discourage meritless lawsuits and would allow for Texas to be an even more attractive destination for business.

In 2002, the Greater Houston Partnership ("GHP") passed a resolution in support of tort reform which included:

¹ Gryphon, Marie. "Greater Justice, Lower Cost: How a "Loser Pays" Rule Would Improve the American Legal System." *Manhattan Institute for Policy Research* (2008).

Previously recommended reforms include support of:

- Curbing the abuse of class action lawsuits;
- Medical malpractice reform;
- Enabling juries to assign fault to all responsible parties;
- Imposing liability on a property owner for third party criminal acts only when the owner is grossly negligent;
- Prohibiting interest from being unfairly assessed on damages not yet incurred
- Adopting an offer of settlement rule;
- Banning irresponsible drivers from suing for non-economic damages
- Limiting contingency fees in quick settlements;
- Preventing double recoveries by persons who sue third parties after collecting workers' compensation from their employer;
- Capping multiple awards of punitive damages against the same defendant arising out of the same act;
- Developing a system that encourages plaintiffs to accept fair settlement offers and avoid unnecessary trials;
- Reforming the judicial selection and campaign finance reform process, and seek more funding for the court system;
- Improving the product liability reform law;
- Strengthening the government standards defense; and
- Clarifying the toxic tort definition.

Governor Perry's 4-point Agenda:

To keep Texas' legal system accountable, transparent and efficient, and maintain Texas' competitive economic position, Governor Rick Perry has noted the need to expand lawsuit reform in Texas by:

- Creating an early dismissal option for frivolous lawsuits;
- Ensuring many victims of frivolous lawsuits do not bear the financial burden of defending themselves through the creation of a "offer of settlement" system;
- Ensuring new laws cannot create causes of action unless expressly established by the Legislature; and
- Setting up expedited trials and limited discovery for lawsuits with claims between \$10,000 and \$100,000.

Governor Rick Perry has touted loser-pays as the next step for tort reform in the state and Texans for Lawsuit Reform proudly support "Loser Pays" and the Governor's lawsuit reform agenda.

LEGISLATIVE ACTION:

Senator Joan Huffman filed SB 13, which includes a provision that would allow prevailing parties in lawsuits to recover litigation costs in certain civil claims, including those for disputes over contracts, rendered services and preformed labor. The bill includes measures focused solely on plaintiffs. For example, if a plaintiff rejects a defendant's offer to settle and the difference between the damages awarded to the defendant is equal or greater than 10 percent of the settlement offer, then the plaintiff is obligated to pay lawyers' fees.

Representative Brandon Creighton filed a similar bill, HB 274, which contains the same initial loser-pays provision as Senator Huffman's but adds a focus on contingency fee lawyers. It holds the lawyers — not the party they represent — liable for the other side's lawyers' fees if a court finds they have a "financial interest" in a case that it deems is an "abusive civil action."

Representative Tim Kleinschmidt filed HB 2661 which would significantly change "Offers of Settlement" under Chapter 42 of the Texas Civil Practice and Remedies Code. The bill would also penalize only losing plaintiffs, not losing defendants.

The "Offer of Settlement" rule² would create an incentive for defendants to put a reasonable offer on the table early in the litigation process and encourage plaintiffs to accept sensible offers or to make logical counter-offers. The provision would work essentially as follows:

- If a defendant decided to invoke the offer of settlement mechanism, it would make an offer to plaintiff;
- If plaintiff rejects the offer and ultimately recovers less than 90% of defendant's offer, then plaintiff must pay for defendant's litigation costs from the time defendant's offer was rejected;
- If defendant rejects a counter-offer by plaintiff and the plaintiff ultimately recovers more than 110% of that offer, then defendant must pay for plaintiff's litigation costs from the time plaintiff's offer was rejected;
- If both defendant's offer and plaintiff's counter-offer are rejected and plaintiff's ultimate recovery is more than 90% of defendant's offer and less than 110% of plaintiff's counter-offer, then there is no cost-shifting and each party pays for its own litigation costs.

HB 2661 would create incentives for parties to resolve lawsuits early, with greater net recovery by plaintiffs, less net cost to defendants, less time and emotion expended by all parties, less risk to the parties, and less burden on judges and citizens who serve as jurors.

KNOWN OPPOSITION:

² Trabulsi, Dick. "CSHB 2661 by Kleinschmidt – Offer of Settlement." Texans For Lawsuit Reform (2011).

The Texas Trial Lawyers Association opposes “Loser Pays”.

FISCAL IMPACT:

Adoption of this legislative policy position will have no direct fiscal impact on Texas’ general revenue.

IMPLEMENTATION:

To implement this recommendation, GHP will communicate its support of this resolution.

RESOURCES REQUIRED:

This recommendation can be implemented with available GHP staff and within current operating budget resources.