

JACKSON WALKER L.L.P.

PRESENTS

EXECUTIVE SUMMARIES LUNCHEON

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LEGAL UPDATES

WEDNESDAY, JUNE 29, 2005
AUSTIN, TEXAS

Austin Dallas Fort Worth Houston Richardson San Angelo San Antonio
A member of GlobalawSM, The International Law Group, with offices in 60 countries

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Roster

OUR EXPERIENCE

LABOR AND EMPLOYMENT

Jackson Walker has extensive experience representing management in a comprehensive range of employment and labor law issues. These include, among others, counseling with management, defending employee claims, workers' compensation issues, and traditional labor relations.

COUNSELING WITH MANAGEMENT

Members of the section routinely provide counsel and assistance to their clients on numerous employment related issues including the following listed below.

- Employment issues relating to employee training, workforce reductions, corporate acquisitions, reorganizations, and relocations
- Appropriate discipline of employees
- Drafting and enforcement of employment contracts, including non-competition agreements
- Preparing and auditing employee handbooks and personnel policies
- Unemployment compensation claims
- Wage-hour obligations
- Workers' compensation claims
- Occupational safety and health issues
- Immigration control procedures
- Affirmative action plans and OFCCP compliance issues

DEFENDING EMPLOYEE CLAIMS

The section members also offer to our clients expertise in mediating, arbitrating, and litigating the defense of individual and class action employee charges and suits involving a wide range of matters and issues.

LABOR AND EMPLOYMENT

- Race and sex discrimination claims
- Sexual harassment claims
- Age discrimination claims
- Disability discrimination claims
- Family and medical leave claims
- Defamation claims
- Wrongful discharge claims
- Workers' compensation retaliation
- Claims asserting violations of various other federal and state employment related and civil rights statutes

WORKERS' COMPENSATION ISSUES

Section members, in conjunction with the firm's employee benefits attorneys, also assist employer subscribers and non-subscribers under the Texas Workers' Compensation Act.

- Review and analysis of employers' existing workers' compensation insurance arrangements
- Evaluation of legal risks associated with becoming a non-subscribing employer
- Rejection of the Texas Workers' Compensation Act
- Evaluation and implementation of employee benefit programs in lieu of workers' compensation, including design and drafting of employee benefit plans; analysis of insurance policies, safety consultants, and medical providers; and coordination with insurance advisors
- Establishment of litigation minimization procedures, such as hiring policies, safety procedures, and claims processing
- Representation of employers in claims disputes

LABOR AND EMPLOYMENT

TRADITIONAL LABOR RELATIONS

Jackson Walker's labor and employment law attorneys also provide substantial experience and expertise in management's dealings with labor unions. Their expertise encompasses such areas as those listed below.

- Union avoidance campaigns
- Union election contests
- Negotiation of collective bargaining agreements
- Arbitration of disputes arising under collective bargaining agreements
- Responding to unfair labor practice charges under the National Labor Relations Act, the Railway Labor Act, and related statutes

EMPLOYEE BENEFITS / EXECUTIVE COMPENSATION

Section members also assist clients in a variety of matters related to ERISA, Employee Benefits and Executive Compensation, including the following:

- counseling regarding plan governance procedures and best practices designed to minimize fiduciary liability risk; and
- assistance in dealing with compliance and administrative considerations related to plans, including matters pertaining to participants and governmental agencies.

BIOGRAPHIES

STACY ALLEN

Stacy Allen is a partner in the Litigation section of Jackson Walker. Mr. Allen concentrates his practice in complex commercial litigation, product liability, insurance, unfair trade practices, health care, toxic tort and employment discrimination litigation and arbitration. Mr. Allen has successfully defended many Fortune 500 companies and other entities in state and federal litigation, including M.D.L. proceedings and class actions. Representative cases include: the defense of major airlines and aircraft manufacturers against claims arising from highly publicized commercial aviation disasters; the defense of an asbestos-containing fireproofing manufacturer against asbestos-in-buildings property damage claims brought by commercial real estate owners and school districts totaling in the tens of millions of dollars; commercial actions alleging breach of contract, fraud and unfair trade practices; insurance coverage and claims litigation; insolvency litigation (e.g., fraudulent conveyances, receiverships, bankruptcy-related adversarial proceedings); and the defense of major regional and national employers in employment discrimination suits and administrative proceedings alleging statutory (Title VII, ADEA, ADA) and common law claims. In addition to representing insurers and reinsurers in complex litigation and regulatory matters, Mr. Allen regularly provides health care contract negotiation and litigation representation to a major New England HMO. Mr. Allen has also represented acquiring insurers and reinsurers in obtaining regulatory approval from the Connecticut Department of Insurance of complex mergers and divestitures valued in the billions of dollars.

Mr. Allen is admitted to practice before state and federal courts in Texas, Connecticut, New York and California. He was also a member of the Los Angeles County Bar Association, Federal Courts Committee.

EDUCATION

Mr. Allen received his B.A. degree, *summa cum laude*, from the University of Southern California in 1979, and his J.D. degree from Yale Law School in 1983, where he was a John Courrier Galagher Prize finalist.



Stacy Allen practices litigation.

B.A., University of Southern California

J.D., Yale University

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MATT DOW

Matt Dow is a partner in the Litigation section of Jackson Walker. Formerly with Small, Craig & Werkenthin, Mr. Dow joined Jackson Walker in January 1999 when the two firms combined. He has handled trials and appeals throughout the State of Texas and has argued before the Texas Supreme Court. Mr. Dow specializes in commercial, employment and intellectual property litigation.

He is admitted to practice before the United States District Courts for the Northern, Southern, Eastern, and Western Districts of Texas; and the United States Court of Appeals for the Fifth Circuit.

MEMBERSHIPS

He is a member of the State Bar of Texas, the American Bar Association, the Travis County Bar Association, the Texas Association of Defense Counsel, and the Litigation and Employment Law Sections of the Travis County Bar Association and the American Bar Association. In addition, he is a Fellow of the Texas Bar Foundation.

COMMUNITY INVOLVEMENT

Mr. Dow is member of the Capital Area Food Bank's board of directors, a past board member of the Austin Metropolitan YMCA, and a graduate of Leadership Austin.

PUBLICATIONS / SPEAKING ENGAGEMENTS

Mr. Dow is a frequent author and lecturer on a wide variety of topics including the use of e-mail at trial, employment issues, and document management for companies involved in litigation.

EDUCATION

Mr. Dow received his B.A. degree from Baylor University and his J.D. degree from St. Mary's University. While in law school he was an articles editor for the Law Journal, an instructor for legal research and writing, and a member of Phi Delta Phi legal fraternity.



Matt Dow practices litigation and appellate law.

B.A., Baylor University

J.D., St. Mary's University

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ALICIA R. DULEBA

Alicia Duleba is a partner in the Labor and Litigation sections of Jackson Walker. Her practice focuses on employment law, general litigation in addition to counseling employers on employment and human resource issues.

Ms. Duleba has experience representing employers in a full range of employment law matters such as defending employee claims in state and federal court; representing clients before administrative agencies such as the Equal Employment Opportunity Commission, Texas Workforce Commission - Civil Rights Division, and Occupational Safety and Health Administration; preparing and auditing employee handbooks and personnel policies; counseling and formulating preventative strategies; handling mediations and settlement negotiations; and drafting and interpreting employment contracts, including non-competition agreements, and unemployment compensation claims.

Ms. Duleba's general litigation experience includes defending clients in products liability, healthcare, personal injury, and commercial litigation lawsuits.

Ms. Duleba is admitted to practice law before all Texas state courts and the United States District Courts for the Western, Northern, and Southern Districts of Texas.

MEMBERSHIPS

Ms. Duleba is a member of the State Bar of Texas, the Labor and Employment section of the Travis County Bar Association, and the Labor and Employment section of the Texas State Bar Association.

EDUCATION

Ms. Duleba received her B.B.A. degree from Texas A&M University, and her J.D. degree from University of Texas.



Alicia Duleba practices employment law and general litigation in the Austin office.

B.B.A., Texas A&M University

J.D., University of Texas

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THOMAS M. LIPOVSKI

Thomas M. Lipovski is a partner in the Labor and Employment section of Jackson Walker. His practice includes the representation of clients in litigation and in proceedings involving the Equal Employment Opportunity Commission and the Texas Workforce Commission Civil Rights Division.

Mr. Lipovski has experience in counseling clients with respect to various personnel issues. He has represented clients in mediations and other settlement negotiations, arbitration proceedings, lawsuits in state and federal courts, and in appellate proceedings in the United States Fifth Circuit Court of Appeals.

Mr. Lipovski is admitted to the State Bar of Texas and is admitted to practice in the United States District Courts for the Northern, Southern, Eastern, and Western Districts of Texas. He is also admitted to practice before the Fifth Circuit Court of Appeals.

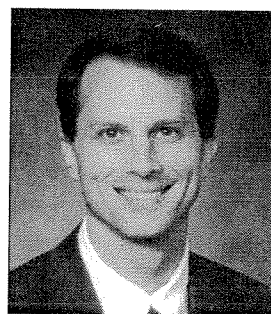
MEMBERSHIPS

Mr. Lipovski is a member of the Travis County Bar Association and the Austin Association of Young Lawyers. He is also a member of the Employment Law Sections of both the State Bar of Texas and the American Bar Association.

PUBLICATIONS AND PRESENTATIONS

Mr. Lipovski has served as an associate editor and contributing author of a chapter of the Fair Labor Standards Act for the *Texas Employment Law Handbook, A Guide For Employers*, published by the Texas Association of Business and Chambers of Commerce (1996 ed., 1997 ed.) and has had an article published in the *Austin Business Journal* entitled Keep Hiring, Firing Decisions out of Court Rooms.

Mr. Lipovski has given presentations to clients regarding the hiring, counseling, and termination of employees and has given presentations at a number of employment seminars including ones sponsored by Jackson Walker L.L.P., the Texas and Southwestern Cattle Raisers Association, and the International Society of Certified Employee Benefits Specialists.



*Thomas Lipovski
practices labor and
employment law.*

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THOMAS M. LIPOVSKI

COMMUNITY INVOLVEMENT

Mr. Lipovski serves on the YMCA of Austin Metropolitan Board of Directors and has coached youth football at the West Austin Youth Association.

EDUCATION

Mr. Lipovski received his B.B.A. and J.D. degrees from the University of Texas.

EDWARD C. SMALL

Edward C. Small is a partner in the Governmental Affairs section of Jackson Walker. He has more than 25 years experience representing clients before the Texas Legislature and Texas regulatory agencies, in addition to his litigation practice.

Mr. Small has served as counsel to entities and associations with legislative and regulatory issues. He has appeared for clients before the Texas Legislature and State and Federal agencies. His clients include associations and entities seeking solutions to issues affected by State Government.

Mr. Small's litigation experience include water rights, boundary issues, condemnation, oil and gas, and other land-related issues.

MEMBERSHIPS

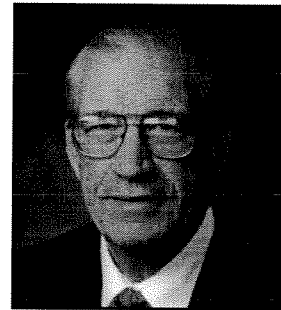
Mr. Small is a member of the State Bar of Texas, the Travis County Bar Association, and is a Texas Bar Foundation Fellow.

COMMUNITY INVOLVEMENT

Mr. Small is Past-President of the Austin Independent School District Board of Trustees and Past-President of the Headliners Club. Mr. Small also served on the Board of Directors for the UT Parent Association and is on the Advisory Committee for the UT Department of Education.

EDUCATION

Mr. Small received his B.B.A. and J.D. degrees from the University of Texas.



Ed Small is a litigator with significant experience in state government affairs.

B.B.A., University of Texas

J.D., University of Texas

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GARY A. THORNTON

Gary A. Thornton is a partner in the Litigation and Labor sections of Jackson Walker. He leads the Labor group in the Jackson Walker Austin office. Formerly with Small, Craig & Werkenthin, Mr. Thornton joined Jackson Walker in January 1999 when the two firms combined. Before becoming an attorney, he was a radio/television news broadcaster and college professor. His legal practice focuses in the area of non-subscriber tort litigation and malpractice defense for health care providers. He wrote the foundation article for the *Texas Bar Journal* on non-subscriber litigation. Since that time, he has represented corporations all over Texas in their employee injury matters and has organized an Austin team expanding into all areas of employment law defense.

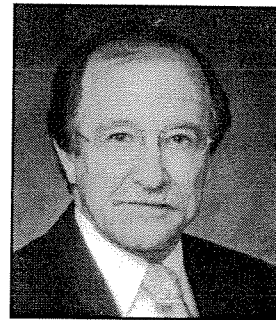
Prior to joining the firm, Mr. Thornton was a briefing attorney for Chief Justice Jack Pope of the Texas Supreme Court.

MEMBERSHIPS

Mr. Thornton is presently a member of the State Bar of Texas, the Travis County Bar Association, the American Bar Association and the Christian Legal Society. He has served as president of the Travis County Bar Association, a member of the MCLE Texas State Bar Committee and one of the chairmen of Committees for the Litigation Section of the American Bar Association. Mr. Thornton was recently paid the honor of being appointed to the Board of Directors for the Texas Association of Business.

COMMUNITY INVOLVEMENT

Mr. Thornton serves as an Elder at the University Avenue Church near the University of Texas, previously he served as chairman of the board for a local homeless organization. He recently served on the Board of Directors for the Greater Austin Chamber of Commerce and the Austin Graduate School of Theology. He also serves as a member of the Board



Gary Thornton practices litigation.

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GARY A. THORNTON

of Trustees for Abilene Christian University and the Board of Visitors at Pepperdine School of Law.

PUBLICATIONS / SPEAKING ENGAGEMENTS

He is a frequent author and speaker. Among the articles he has authored are “Landowners Should Know Rights in Condemnation Cases,” *The Cattleman* (January 1986); “Additions to and Realignments of Travis County Courts to Help With Heavy Criminal Docket and Condemnation Explosion,” *Austin Lawyers Journal* (November 1987); “Litigation Involving Non-Subscribers to Workers Compensation Insurance,” *Texas Bar Journal* (April 1991); “Jury Selection Study,” *Austin Lawyers Journal* (November 1991) and *The County and District Clerk* (November 1991); and “Litigation Involving High Power Electrical Transmission Line Cases” *Condemnation Law Trends* (Spring 1992) and *Current Condemnation Law* (American Bar Association 1994).

Additionally, Mr. Thornton is often asked to speak at seminars on various employment matters and has advised boards of directors throughout the state regarding the options available to them concerning workers compensation.

EDUCATION

Mr. Thornton earned his B.A. degree, and Master’s degree in mass communications, from Abilene Christian University and his J.D. degree from Pepperdine University.

PRESENTATION

Wage and Hour Update Fair Labor Standards Act



Presented by:
Alicia Duleba

Denton Walker LLP JW

- New Rules effective August 23, 2004
- Efforts to repeal the new rules have failed

Denton Walker LLP JW

- Recent DOL wage and hour opinion topics
- DOL Hot Topic – misclassifying employees as independent contractors
- Salary basis requirement
- Safe harbor provision

Denton Walker LLP JW

The Department of Labor has announced that it has paid over \$200,000,000 in back wages in fiscal year 2004 to more than 288,000 workers.

Recent Department of Labor Wage and Hour Opinions

- 16 DOL Wage and Hour Opinion Letters
 - Timesheets and Partial-Day Salary Docking
 - Joint Employment
 - Nonexempt Office Assistant
 - Data entry/receptionist
 - Paid time off bank
 - Timekeeping system
 - Prepayment plan for overtime

The Joint Employment Dilemma Independent Contractor or Employee

- FLSA governs employees, not independent contractors
- Vega v. Contract Cleaning Maintenance – Illinois
 - UPS hires cleaning service
 - Cleaning service sends workers to clean UPS office
 - UPS did not hire, fire or pay the workers
 - “possible” for UPS to be a joint employer, so case is not dismissed

What is Joint Employment? (29 CFR Part 791)

FLSA regulations state that Joint Employment occurs when “the facts establish that the employee is employed jointly by two or more employers, i.e., that employment by one employer is not completely disassociated from employment by the other employer(s).”

Independent Contractor or Employee? Economic Realities Test

1. Whether the workers used UPS premises and equipment for their work;
2. Whether the contracting company's business could shift from one employer to another;
3. The extent to which the janitors' work was integral to UPS' business;
4. Whether another employer could become responsible for the janitors without affecting their job;
5. The degree to which UPS supervised the janitors' work; and
6. Whether the janitors worked predominately or exclusively for UPS

Salary Basis Requirement Safe Harbor Provision

- Improper deductions from salary may cause exempt employees to lose their exempt status
- Exemptions can be preserved through the use of a “safe harbor” provision

Safe Harbor Requirements

- Clearly communicated policy
- Complaint mechanism
- Reimburse for improper deductions
- Good faith commitment to comply in the future

Jackson Walker LLP 


Update your Employee handbooks!

Jackson Walker LLP 

The Americans with Disabilities Act



Presented by:
Alicia Duleba

Jackson Walker LLP 

• What is a “reasonable accommodation” in the 21st Century

• Intellectual Disabilities

Judson-Walton LLP

• What is a reasonable accommodation?

• When does an accommodation become an undue hardship?

• Technological advances have impacted this analysis.

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• EEOC wins \$8 million jury verdict for blind worker in disability discrimination case against Echostar (May 5, 2005)

• Blind applicant applied for customer service representative position

• Position involved reading – manuals, documents, customer invoices, heavy computer use

• Applicant applied numerous times

• Applicant had been trained at the Colorado Center for the Blind for the same type of position he applied for

Judson-Walton LLP

- Echostar argued that “they were not set up to handle blind people”
- Job Access with Speech (JAWS) – computer program that translates text into speech
- Echostar argued that JAWS would not have worked with its computer set up because of the complexity of the computer environment – not reasonable and undue hardship
- Court disagreed and let case go to jury
- Jury disagreed and awarded \$8 million verdict

- Look at your competitors and the industry for guidance
- What was not a reasonable accommodation 10 years ago may now be deemed reasonable

Intellectual Disabilities

- EEOC Enforcement Guidance specifically addressing how the Americans with Disabilities Act applies to individuals with intellectual disabilities
- EEOC statistics that identify the impairment basis for charges of discrimination list 11 impairment categories that could fall within the definition of intellectual disability

- Alzheimers
- Anxiety disorder
- Autism
- Brain-head impairment
- Brain-head injury-traumatic
- Cumulative trauma disorder
- Depression
- Learning disabilities
- Manic depressive disorder
- Mental Retardation
- Other psychological disorders

- EEOC lists examples of jobs that people with intellectual abilities are likely to be able to perform
- Laundry workers
 - Building maintenance workers
 - Data entry clerks
 - Mail clerks
 - Cooks
 - Photocopy operators
 - Hospital attendants
 - Housekeepers
 - Clerical aides

- Do not generalize about people with mental conditions
- Still must meet the ADA's definition of disability

Workers Comp Update and Non Subscriber Law



Presented by:
Gary A. Thornton

Jacobson Walker LLP JW

Worker's Comp Reform

Abolishes TWCC

- New: Commission of TDI
(with authority over premiums)
- Consumer advocacy for injured workers
(including attorneys)
- Enables TDI to streamline benefit
dispute process

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Medical Networks

- To be certified by TDI
- Establish a return-to-work pilot program
 - (grants to small employers)
- Medical fees can be negotiated
- Allows networks to:
 - Establish evidence-based treatment
guidelines
 - Designate types of medical providers
that may treat injured workers

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Benefits
12% increase

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Non-subscribers – waivers/release
(previous legislation prohibited pre-injury waivers)
New legislation: negligence may not be waived after injury unless:

- Voluntary
- With knowledge of effect
- Not sooner than 10th day after initial report
- After medical evaluation by other than ER doctor
- In writing with intent specified
- Conspicuous language (bigger type or different color)

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- Arbitration still seems better than a jury trial.
- Why:
 1. Runaway Juries
 2. Arbitrator is business oriented
 3. "Splitting the baby" may be better than "running away with it".
 4. Privacy!!
 5. Others?

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• **Requirements**

1. Mutual Promise
2. Not "Unconscionable"
 - A. Costs (Company should pay most)
 - B. All remedies available under the Court system preserved
 - C. Notice/Agreement (continued employment?)

In re Halliburton Company and Brown & Root Energy Services 80 S.W.3d 566 (2002)

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Cases on Arbitration

1. Most important case: In re Halliburton (2005)
2. Most recent case: In re Big 8 Food Stores, Inc.
3. In re: RLS Legal Solutions, 156 SW3rd 160 ("Tex – Beaumont 2005").

Holding: withholding Plaintiff's paycheck for work she already performed until she signed Arbitration Agreement – economic distress.

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"One alternative to arbitration agreements is a 'jury waiver agreement.' As its name implies, the parties agree that if a dispute arises and suit is filed, the parties waive their right to a trial by jury. The case is still filed in courts; but if the matter proceeds to trial, the trial judge hears the testimony and decides the case." Texas Bar Journal, April, 2005.

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• Jury Waiver Requirements:

1. Knowing and voluntary
2. Open and obvious


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• Jury Waiver Advantages and Disadvantages

- Advantages of Judge – decided trial
 1. Less expensive than arbitrator
 2. Judge is usually more conservative than jury
 3. Faster
- Disadvantages
 1. Open to the public
 2. Subject to the Court's crowded docket
 3. Subject to setting by individual judges

Judith Miller LLP JW

Age Discrimination



Presented by:
Tom Lipovski

Judith Miller LLP JW

Questions Regarding the ADEA Recently Addressed By Courts

1. Does a cause of action exist for reverse age discrimination?
 - See *General Dynamics Land Systems, Inc. v. Cline*, 124 S.Ct. 1236 (2004)
2. Can an individual prove an ADEA claim using disparate impact analysis?
 - See *Smith v. City of Jackson, Miss.*, 125 S.Ct. 1536 (2005)

Jackson-Wooden LLP JW

Family Medical Leave Act



Presented by:
Tom Lipovski

Jackson-Wooden LLP JW

Questions Regarding FMLA Recently Addressed By Courts

1. In determining whether an employee is entitled to FMLA rights, how does a court decide whether there are 50 or more employees within 75 miles of each other?
 - See *Bellum v. PCE Constructors, Inc.*, 2005 WL 941356 (5th Cir. (Miss.), April 25, 2005)
2. How does a court determine whether leave was requested "as soon as practicable"?
 - See *Prejean v. Cypress-Fairbanks Independent School Dist.*, 2004 WL 1114425 (5th Cir. (Tex.), May 11, 2004)
3. Does the provision of the FMLA requiring an employer to provide an employee a reasonable opportunity to cure a deficiency in a medical certification form apply where the employee had never submitted any medical certification?
 - See *Urban v. DolgenCorp. of Texas, Inc.*, 393 F.3d 572 (5th Cir. 2004)

Jackson-Wooden LLP JW

Texas Jury Survey



Matt Dow
Jackson Walker L.L.P.

Jackson Walker L.L.P. JW

Austin



- 8 cases (EEOC in 4)
- 3 defense verdicts
- 2 plaintiff verdicts (default judgments)
- 3 settlements (Age, Religion, NO)

Jackson Walker L.L.P. JW

Austin



- Settlement range
- NO \$10,000
- Religion \$15,000
- ADEA class action \$160,000 (\$700)

Jackson Walker L.L.P. JW

Corpus Christi



- 4 cases
- 1 defense verdict
- 0 plaintiff verdicts
- 3 settlements

Jackson Walker LLP JW

Corpus Christi



- Settlement range
- Sexual Harassment \$57,500
- Sexual Harassment \$50,000

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Dallas



- 26 cases
- 14 defense verdicts
- 5 plaintiff verdicts
- 7 settlements (2 EEOC)

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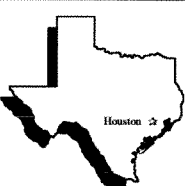
Dallas



- Verdict range
- \$2,000; \$17,500; \$31,000; \$68,000; \$122K
- Settlement range
- \$2,400; \$4,000; \$10,000; \$175,000
- 2 deadlocked juries
- Discrimination & Reasonableness

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Houston



- 35 cases
- 19 defense verdicts (1 EEOC)
- 9 plaintiff verdicts
- 7 settlements (2 EEOC)

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Houston



- Verdict range
- \$90K; \$130K; \$149K; \$171; \$300K;
\$457K; \$583; \$24M
- Settlement range
- \$13K; \$35K; \$45K; \$120K; Apology

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San Antonio



- 14 cases
- 2 defense verdicts
- 4 plaintiff verdicts
- 10 settlements (6 EEOC)

Justice Walker LLP

San Antonio



- Verdict range
- \$82K; \$275K; \$500K; \$967,794
- 24 year employee/RIF
- \$1,095,000 punitive damages

Justice Walker LLP

Central Texas



- 4 cases
- 1 defense verdict
- 2 plaintiff verdicts
- 1 settlement

Justice Walker LLP

Central Texas



- Verdict range
- \$151,000 & \$210,000
- Settlement range
- \$71,500

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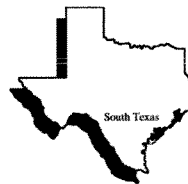
South Texas



- 7 cases
- 3 defense verdicts
- 3 plaintiff verdicts
- 1 settlement

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South Texas



- Verdict range
- \$125K; \$525; \$1.8M (\$1.5 punitive)
- 20 year employee, no reprimands
- Settlement: \$42,500, policy, posting

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East Texas



- 3 cases
- 1 defense verdict
- 1 plaintiff verdict
- 1 settlement

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East Texas



- \$746,000 verdict (race)
- \$150,000 settlement (sexual harassment)
- Defense verdict (race & disability)

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West Texas



- 9 cases
- 3 defense verdicts (1 class action)
- 1 plaintiff verdict (\$96,467)
- 5 settlements (2 EEOC)

Jackson Walker LLP 

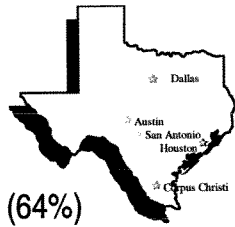
West Texas



- Settlement range
- \$35K; \$35K; \$400K
- "Tough on everybody"

Jackson Walker LLP JW

Summary



- 74 cases
- 47 defense verdicts (64%)
- 27 plaintiff verdicts (36%)

Jackson Walker LLP JW


79th Texas Legislative Session



Presented by:
Ed Small

Jackson Walker LLP JW

Offer Letters Versus The At-Will Doctrine



Presented by:
Stacy Allen

Stacy Allen, L.L.P. JW

At-Will Doctrine

"[A]bsent a specific agreement to the contrary, employment may be terminated by the employer or the employee at will, for good cause, bad cause, or no cause at all."

Montgomery County Hospital Dist. v. Brown,
965 S.W.2d, 501 (Tex. 1998)

Stacy Allen, L.L.P. JW

Offer Letters

Conflict in Texas law:

- English Rule – stated sum per week, month or year is definite employment for stated period
- Montgomery Standard – must be evidence of "unequivocal and definite intent" for employer to be bound to other than at-will relationship

Stacy Allen, L.L.P. JW

Montgomery Standard

- Supreme Court did not address offer letter context
- Some Texas appellate courts have relied on Montgomery to benefit employers in offer letter disputes
- 5th Circuit has adopted Montgomery standard in offer letter context

Jacklin Wright LLP

To Be Safe

- All offer letters should clearly state the letter does not change the at-will relationship
- The letter should further define the at-will relationship to avoid questions about intent or understanding by employee
- Where possible, define salary and bonuses or benefits in shorter increments of time (weekly or monthly, instead of annually)
- Avoid words such as "guarantee, permanent, just cause," etc.

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Criminal History Checks



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Why Conduct Criminal Background Checks?

- Because it's the law in the LTC industry

What do you do with the information?

- It depends . . .

What Other Verifications?

- Licensure/certification
- Anything else required by your policy (references, education, etc.)

Fair Credit Reporting Act

- Tedious notice and rebuttal requirements
- But does it apply?

Questions & Answers

ROSTER

Tom Adolph
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 Samuel S. Allen
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 James M. Alsup
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