**TEXAS CIVIL JUSTICE LEAGUE**
400 West Fifteenth Street, Suite 1400
Austin, Texas 78701-1648
512.320.0474 (T)
www.tcjl.com

February 24, 2015

Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711

Re: No. 14-0175; *In Re Longview Energy Company, Relator*

**To the Honorable Members of the Texas Supreme Court:**

Pursuant to Rule 11, Texas Rules of Appellate Procedure, *amicus curiae* Texas Civil Justice League files this *amicus* letter in the above-referenced cause.

## Statement of Interest

The Texas Civil Justice League ("TCJL") is a non-profit association of Texas businesses, health care providers, professional and trade associations, and individuals dedicated to maintaining a fair and balanced civil justice system. Since its inception in 1986, TCJL has consistently striven, through legislative advocacy and participation in important matters before the Court, to achieve a tort liability system that provides access to judicial remedies for legitimate claims, while encouraging capital investment and job creation in this state. The issue in this case is of fundamental importance to the right of a civil defendant, whether a business entity or an

individual, to obtain meaningful appellate review of a trial court judgment, and thus goes to the heart of TCJL's *raison d'être*. This letter has been prepared in the ordinary course of TCJL's operations.

## Summary of Argument

The San Antonio Court of Appeals' determination that the $25 million limitation on a supersedeas bond contained in §52.006(b)(2), Civil Practice & Remedies Code, applies on per judgment basis is correct and should be upheld. If the Legislature had wanted to adopt a cap on a per judgment debtor basis, as it considered doing in 1987 during the *Texaco v. Pennzoil* controversy, it explicitly would have.

## Argument

**During the 1987 session, the Legislature considered and ultimately rejected a cap on the amount of a supersedeas bond that applied to individual judgment debtors. In the context of this history, the 2003 Legislature opted for a hard cap on the amount of security for the judgment instead.**

Both the Real Parties' Response Brief on the Merits and the brief filed by *amici curiae* U.S. Chamber of Commerce, American Tort Reform Association, and NFIB Small Business Legal Center make compelling arguments that both the plain language of TEX. CIV. PRAC. & REM. CODE §52.006(b), Civil Practice & Remedies Code, and the public policy promoted by the statute dictate the decision of the San Antonio Court of

Appeals that the $25 million cap on the supersedeas bond amount applies to the single judgment, not to the several liability of multiple defendants. TCJL will not reiterate those arguments.

Instead, we would like to draw this Court's attention to the manner in which the Texas Legislature approached the supersedeas bond question in 1987, the session immediately following the issuance the landmark report of the House/Senate Joint Committee on Liability Insurance and Tort Law Procedure, the so-called "Bible" of tort reform. As this Court will recall, the Joint Committee reported to the 70th Legislature that a serious liability insurance crisis had afflicted Texas largely because of a series of Texas Supreme Court decisions during the later 1970s and 1980s that radically expanded theories of liability and recoverable damages in tort cases. Not long after the Joint Committee issued its report and recommendations for addressing the crisis in January of 1987, however, the U.S. Supreme Court vacated a lower court injunction against the application of the Texas appeal bond requirement to a $13 billion judgment in the *Texaco, Inc. v. Pennzoil Co.* litigation. As the Real Parties' and *amici* point out, Texaco, unable to post or even obtain a supersedeas bond of such staggering proportions, felt compelled to file bankruptcy.

The rest, as they say, is history, but not quite all of it. At the same time as an historic tort reform bill embodying many of the Joint Committee's recommendations was winding its way through that 70th Legislature, Texaco came calling with a $13 billion judgment in one hand and its bankruptcy petition in the other. Deep into the legislative session, the House and Senate granted unanimous consent to allow the introduction of legislation requiring the Texas Supreme Court to adopt rules limiting the amount of a supersedeas bond that could be required for a defendant to pursue an appeal. On April 9, 1987, H.B. 2538 and S.B. 1414 were introduced in the House and Senate and quickly scheduled for committee hearing. The House Judiciary Committee held a public hearing on the bill on April 21, while the Senate Jurisprudence Committee heard and reported its version of the legislation on April 28.[1] At this point, however, the proposal lurched to a halt, as opponents questioned the wisdom of making an important policy decision based on a single case. In face of the opposition, the bill's supporters could not muster the 21 votes necessary to bring it to the Senate floor for debate. Though the House committee subsequently reported its version of the bill on May 11, it never got to the House calendar. Thus the

[1] See House Committee Report. H.B. 2538, 70th Legislature, R.S., May 11, 1987; Senate Committee Report, S.B. 1414, 70th Legislature, R.S., April 30, 1987.

effort failed, but not before it revealed a serious weakness in Texas law that could prevent a defendant from meaningful access to appellate review.

As the Real Parties and *amici* note, the debate over the *Texaco* case eventually contributed to the Legislature's adoption of §52.006 in 2003. But it is instructive that the 2003 Legislature *did not* approach limiting the amount of a supersedeas bond in the same way the cap's proponents in 1987 did. Section 7 of the Senate committee substitute (Section 6 of the House version) directed the Texas Supreme Court to adopt rules establishing a unified system for suspending the execution of a judgment.[2] These rules must give the district court discretion regarding the amount and type of security, as well as provide for interlocutory appellate review of the trial court's order. The legislation, however, placed the following limitation on the trial court's discretion:

> *No judgment debtor* shall be required to provide security for judgment in a value in excess of $1 billion to suspend execution of the judgment and to suspend establishment or validity of judgment liens.[3] [emphasis added]

Pending the adoption of these rules, the bill established a procedure applying to pending appeals of existing judgments, such as in the *Texaco* litigation itself. This process essentially mirrored the rulemaking directive, allowing a

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[2] Ibid.
[3] Senate Committee Report, S.B. 1414, 70th Legislature, R.S., April 30, 1987, §7.

judgment debtor to request and receive an evidentiary hearing before the trial court with respect to the amount and type of security, subject to an interlocutory appeal. In no event, however, could "*security for judgment* . . . be required in a sum in excess of the value of One Billion Dollars" [emphasis added].[4]

The purpose of recounting this history is to demonstrate that when the Legislature considered this issue in 1987, it clearly took alternative approaches to the cap that would have limited by Supreme Court rule the amount of security that a *judgment debtor* must provide to $1 billion, while limiting the *security for judgment* in pending cases to $1 billion. When it revisited the issue in 2003, the Legislature limited *the amount of security* for a judgment for money to the lesser of 50 percent of a judgment's debtor's net worth or $25 million. In other words, the Legislature knew exactly what it was doing when it adopted the hard cap in this particular form. It could easily have—and in fact *had* considered in 1987—a cap tied to a specific judgment debtor. As the Real Parties and *amici* amply demonstrate, the Legislature in 2003 took into account the trend in other states and the strong public policy rationale for a hard cap on a per judgment basis and decided on

[4] Ibid.

$25 million. Our point is that the Legislature also had an historical precedent for taking another path and chose the per judgment cap as the general rule.

## Conclusion and Prayer

TCJL respectfully requests this Court to affirm the Court of Appeals' decision that TEX. CIV. PRAC. & REM. CODE §52.006(b)(2) applies on a per judgment basis.

Respectfully submitted,

*/s/ George S. Christian*
GEORGE S. CHRISTIAN
State Bar No. 04227300
400 West 15th Street, Suite 400
Austin, Texas 78701
512.791.1429
george@thechristianco.com
**ATTORNEY FOR *AMICUS CURIAE* TEXAS CIVIL JUSTICE LEAGUE**

## CERTIFICATE OF COMPLIANCE

I certify that this document contains 1,276 words in the portions of the document that are subject to the word limits of Texas Rule of Appellate Procedure 9.4(i), as measured by the undersigned's word-processing software.

*/s/ George S. Christian*

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *amicus* letter has been served by electronic mail to all attorneys of record as listed below on August 19, 2013.

**Counsel for William R. "Bill" Huff:**

Sharon E. Callaway
CROFTS & CALLAWAY, P.C.
State Bar No. 05900200
sharonc@ccappellate.com
613 NW Loop 410, Ste. 800
San Antonio, TX 78216
210.569.7201
210.569.8490 (telecopier)

Ricardo R. Reyna
BROCK PERSON GUERRA REYNA, P.C.
State Bar No. 16794845
17339 Redland Road
San Antonio, TX 78247
210.979.0100
210.979.7810 (telecopier)

**Counsel for Rick D'Angelo**

Pamela Stanton Baron
State Bar No. 01797100

psbaron@baroncounsel.com
Post Office Box 5573
Austin, Texas 78763
512.479.8480
512.479.8070 (telecopier)

**Counsel for Riley-Huff Energy Group, LLC:**

FULBRIGHT & JAWORSKI, L.L.P.
Dean V. Fleming
State Bar No. 07122100
dfleming@fulbrightnortonrose.com
Michael W. O'Donnell
State Bar No. 24002705
modonnell@fulbrightnortonrose.com
Jeffrey A. Webb
State Bar No. 24053544
jwebb@fulbrightnortonrose.com
300 Convent Street, Ste. 2100
San Antonio, TX 78205
210.224.5575
210.270.7205 (telecopier)

BAKER BOTTS, L.L.P.
Thomas R. Phillips
State Bar No. 00000102
tom.phillips@bakerbotts.com
Matt C. Wood
State Bar No. 24066306
matt.wood@bakerbotts.com
98 San Jacinto Blvd., Ste. 1500
Austin, TX 78701
512.322.2500
512.322.2501 (telecopier)

**Counsel for The Huff Energy Fund, L.P. and WRH Energy Partners, L.L.C.:**

Daryl L. Moore
DARYL L. MOORE P.C.
State Bar No. 14324720
daryl@heightslaw.com
1005 Heights Boulevard

Houston, TX 77008
713.529.0048
713.529.2498 (telecopier)

**Counsel for Longview Energy Company:** Mikal C. Watts
Francisco Guerra IV
WATTS GUERRA, LLP
Four Dominion Drive
Building Three, Suite 100
San Antonio, TX 78257

Craig B. Florence
Randy D. Gordon
Stacy R. Obenhaus
Rachel Kingrey
GARDERE WYNNE SEWELL LLP
1601 Elm Street, Suite 3000
Dallas, TX 75201-4761

**Counsel for *Amici Curiae***
**U.S. Chamber of Commerce,**
**American Tort Reform Association,**
**NFIB Small Business Legal Center**

Elmore James Shepherd III
SHOOK, HARDY & BACON L.L.P.
JP Morgan Chase Tower
600 Travis Street, Suite 3400
Houston, TX 77002

*/s/ George S. Christian*
George S. Christian