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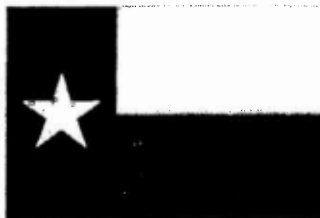
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May 23, 2008, 1:07 pm

### Volkswagen Lawyers Raise Challenge to Texas's 'Rocket Docket'

Posted by Dan Slater



For a long time the Law Blog has spilled pixels over Marshall, Texas, and the rocket-docket that is the Eastern District of Texas. Will the plaintiff-friendly district be no longer?

Yesterday, the Fifth Circuit Court of Appeals heard a decidedly unsexy appeal with decidedly big implications for lawyers who flock to Marshall to file civil suits — particularly patent and product liability cases — and for the

lawyers who defend them. In a mandamus case, *In Re: Volkswagen*, the Fifth Circuit heard arguments over whether a trial judge's discretion should be limited when a party moves to transfer venue pursuant to — dust off your civ pro books — 28 U.S.C. §1404 (a).

Under federal law, plaintiffs may file product-liability suits in “any district in which a defendant resides,” allowing them to file in Marshall, where the judges are known for moving cases expeditiously, and juries have a reputation for doling out fat money judgments. According to today's story in *The Texas Lawyer*, the Eastern District of Texas leads the nation in patent suits filed with 359 for the 12-month period ending Sept. 30, 2007.

Danny Ashby, a lawyer for defendant Volkswagen, which is being sued on a product liability theory for allegedly faulty seats, reportedly argued to the 5th Circuit that U.S. District Judge T. John Ward abused his discretion by refusing to transfer the suit out of the Eastern District. Ashby, a partner at K&L Gates in Dallas, argued that “The parties and the witnesses have no connection to Marshall. And the case has no connection to Marshall.” Click [here](#) for a Texas Record backgrounder on the issues.

But plaintiffs lawyer Martin Siegel, a solo practitioner in Houston, argued that Judge Ward gave proper weight to his clients' choice of venue, that the witnesses located where the defendants want to try the case are not important to its resolution and that the defense has not proven that Ward's venue ruling is an “extraordinary cause” that justifies mandamus.

“It could hurt lawyers all over the state,” especially in Dallas, which has a large contingent of firms that practice in the Eastern District, said Michael C. Smith, a partner in the Marshall office of Siebman Reynolds Burg Phillips & Smith who also represents the plaintiffs in the Volkswagen case.

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Wittle Plaintiff Lawyers might not get to make fortunes by helping no one? Truly a sad story!

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### ABOUT THIS BLOG



The Wall Street Journal's Law Blog focuses on law and business, and the business of law. Dan Slater is the lead writer. Dan joined The Wall Street Journal from The Deal magazine. Before becoming a journalist, Dan worked as a litigator at a New York law firm. The blog's founding writer was Peter Lattman, who now covers private equity for the Journal.

The Law Blog also includes contributions from reporters and editors at the Journal and Dow Jones Newswires. Have a comment or tip? Write to [lawblog@wsj.com](mailto:lawblog@wsj.com).

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Comment by Awwww - May 23, 2008 at 1:19 pm

"It could hurt lawyers all over the state" ...

So what?

That's what happens when a group of lawyers are reduced to honesty.

Comment by Frank in Oklahoma - May 23, 2008 at 1:33 pm

It will hurt all lawyers, not just plaintiff lawyers. The defense firms won't have those big fees rolling in either if the case is out of state.

Comment by All lawyers - May 23, 2008 at 2:45 pm

Is there a reason why the link for this article has "volkswagen-lawyers-raise-challenge-to-(texass)-rocket-docket"?

Comment by anon - May 23, 2008 at 2:51 pm

With a more objective set of jurors, the overall societal cost will drop - who cares about the lawyer fees. These are direct costs everyone pays.

Comment by GKB - May 23, 2008 at 2:51 pm

Gee, I thought Texas was a conservative state.

Comment by Anonymous - May 23, 2008 at 2:59 pm

Texas is a great place. Just thought I'd preempt people ridiculing my state.

Comment by Don't Mess With Texas! - May 23, 2008 at 3:13 pm

I would like to thank you for pointing the URL out. That made my day. Time to start the holiday weekend.

Comment by Dear Anon at 2:51 - May 23, 2008 at 3:34 pm

The Fifth Circuit will do what it always does, ignore well-established rules to favor its corporate pals.

Comment by Burned Too Many Times - May 23, 2008 at 3:48 pm

"The parties and the witnesses have no connection to Marshall. And the case has no connection to Marshall."

Volkswagens high priced lawyer ought to check his facts. The plaintiff's lived in the Eastern District at the time of the accident. Anyone with a modicum of reasonableness can see a connection exists.

Comment by WTF - May 23, 2008 at 4:02 pm

This case is not about lawyers or legal fees. It's about being fair to the defendant. If it puts litigation lawyers in Texas out of business, that's a side benefit. There's a reason why Texas is known as a hell-hole district.

Comment by Last Iconoclast - May 23, 2008 at 4:10 pm

There are four Federal districts in Texas: Northern, Southern, Eastern, and Western. The Northern District has a reputation for being one of the most conservative in the country.

Comment by Jose Padilla - May 23, 2008 at 5:08 pm

Yeah, don't mess with Texas. It ushered in the era of George bush, after all. Nothing can beat the mess that created.

Comment by Texas Tea - May 23, 2008 at 5:13 pm

So, instead of filing in Marshall, they'll file in Tyler or Sherman, both of which are in the E.D. of Texas, and both of which are within 100 miles of Dallas.

Comment by Jenn - May 23, 2008 at 5:21 pm

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The venue law is far too liberal. We need to create special private courts for people who are injured by the alleged "negligence" of auto companies. When we can control the awards and finally whittle them to nothing, we can do away with these needless lawsuits. The vast majority of the people who are "injured" by the alleged "negligence" of an auto manufacturer are faking injuries and/or malingering. They are all just looking to get rich at the expense of the hard working auto companies.

Comment by Tort Reform - May 24, 2008 at [2:27 pm](#)

Oh, and another thing, you can bet your bottom dollar the Fifth Circuit will take a sledgehammer to this venue issue to make it easier for corporate defendants to move cases they want moved. The Fifth Circuit is a perfect example of what our movement has been able to accomplish. Not so long ago the Fifth was plaintiff friendly, now it awaits plaintiff's cases so it can put the smackdown on the excessive "rights". Rest assured the Fifth Circuit will do the right thing a skewer the plaintiff's right to a choice of venue.

Comment by Tort Reform - May 24, 2008 at [4:24 pm](#)

"The vast majority of the people who are "injured" by the alleged "negligence" of an auto manufacturer are faking injuries and/or malingering."

The injured party in this case is a little girl whose skull was crushed due to the faulty seating design created by Volkswagen. Sadly, this girl has lost her life and her parents are fighting to ensure that such a tragedy never ever befalls another family.

Comment by tort reform - May 24, 2008 at [4:32 pm](#)

The "faulty" seating design you reference has been used millions of time without failure. In addition, if you would take the time to do your legal and factual research, you would learn that the federal government standards were met by the manufacturer. I'll wager you're just some liberal trial lawyer who really believes that just because someone suffers an injury there must be someone else at fault. I'll bet the driver of her car was not operating properly. Suffice it to say the Fifth Circuit will certainly not be suckered in by the horrible injury and will move to end the frivolous filings in the Court at issue. Your time has come Ms. trial lawyer. The Fifth Circuit is about to show you the door.

Comment by Tort Reform - May 24, 2008 at [10:26 pm](#)

Oops, wrong site, when I saw the words Rocket and lawyers, I thought this was an article about Roger Clemens and his legal problems.

Comment by Anonymous - May 25, 2008 at [12:52 am](#)

After reading the briefs it certainly seems as if the Fifth Circuit wants to make a statement of some type. They have agreed to the extraordinary step of granting mandamus, and the standard is very high. Sounds like someone is about to get all activist on someone!

Comment by anon - May 25, 2008 at [8:37 am](#)

Hey Frank in OK, chill with the jealousy. Your comment shows you have no integrity. and as for you "tort reform"(idiotic name)you stated "The vast majority of the people who are "injured" by the alleged "negligence" of an auto manufacturer are faking injuries and/or malingering." This tells me that you truly have no idea the harm that tort reform actually causes. Go get educated

Comment by Marshall Law - May 25, 2008 at [3:32 pm](#)

Harm caused by tort reform. You obviously have not been reading much lately. The high cost of our legal system has been chronicled by [www.overlawyered.com](#) and by the United States Chamber of Commerce. Towers Perrin did a study as has the Manhattan Institute. All empirical evidence points to how the tort system tears our economy apart and how Trial Lawyers Incorporated is harming our ability to keep our country secure. Please take your head out of the sand. You and your liberal trial lawyer buddies are making America less secure. You are the main reason our economy is showing signs of strain.

Comment by Tort Reform - May 25, 2008 at [4:47 pm](#)

"You and your liberal trial lawyer buddies are making America less secure. You are the main reason our economy is showing signs of strain."

Tort Reform Dude, you need to stop thinking about law and politics for a few years.

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Clearly you ascribe way more influence to such things than they actually have. Given your concern about the economy, try following economic and business topics exclusively until you look back and can't remember why you were so obsessed with tort reform. And your dog will be glad 'cause you'll beat it less.

Comment by Da Judge - May 25, 2008 at 8:19 pm

I don't have a dog.

Comment by Tort Reform - May 25, 2008 at 9:50 pm

Re: You are the main reason our economy is showing signs of strain. I agree Tort reform is sorely needed, but Lawsuits are only one of the Liberal practices that is destroying the economy.

Comment by Bob - May 28, 2008 at 2:00 pm

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