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## WELCOME PENNY JANE!

I know this newsletter is late — even my printer is checking on me to see where I am.

But I have a few good excuses. First, I was in trial last week. Getting ready for trial and being in trial is a lot of work and put me a little behind on things like the newsletter.

Additionally, it's back to school time. No matter what we do during the summer, the start of school seems to sneak up on us, and I find myself trying to spend those last few days trying to cram in a summer's worth of my kids' summer "to do" list. Of course, with a trip to Africa and trial prep and a trial taking up big chunks of the summer, this summer seemed a little worse than normal.

But more importantly, we welcomed Penny Jane to the world.

On July 25, 2012, at 6:42 a.m., my trusted assistant, Jillian Griffin, gave birth to Penny Jane. Penny Jane weighed in at a healthy 8 pounds, 2 ounces.

This is Jillian's first child, and we're all extremely excited for her.

Fortunately, both Jillian and Penny Jane are doing great.

Jillian is taking some time off (though she's started coming in an hour or two a week so that she's not so far behind when she returns full time).

And I'm learning to get along by myself until Jillian gets back. I got off to a rough start, spending about thirty minutes trying to figure out how to mail a Federal Express package on Jillian's first day of maternity leave. But I've been making progress and am slowly learning many of the things that Jillian did so flawlessly. (Having said that, I'll still be very happy when she returns.)

Jillian doesn't know I'm offering this, but if you have a minute, you might shoot her an email and congratulate her on her new little one.

— Brooks Schuelke

## BROOKS ON TORT REFORM

We always appreciate it when stories about tort reform abuses make it to the news.

Last month, the story of the Michelle Gaines was in the news. Michelle was a high school prom queen who suffered a severe brain injury when she was involved in a trucking accident. The consequences of the injuries were terrible. Ms. Gaines can't live on her own and can't take care of herself. The burden was also so great that her mother left the family, and her father is now trying to juggle his own business and trying to take care of Michelle.



The main issue in the trial of Michelle's case wasn't how bad she was hurt; instead, the trial focused on who really owned the truck that hit her. After hearing evidence about the ownership, that the parties deliberately destroyed documents trying to conceal ownership of the truck, and that payments may have been made to silence witnesses, the jury found that the truck was jointly owned by two persons/entities. The jury awarded Ms. Gaines \$8 million and ordered the two defendants to pay their share.

The defendants appealed the findings, and the Court of Appeals recently reversed the important part of the trial, finding that only one of the entities owned the truck, letting the other entity off the hook.

A number of news outlets have run stories about the case. YNN of Austin was one of those that ran stories on the case, and Brooks was interviewed for part of their story.

Brooks's point was that the case is just another example of the recent trend of the Texas Supreme Court and the Texas Courts of Appeals substituting their judgment for a jury's judgment. That's a disturbing trend.

We all know that communication is about 75% non-verbal, meaning it's important to be able to see witnesses, see how they say things, see how they react to questions, see whether there's a pause before an answer, etc. All of that is critical to understanding what is being said and to determining whether a witness is credible. Juries get to see and hear all of that information to truly understand the non-verbal communication. But judges don't. Judges usually only get to read a transcript of the court proceedings — a typed out booklet of the questions asked and answers provided. They miss out on the extensive non-verbal communication, and yet they continue to substitute their judgment for the jury's.

Brooks isn't the only one noting the problem. In the last few years, a number of people have started speaking out about the problem. That group includes a long list of law professors who have started becoming vocal about their concerns. In fact, a few years ago, a number of law professors used their own time and their own money to write articles and briefs to the Texas Supreme Court urging the Court to reverse this trend.

History buffs also know about the problem. Both the United States and Texas constitutions have provisions guaranteeing the right to a trial by jury in civil cases. On the federal level, one of the primary concerns of our founding fathers was that the colonies weren't being treated fairly in terms of trial by jury. The English citizens had jury trials to protect them in civil disputes from judges who might feel the pressures of politics or appointments. But the colonies were denied that right, with a judge overseeing disputes in the colonies. The right to jury trial in civil cases was eventually added to the Constitution to address this inequity.

If you would like to watch the YNN video story, including the comments from Brooks, you can find the story at the following URL: <http://goo.gl/HbrR5>

## CHEERLEADING SAFETY

In Texas, August means back to school and back to football. And along with football, comes cheerleading.

I've often written about the dangers of football-related head injuries, but often overlooked are the dangers associated with cheerleading.

According to some studies, cheerleading has become the leading cause of catastrophic injuries to young women. And those injuries have been skyrocketing. The Consumer Product Safety Commission has seen the number of serious cheerleading-related injuries go from around 5,000 per year in 1980 to almost 30,000 per year in recent years.

While many of the injuries are not serious — such as muscle pulls and strains and fractures — increasingly difficult acrobatics and stunts are causing a significant increase in the number of catastrophic injuries, including death, traumatic head injuries, and debilitating injuries from spinal trauma.

Parents and schools need to be proactive to help limit



the potential for these serious injuries. First, coaches must have proper training. That training must include training in technique, flexibility, strength and conditioning. Additionally, the coaches should have first aid and safety training. If parents think their daughters (or sons) are at risk for poor coaching, they must be willing to speak up to protect their kids.

Second, schools and parents must make sure that their children have proper equipment. Gone are the days when we thought it was okay to practice acrobatics and such on hard gym floors or outdoors in a parking lot or on concrete. There are now a number of safer, alternative products that can be used for practicing and to help reduce the risk of injuries while kids are learning these tricks.

Finally, kids must understand that it's okay to say, "No." If they are being asked to do something that they know or think is unsafe, then they should understand that they have the right to stand up for themselves.

## TEXAS CONTINUES TO LEAD THE WAY IN AUTO FATALITIES

Recently, the Texas Department of Transportation released statistics showing that as of 2010, the number of car wreck fatalities in Texas have decreased by almost 15% since 2006. That's the good news.

The bad news is that Texas continues to be much more dangerous than the United States as a whole.

There's also a catch. The "good news" of decreased fatalities is based on the number of fatalities per miles driven. I can't find any hard numbers on it, but given the boom in the Texas population growth and the increase in miles driven, I'd bet that the actual number of fatalities remained pretty steady between 2006 and 2010.

The other bad news is that other studies have shown that the number of fatalities aren't decreasing. For much of the country, the number of fatalities decreased from 2010 to 2011, but the number of actual deaths in Texas remained flat.

With improving vehicle safety and increased use of seat belts, fatality numbers should be decreasing. Why isn't it decreasing in Texas? I suspect that it has to do with the trucking industry. IH 35 continues to be one of the most busy trucking routes in the country, and the Eagle Ford Shale oil boom has increased trucking activity in Southwest Texas, and the number of wrecks in that area has increased accordingly.

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This newsletter is informational and not legal advice. If you need legal advice, feel free to call us to set up a consultation.

## THANKS FOR YOUR REFERRALS

The success of our firm depends on referrals from attorneys, former clients, and other friends and family members. We try to ask each potential new client who referred them so we can make sure to properly thank all of you. Unfortunately, many clients can't remember who sent them our way. If you referred someone, and we didn't thank you, rest assured it's because the client couldn't remember who provided our name. Nevertheless, we still appreciate all of you.

It's time to thank people by name so we'd like to thank the following for referring cases to us over the last month:

Steve Fleckman (attorney)  
David Gonzalez (attorney)  
Larry Hathorn (client)  
Maricela Koopman  
Andrew Traub (attorney)  
Arthur Troilo III (attorney)  
Eric Visser (attorney)

