

LEGAL BRIEFS

A QUARTERLY NEWSLETTER DEDICATED TO PERSONAL INJURY LAW

VOLUME XI

AUGUST, 2011

FIGHTING FOR THE RIGHTS OF THE INJURED FOR 21 YEARS

Houston ranked third among U.S. cities in traffic accident fatalities last year

—0—

Here are the most recent statistics about automobile accidents.

**Last year alone there were over 6 million accidents in the United States.*

**Last year alone there were over 2 million people injured from these accidents.*

**Last year alone over 40,000 Americans died from automobile accidents in the U.S.*

**For people ages 4 – 34, automobile accidents are the leading cause of death.*

**Nearly half of vehicle accidents and fatalities are due to intoxicated driving.*

**Houston ranked third in the number of traffic fatalities last year – behind New York and L.A.*

**Only 2% of traffic accidents are 'rollovers,' but they account for 25% of traffic fatalities.*

**Increasingly, distracted drivers are being blamed for vehicle collisions and states are belatedly acting to prevent some of the more heinous offenses – such as texting and driving or talking on a cell phone and driving.*

**The number of fatalities of individuals who failed to use their seat belts is annually in double digits.*

**More accidents occur on weekend nights than any other time of the week.*

**Driver error is the most likely culprit in an automobile accident.*

**There are car seats for animals, which become living projectiles in a collision if not restrained.*

Legislature's 2011 tort reform measures are unlikely to have any significant effect

"Tort reform" groups have hailed the passage of House Bill 274 by the 2011 Texas Legislature as the establishment of a "loser pays" system in Texas, but in reality, none of the tort reform measures signed into law by Gov. Rick Perry should have a significant effect on the civil justice system in this state.

The measure in the bill most touted by the tort reformers is the creation of a new dismissal motion. H.B. 274 directs the Texas Supreme Court to "adopt rules (for all cases except those filed under the Texas Family Code) that provide for the dismissal of causes of action that have no basis in law or fact."

Early versions of the bill required the Supreme Court to model the new rules after the Federal Rules of Civil Procedure, which require the plaintiff to file a very specifically detailed petition. If a federal court determines, upon a motion from the defense, that the plaintiff's petition does not state a claim upon which relief can be granted, then the court is required to dismiss the case. The final version of H.B. 274 does not require

the Supreme Court to use the federal rules as a model, and it is unlikely the Supreme Court will develop rules that completely abandon the much-less-stringent general pleading standards that are currently the law in Texas.

Also, the legislature attached a "loser pays" provision into the dismissal process that the Supreme Court is to develop. Under this provision, if a motion to dismiss is filed claiming the case has no basis in law or fact, the court shall award costs and reasonable attorney's fees to the prevailing party. Therefore, defendants are likely to be very hesitant to file such motions, because they could end up paying the plaintiff's costs and attorney's fees and still have to defend the case.

Another provision of H.B. 274 mandates that the Texas Supreme Court develop rules that expedite civil cases with damages of \$100,000 or less. If the Supreme Court models its rules after those recently adopted in South Carolina and California for such cases, plaintiffs could benefit greatly.

Study of decrease in med-mal cases ignores key fact

A study published in April, 2011, found that medical malpractice lawsuits filed against the University of Texas at San Antonio Health Science Center had decreased 80 percent since the 2003 Constitutional Amendment that capped damages in such suits.

In 2003, Texas Proposition 12 limited non-economic damages (pain and suffering, mental anguish, loss of enjoyment of life, etc.) to in a medical malpractice case to \$250,000 per individual physician.

Why the report does not address is how

many cases in that 80 percent decrease are actually legitimate instances of malpractice, but because of the caps, they are no longer economically feasible to pursue.

"Med-mal" cases, as they are called, are notoriously expensive to bring. The plaintiff's attorney often has to spend \$50,000 to \$100,000 of his own money to get the case to trial.

Therefore, only the most egregious medical malpractice cases involving clear liability and catastrophic damages are now assessed as economically feasible.

DeSimone Law Office

3120 Southwest Freeway, Suite 555, Houston, Texas 77098

Office: (713) 526-0900 Fax: (713) 526-8041

DeSimone Law Office handles a variety of injury cases

DeSimone Law Office has been serving Houston and the greater Gulf Coast area for 20 years.

The firm's primary focus has been the representation of persons who have been injured.

Along with personal injury cases, attorneys Ronald DeSimone and Donald DeSimone handle criminal defense and selected domestic cases.



Ronald DeSimone

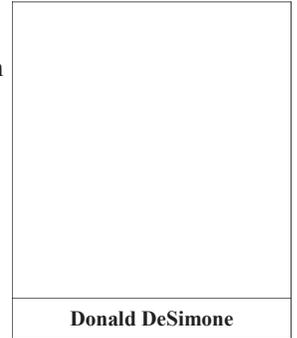
The DeSimones handle the following types of personal injury cases:

- **AUTOMOBILE AND TRUCKING ACCIDENT**
- **SHOOTINGS AND ASSAULTS AT APARTMENTS/BUSINESSES**
- **RAILROAD WORKER INJURIES**
- **BOAT ACCIDENTS/DROWNINGS**
- **OFFSHORE ACCIDENTS**

Ronald DeSimone graduated from the University of Florida with a chemistry degree in 1984. He entered the University of Houston Law Center the following fall and

received his license to practice law in 1987.

Donald DeSimone graduated from the University of Florida with a business degree in 1986, and, after enrolling at the University of Houston Law Center in the fall of that year, he was licensed to practice law in 1989.



Donald DeSimone



Houston Auto Accident Attorneys, Personal Injury & Car Accident Lawyers

For more information on auto accidents and ways to contact us, visit our website at www.houstonautoaccidentsattorney.com

[Rear-End Collisions](#)

[Side Swiping](#)

[Intersection Collision](#)

[Red Light Violation](#)

[Stop Sign Violation](#)

[Failure to Yield](#)

3120 Southwest Freeway
Suite 555

Houston, Texas 77098
Office: (713) 526-0900

FAX: (713) 526-8041

[DUI Victim](#)

[Driver Fatigue](#)

[Reckless Driver](#)

[Driving while Texting](#)

PRESORTED STANDARD
U.S. POSTAGE
PAID
HOUSTON TX
PERMIT NO. 11356

ADDRESS SERVICE REQUESTED

YOUR ATTORNEYS "FOR LIFE"