

# JUDGE, KOSTURA & PUTMAN, P.C.

ATTORNEYS AT LAW



NEWS YOU CAN USE FROM THE FIRM YOU CAN TRUST

October 2010

## IN THE NEWS

Austin City Council members voted this summer to reject a \$750,000 settlement to the family of Nathaniel Sanders II, shot fatally by an Austin Police officer in May of 2009.

The story has been in the headlines in Austin since the shooting occurred, stirring up emotions and strong opinions from many communities and organizations around Austin. The city and police officer were sued by the Sanders family. Although the city was dropped from the suit, it would still be financially responsible if a jury held the police officer liable for the death of Sanders. A jury trial in federal court, set to begin July 26th, was struck from the docket after both sides announced that a tentative settlement had been reached with the family of Nathaniel Sanders II for \$750,000.

The possible settlement arose after the city indicated a desire to resolve the case and both sides attended a mediation shortly before the trial setting. Attorneys for the city and the Sanders family hammered out a settlement, subject to a vote of the Austin City Council. The council voted 4-3 to reject the settlement proposal, prompting federal judge Sam Sparks to express frustration that the city mediated without involving the decision makers in the negotiations.

The rejection by the City Council has set the case back considerably; trial has been rescheduled for November 2011, a delay of more than a year. The set back in relationships is greater.

The case shows how emotionally charged the litigation process can be, how the media coverage can influence the decision to settle or go to court, the importance of involving the ultimate decision-makers in any settlement negotiations or mediation, and how long it takes for cases to be resolved.

## HOW YOUR HEALTH INSURER DECIDES WHAT BILLS TO PAY

Most health insurance policies contain discretionary clauses. These clauses give the insurance company the discretion to decide what benefits or medical treatment the health insurer will pay. The Texas Department of Insurance is investigating whether these clauses, in accident, health and life policies, make it too easy for insurance companies to deny legitimate claims. Discretionary clauses give insurance companies the authority to interpret their own policies. If the carrier refuses to pay, the policy holder must show the plan administrator abused his discretion in denying the claim; this burden is difficult to meet and, under current federal law, suing to obtain benefits is difficult and expensive.

In October 2009, the state Office of Public Insurance Council asked Insurance Commissioner Mike Geeslin to considering banning these clause, arguing that they are inherently unfair to consumers. OPIC is leading Texas along with almost two dozen other states that are taking steps to reform or remove discretionary clauses. The new federal health care law passed by the current administration will not have any effect on discretionary clauses, as states remain free to allow or to reject the clauses.

Insurance companies argue that the clauses are necessary to protect employers and consumers by providing consistent benefit eligibility determinations and interpretations of policies. They assert that the clauses help keep premiums low and protect them from frivolous lawsuits. These arguments are hard to swallow, given the rapid rise in the cost of health insurance.

We support banning these clauses and will keep you posted on the outcome.

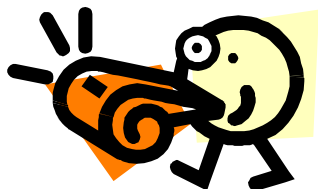


# **DODD-FRANK BILL SIGNED**

## **WHISTELBLOWERS**

### **PROTECTED**

The subprime mortgage melt down of 2008 signaled the nation's serious economic problems. These



problems could have been lessened by enforcing the statutes passed under the two Roosevelt administrations: (a) the monopoly-busting anti-trust laws; (b) and the stock market reforms contained in the Securities Acts of 1933 and 1934. Those laws allowed the 20<sup>th</sup> Century American economy to grow with unprecedented strength and vigor because they enabled ordinary working people to actively participate in Thomas Jefferson's American Dream.

Unfortunately, the Department of Justice and the Securities Exchange Commission effectively stopped enforcing the anti-trust and securities laws of the two Roosevelt eras in 1981. From then until 2009, the executive department of our federal government turned a blind eye to deceptive, misleading, and criminal behavior in the financial sector. The state and federal courts followed suit.

The Dodd-Frank financial services reform bill (H.R. 4173) is a fresh step in the right direction. The new law, which President Obama signed on July 21, 2010 recognizes that robust whistleblower protection is critical to preventing another financial crisis. It includes numerous provisions designed to encourage whistleblowing and to provide real world protection from retaliation. These provisions create monetary awards for whistleblowers who provide original information to the Securities Exchange Commission (SEC) or the Commodity

Futures Trading Commission (CTFC), strengthen the whistleblower protection provisions of the Sarbanes-Oxley Act (SOX) and the False Claims Act, and create additional whistleblower retaliation causes of action.

Under §922, the SEC will be required to pay a reward to individuals who provide original information to the SEC which results in monetary sanctions exceeding \$1 million. The award will generally range from 10 to 30 percent of the amount recouped, with an appeal to the appropriate federal court of appeals within 30 days of the determination.

Dodd-Frank also strengthens the SOX Whistleblower Protection Provision (Sections 922 and 922A) to broaden the scope of coverage, increase the statute of limitations, exempt SOX whistleblower claims from mandatory arbitration, and clarify that SOX claims removed to federal court can be tried before a jury.

John Judge of JUDGE, KOSTURA, & PUTMAN, P.C. has been providing cutting edge representation of and protection for state and federal whistleblowers for more than 30 years. If you are working for an employer that is breaking the law, or if you have been subjected to an adverse employment action because you have reported violations of law to appropriate law enforcement authorities, contact us.

Your information will be held in strict confidence until you decide to "go public." There is no charge for initial consultation with one of our attorneys. Appropriate cases are handled on contingent fee basis with sliding scale fee and expense reimbursement plans available

## GOOD FENCES MAKE GOOD NEIGHBORS OR THE BUM STEER AWARD...

In 2000, a severe drought prompted several of Randy Reynolds' cattle to walk across a dry riverbed separating his land from that of Thomas Bennett Jr. Bennett rounded up 13 of Reynold's cattle and sold them for \$5,311, hiding his actions from Reynolds.

When a disgusted ranch hand blew the whistle on Bennett, Reynolds sued Bennett in civil court. The jury heard evidence of Bennett's attempted blackmail, bribery, witness tampering and doctored evidence, in addition to his theft of Reynolds' cattle. The jury awarded Reynolds over \$5,311 for the stolen cattle, and added a punitive damage fine of \$1.25 million, trying to send a powerful statement that Texans don't like cattle rustling, cheating, or lying to juries.

Bennett appealed to the Texas Su-

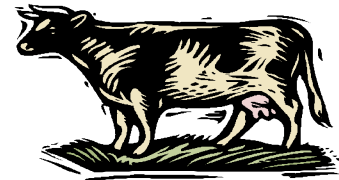
preme Court. At the end of June 2010, the Texas Supreme Court threw out most of the punitive damage award, ruling that it was unconstitutionally excessive and far greater than the actual damages suffered by Reynolds. The Texas Supreme Court suggested the punitive award should be less than four times the actual damages, limiting the award to less than \$21,300.

To determine whether certain damages are excessive, the court examined these "reprehensibility factors:" Did the action cause physical harm, threaten the health or safety of others, involve repeated actions or threaten financial ruin?

Despite Bennett's systematic abuses of the civil justice system while the case proceeded to trial, the Texas Supreme Court decided that Reynolds did not meet enough of

the standards to receive such a high punitive award.

Punitive damages are often intended to punish or deter reprehensible behavior and can be an invaluable source of closure and justice for some people. Large verdicts make the headlines. But when you read the headlines about large damage awards, keep in mind that the judgment from the jury is usually not the end of the case. Most of the significant punitive damage awards are appealed and often reduced.



## ONE MORE TRICK UP A YANKEE'S SLEEVE

On July 13 of this year, legendary Yankee owner George Steinbrenner died, leaving a rich legacy of American baseball for his fans and a financial legacy for his family. And in true Yankee fashion, he managed to pull off one last win when it came to his estate. Steinbrenner owned 55% of the Yankees parent company, one of the most valuable sports franchise in the world. His death fell six months after the federal estate tax expired. The federal estate tax of 45% on all inheritance lapsed in January 2010.

Had the Yankee legend died in 2009, about \$500 million of his estimated \$1.1 billion would be due to the government. Congress is debating whether to renew the tax in 2011 and at what level. If no action is taken before the end of the year, the tax will automatically increase to 55% on an amount over \$1 million.

What does this mean for you? Obviously, most people do not have to worry about losing their sports franchise and death cannot be planned within a certain time frame, but many families don't consider estate taxes and other fees and penalties associated with handling an estate. While much in life cannot be helped or expected, having a solid estate plan in place can save your loved ones extra strife and help them plan for a solid future.



**Do You Need Help**

**Planning Your Estate?**

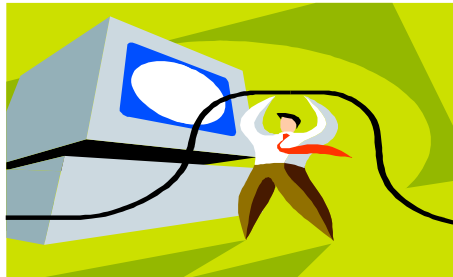
Call us at Judge, Kostura and  
Putman, P.C.

## WHEN FREE SPEECH IS NOT FREE

In September 2009, a Knoxville marketing firm filed a \$2 million libel lawsuit against a former client claiming the client's complaints on Facebook and Twitter hurt the firm's reputation. The case is still pending.

A Chicago resident tweeted about her property managers, criticizing them for not dealing with what she considered a serious mold issue in the apartments. She was subsequently sued for \$50,000 by her property management company, which claimed she damaged their reputation by publishing a false and defamatory tweet on Twitter. The case was eventually dismissed in January 2010 as being "too vague to meet the legal standards of libel."

An Austin law firm was awarded \$400 in damages for a negative review posted on



the consumer site [www.ripoffreport.com](http://www.ripoffreport.com), which publishes consumer comments about their experiences with businesses. A negative online review by David Christopher Kidd about The Patten Law Firm caused the firm to rocket to the top of the review site. Kidd later tried to delete his post, but the webmaster for the site said that removal of posts was against their policy. The firm sued Kidd and won its lawsuit but was stunned when the firm was awarded only \$400 in damages to their reputation.

The firm is appealing, claiming they deserve more than the \$400 in penalties and that

Kidd's malice entitles them to exemplary damages.

While social networking sites are a great place to reconnect, joke around or vent, keep in mind that posts on such sites are public.

Freedom of speech is certainly a protected right, but it does not protect you from being held accountable if the content is slanderous or defamatory. Highly unflattering venting may provoke a lawsuit which, even if dismissed, may be costly, time consuming, and stressful.

Increasingly, Facebook and Twitter accounts and posts are being used in litigation, both criminal and civil, as evidence. Prospective employers have googled job candidates to assess the candidate's fitness for the job.

Our advice? Think before you Tweet.

Identity theft scams have been around for a while, and a new twist on an old scam threatens the safety of your bank account.

A caller identifies themselves as an officer of the court notifying you of an impending warrant for failing to report to jury duty. When you protest that you never received a notice to report for jury duty, the caller will ask for your Social Security Number, date of birth, and other personal identification in order to "verify" or correct the mistake. Do NOT give the information.

### **WARNING:** Identity Theft and Jury Duty Scam

Hang up the phone and report the caller. This call is a scam. It's an easy scam to fall for. Hoping to avoid any confusion or trouble, people may give out information to the "court officer" before realizing

they are the victim of identity theft.

No matter who calls you, or how persistent they may be, if you did not initiate the business relationship with the caller and do not know them, safeguard your personal identification.

Jury service is an important bedrock of our civil justice system. Judge, Kostura & Putman, P.C., supports your civic participation as we keep you informed of scams that threaten your identity.

# JUDICIAL CANDIDATES ELECTION: THE OUTCOME MATTERS

Even the most informed citizen has a hard time knowing the candidates for judicial elections. Judge, Kostura & Putman knows the law and the judges! Here are our recommendations in the contested judicial races. Whether you vote early (October 18-29) or on November 2nd, please vote and consider these candidates.

## Appeals Court Judicial Candidates

### **Justice, Supreme Court, Place 3**

Incumbent [R] Debra Lehrman

Justice, Supreme Court, Place 5

[D] Bill Moody

Justice, Supreme Court, Place 9

[D] Blake Bailey

Justice, Ct of Criminal Appeals, Pl 5

Incumbent [R] Cheryl Johnson

Justice, Ct of Criminal Appeals, Pl 6

[D] Keith Hampton

Justice, 3rd Court of Appeals, Place 4  
[D] Kurt Kuhn is the superior candidate over his female challenger.

Kuhn has the support of respected Republican Supreme Court justices and women attorneys throughout the 24 county district. He won the State Bar preference poll almost 2 to 1 but needs a large turnout to win. Kuhn teaches appellate law, heads the appellate law section of a major firm, and regularly contributes to continuing education seminars for lawyers. Kurt has won the endorsements of every non-partisan group but voters in the outlying 24 counties who vote straight party could skew the results. He deserves your vote. Learn more at [www.votekuhn.com](http://www.votekuhn.com).

FUN FACT: voting early results in fewer robo calls sent to your voice mail! Early voting runs October 18-October 29

Trial Court, Travis County:  
Judge, 353rd District Court  
[D] Tim Sulak is experienced, honest, smart and fair. He challenges the judge recently appointed by Governor Perry. Sulak served as the Vice-Chair of the Texas Commission for Lawyer Discipline, served for 5 years on the City of Austin Ethics Review Commission, and received the Professionalism Award from the Texas Center for Legal Ethics and Professionalism. He has served as the president of the Austin Bar Association and chaired the Texas Bar Foundation, which raises and distributes funds for worthy charitable and educational programs. He has won every non-partisan endorsement. Learn more at [www.timsulakforjudge.com](http://www.timsulakforjudge.com), and please vote for Tim Sulak.

### **Justice of the Peace, Precinct 2**

Karin Crump

Justice of the Peace, Precinct 3

Susan Steeg

Early voting locations are found at

[http://www.co.travis.tx.us/county\\_clerk/election/20101102/early.asp](http://www.co.travis.tx.us/county_clerk/election/20101102/early.asp)



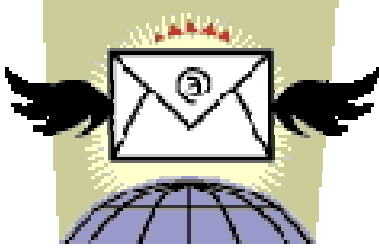
The lawyers at JUDGE, KOSTURA, & PUTMAN, P.C. have over 85 years experience in representing clients injured as a result of the negligence of dangerous and drunk drivers, defective products, 18 wheelers, vicious animals, and unsafe work places.

We support zealous advocacy and an open courthouse, governed by judges who uphold the highest ethical standards and equal treatment of all. We defend the right to trial by jury, the greatest equalizer of all.

We are dedicated to compassionate, cost effective, and knowledgeable representation.

If you would like to meet with an attorney of Judge, Kostura & Putman to discuss your legal needs, please call us at 512.328.9099. We look forward to the opportunity to be of service.

# We're on the Web!



[www.jkplaw.com](http://www.jkplaw.com)

## Practice Areas

- **Serious Personal Injury & Wrongful Death:**  
Representation of persons injured through the negligence of others through automobile collisions, trucking industry collisions, dram shop cases, driving while intoxicated injuries, wrongful death, burn injuries, attack by vicious animals, premises liability, and other injuries.
- **Employment Litigation:**  
Representation of employees and whistleblowers in disputes involving retaliation, discrimination, compensation, conditions, and benefits.
- **Probate:**  
Probate or administration of estates for the families of deceased persons.
- **Estate Planning:**  
The creation of wills, trusts, powers of attorney and other estate planning documents and measures
- **Business and Commercial Law:**  
Including entity formation and representation, contract creation and negotiation, "Bad Faith" insurance cases, business disputes, oil/gas/mineral matters, and deceptive trade practice claims prosecution
- **Professional License Defense:**  
Representation of health care, design, legal, and other professionals in defense of regulatory board disciplinary actions.

## JUDGE, KOSTURA & PUTMAN, P.C.

ATTORNEYS AT LAW



THE COMMISSIONERS HOUSE AT HERITAGE SQUARE  
2901 BEE CAVE ROAD, BOX L • AUSTIN, TEXAS 78746  
P. 512.328.9099 • F. 512.328.4132  
[WWW.JKPLAW.COM](http://WWW.JKPLAW.COM)

ATTORNEYS AT LAW

\*JOHN JUDGE

JUDY KOSTURA

STAN M. PUTMAN, JR.

LEGAL ASSISTANTS

KIMBERLY HALLER

JANET ROPER

MICHELLE TURNER

RECEPTIONIST

CARRIE TAYLOR



Judge, Kostura & Putman, P.C., is dedicated to providing legal services primarily in the State of Texas. Our lawyers bring over 85 years of combined experience to the practice. We are trial lawyers that represent individuals, families, and small businesses in a broad spectrum of civil matters. We do not represent insurance companies. We do not handle tax or family law or criminal matters.

Judge, Kostura & Putman, P.C., combines experience and leadership to achieve results for our clients. Our size enables us to get to know our clients personally and professionally.