FILED
18-0056
5/3/2018 12:34 PM
tex-24343266
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

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

May 3, 2018

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

Re: No. 18-0056; *The Goodyear Tire & Rubber Company v. Vicki Lynn Rogers, Individually and as Representative of the Estate of Carl Rogers, Natalie Rogers, and Courtney Dugat*

**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 letter in the above-referenced cause in support of the Petitioner, Goodyear Tire & Rubber Company.

## 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 predictable civil justice system. Having initiated the effort to reform the law of punitive damages in 1986 and played a central role in the enactment of statutory reforms in 1995, TCJL's members have a longstanding interest in the proper application of the statutory definition of gross negligence. Moreover, as employers of hundreds of thousands of Texans, they likewise have serious concerns that the erosion

of the gross negligence standard could subject them to liability for punitive damages in the workers' compensation context. This letter has been prepared in the ordinary course of TCJL's operations. No fee has been paid for the preparation or filing of this brief.

## ARGUMENT

If affirmed, the Court of Appeals' decision will subject Texas employers of all types and sizes to two distinct threats: (1) the imposition of punitive damages for conduct barely distinguishable from negligence; and (2) the effective abrogation of the exclusive remedy of the workers' compensation system for a potentially significant number of workplace injuries.

In one fell swoop, the Court of Appeals has destabilized a well-established body of law stretching back to this Court's landmark decision in *Transportation Insurance Company v. Moriel*, 879 S.W.2d 10 (Tex. 1994) and raised the unsettling specter of a return to the "some evidence of an entire want of care" standard of *Burk Royalty v. Walls*, 616 S.W.2d 911 (Tex. 1981). Indeed, Justice McGee's dissent in *Burk Royalty* still says it best:

> The majority after full consideration holds that the definition of gross negligence as reaffirmed by this Court in *Sheffield* is correct. Yet, by changing the manner of review, this definition would be significantly changed. It is held that the reviewing court should apply the "no evidence" test. Such review would require the reviewing court to consider only the evidence when viewed in its most favorable light that

> tends to support a jury finding of gross negligence and to disregard all evidence of care. This results in an abandonment of the long settled definition of "gross negligence." It is fundamental that in applying the no evidence test, the reviewing court would not look at the totality of the evidence to determine if the act or omission complained of was the result of a conscious indifference to the right or welfare of the person or persons to be affected by it. *Burk Royalty* at 927.

If ever there was a case of déjà vu all over again, we are certainly looking at one here.

Decisions such as *Burk Royalty* caused untold damage to Texas' business climate in the 1980s and beyond. The 1986 House/Senate Joint Committee on Liability Insurance and Tort Law Procedure denounced this case (and others like it) as "examples of judicial activism" that undermined the stability and predictability of the liability system.[1] In response, the Committee recommended that the Legislature overrule *Burk Royalty*, adopt a clear and convincing evidence standard for punitive damages, and cap punitive damages. At the urging of TCJL, the Legislature adopted the first cap on punitive damages in 1987. In its landmark opinion in *Transportation Insurance Company v. Moriel*, 879 S.W.2d 10 (Tex. 1994), this Court established a clear and convincing evidence standard and overruled *Burk Royalty.* And in 1995, the Legislature codified *Moriel*. The whole trend of

[1] House/Senate Joint Committee on Liability Insurance and Tort Law Procedure, Joint Committee Report to the 70th Texas Legislature, January 1987, 115.

Texas law since 1986 is toward fulfilling Justice Cornyn's admonition that punitive damages are exceptional in nature, and their award can only be justified in situations comparable to criminal punishment. See *Moriel* at 16. By any reasonable construction of the record in this case, the Petitioner's conduct in no way rises to that level.

Yet the Court of Appeals regressed to a pre-*Moriel* standard in its refusal to consider *all* evidence bearing on gross negligence. See *Southwestern Bell Tel. Co. v. Garza*, 164 S.W.3d 607, 627 (Tex. 2004) ("In a legal sufficiency review, a court should look at all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true"). If for no other reason, this Court should grant review to correct this erroneous and troubling regression of Texas law.

The Court of Appeals' decision not only unsettles more than 30 years of sustained legislative and judicial efforts to reserve punitive damages for truly egregious and outrageous conduct, it blows a potentially grievous hole in the workers' compensation system. By diluting the definition of gross negligence and lowering the standard of review, the Court of Appeals seriously weakens the exclusive remedy that underwrites the provision of workers' compensation insurance benefits to begin with. Threatened with

increasing numbers of ordinary negligence claims repackaged as "gross negligence" claims for punitive damages, employers might be forgiven for fleeing a system that has ceased to serve the beneficial purposes for which it was created. If decisions like this one go uncorrected, they could return us to the 19th-century condition in which an employee injured at work would have to file a civil lawsuit to recover his or her health care costs and lost wages. That might be a good outcome for certain legal practitioners, but certainly not for Texas businesses and their employees.

## Conclusion and Prayer

TCJL respectfully requests this Court to grant the Petition for Review and reverse the Court of Appeals.

Respectfully submitted,

*/s/ George S. Christian*
GEORGE S. CHRISTIAN
State Bar No. 04227300
400 West 15th Street, Suite 1400
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 941 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 was served on counsel of record by using the Court's CM/ECF system on the 3rd day of May 2018, addressed as follows:

**Counsel for Petitioner The Goodyear Tire & Rubber Company:**
David M. Gunn
dgunn@beckredden.com
Erin H. Huber
ehuber@beckredden.com
BECK REDDEN LLP
1221 McKinney, Suite 4500
Houston, Texas 77010

**Counsel for Respondents Vicky Lynn Rogers, Individually and as Representative of the Estate of Carl Rogers, Natalie Rogers, and Courtney Dugat:**
Jeffrey S. Levinger
jlevinger@levingerpc.com
LEVINGER, P.C.
1445 Ross Avenue, Suite 2500
Dallas, Texas 75202

Christopher J. Panatier
cpanatier@sgpblaw.com
Darren P. McDowell
dmcdowell@sgpblaw.com
SIMON, GREENSTONE, PANATIER AND BARTLETT, P.C.
3232 McKinney Ave., Suite 610
Dallas, Texas 75204

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