



## Gone to the Dogs

BY JERRY BUCHMEYER

**ERNEST REYNOLDS, III** OF FORT Worth submitted this month's title contribution. The others are from Austin (**Joseph Pitner**), Corpus Christi (**Constance Leudicke**), Dallas (**Theodore Matula, Ira Tobolowsky**), Fort Worth (**Keith Lemons**), George West (**Bill Hardwick**), Harlingen (**Shirley Gray**), Houston (**Lee Gill, Les Pickett**), Lufkin (**James Zeleskey**), New Braunfels (**Marion Borchers**), and Texarkana (**Nelson Shaw**).

### DUMB AND DUMBER

From **Les Pickett** of Houston (Galloway, Johnson, Thompkins & Burr), this marvelous (!) deposition exchange between the defense lawyer and the plaintiff:

Q. Did you ever have a discussion with either a supervisor or your boss at Midkiff as to why you should wear an air-fed respirator while sandblasting?

A. No. First of all, because I wouldn't have understood what they were saying.

Q. *Are you dumb?*

A. *I don't believe I am, but I don't know.*

### MITIGATING DAMAGES

From **Shirley J. Gray** of Harlingen (Drabek & Associates), this excerpt from Shirley's deposition of the plaintiff's husband concerning his loss of consortium claim. **Barry R. Benton** of Brownsville represented the plaintiff.

Q. And tell me what kind of things

she did for you before the fall that she does not do for you now?

A. She would go to bed with me.

Q. Anything else?

A. *Her sister, I would hug her instead of her — I would hug her sister instead of her.*

Q. *All right. Well, I'm not sure I understand.*

Mr. Benton: That may be something for the [*Texas*] Bar Journal.

Ms. Gray (wisely); Well, I think I'll just leave that one alone.

### THE ENERGIZER BUNNY

From **Marion J. Borchers** of New Braunfels, this excerpt from a pleading filed in a bankruptcy court in the Southern District of California. In the case, "the ex-husband of the debtor opposed the sale of land in Comal County, Texas and appealed an adverse ruling, lost three motions to stay, and then filed an ex parte motion for clarification" — which drew this response from **Jeffrey Isaacs** of San Diego, Calif. (Procupio, Cory, etc.):

**Response and Opposition to Ex Parte Application for Clarification of Court's Order Regarding Sale of Texas Real Property and Request for Sanctions Under Rule 9011 of the Federal Rules of Bankruptcy Procedure**

#### Introduction:

Like the Energizer bunny, defendants just keep going and going and going ...

### CLASSIC TYPOS

(1) From the affidavit executed in a workers' compensation death benefit case:

Before me, the undersigned Notary Public, on this day appeared Raymond Butler, *Deceased*, who being by me duly sworn on oath deposed and said ...

(2) From a Commitment for Title Insurance issued by a title company in George West:

... there are no federal estate taxes or state inheritance taxes due and owing on the Estate of Charles Lee Miller, *Deceased*.

(3) From an SEC release dated Feb. 28, 1974, that — *hopefully* — contains a typographical error:

... X Company intends to submit to both classes of its shareholders a plan of recapitalization, which, if approved ... would provide, among other things, for ... [an] exchange of eight shares of common stock for each share of *preferred stool*.

(4) From a witness list filed in a Nueces County lawsuit in the 94th District Court:

J. Kendall and V. Gomez  
c/o City of Corpus Christi Building  
Inspection Dept.  
P.O. Box 9277  
Corpus Christi, Texas 78469

*E.H. Moore, deceased*

(5) From an opinion letter regarding a \$12 million real estate transaction:

In rendering this opinion we have,

with your approval, relied as to certain matters of fact on the Ancillary Documents, as set forth herein. ... Based on the foregoing and subject to the assumptions and qualifications set forth in this letter, it is our opinion that: ...

The contributors of these classic typos are (1) **Joseph A. Pitner** of Austin (Office of the Attorney General), (2) **W.L. (Bill) Hardwick** of George West, (3) **Theodore D. Matula** of Dallas (Vinson & Elkins), (4) **Lee S. Gill** of Houston (McGettigan, Gill & Hargis), and (5) **Ira E. Tobolowsky** of Dallas (Tobolowsky, Siegel & Burk).

#### VICTOR/VICTORIA PLAYS PHOENIX

From **Constance A. Leudicke** of Corpus Christi, this excerpt from the deposition of the plaintiff in "a case alleging faulty remodeling by a contractor." Constance — having "the opportunity to doff [her] 'black hat' as a criminal defense attorney" — served as guardian ad litem in this case.

Q. Okay. How many kids [by your first wife]?

A. One.

Q. And what's his or her name?

A. What ... *Tiana*?

Mrs. Rivas: No, he's confused. *It's a boy, but he — went into sexual — now, she's a girl.* See there's a lot of confusion there.

Mr. Raleigh: I guess so.

Mrs. Rivas: So his real name is a boy, it's *Archie Wayne Rivas*.

The Witness: *Archie Wayne Rivas*.

Mr. Laws: Oh, no, thank you for clarifying things. ... Are — are you — does — does the child we just discussed, *does he or she live with you now?*

A. No sir. *He lives in Phoenix, Ariz.*

#### DID THEY REALLY SAY THAT?

From **Keith D. Lemons** of Fort Worth, this excerpt from his deposition in an automobile accident case where the defendant — who allegedly had "been drinking and strongly smelled of brew, not *Brut*" — offered a rather odoriferous excuse.

Q. Had you done anything or been anywhere that would cause any-

one to believe that you had been drinking?

A. No.

Q. Were you nervous enough at the time of the accident to act like you were drunk or do you think you were?

A. I don't think I was acting drunk.

Q. Okay. Were you tumbling?

A. No.

Q. Okay. *Did you smell like alcohol?*

A. *No. I smelled like cologne.*

Q. *What kind of cologne do you use?*

A. *Brut.*

Q. But you hadn't dashed yourself that much to where it was, I don't know how to say it, odoriferous?

A. It may have been intoxicating to someone else, the amount, but not to me it wasn't.

Q. Okay. *So if anybody smelled you that night, your opinion would be they smelled Brut?*

A. *Yes, sir.*

From **Nelson V. Shaw** of Texarkana (Dunn, Nutter, Morgan & Shaw), this excerpt from the deposition of the plaintiff's wife in a workers' compensation case — with Nelson's explanation that the husband was "an honest to goodness cowboy" whose numerous job-related injuries resulted in "three back surgeries, a knee surgery and bipolar illness."

Q. Even being an experienced cattle person like your husband, you know, it's just a dangerous environment to work in with all the cattle running through there a lot of times. Do you agree with that?

A. That it's a dangerous environment?

Q. Yeah, with people getting hurt a lot. Is that right?

A. *No, sir, I don't think it's a dangerous environment.* No, sir, I sure don't. I think pilots are dangerous environments. *I think being a lawyer and working with irate people would be a dangerous environment.*

From **James J. Zeleskey** of Lufkin (Zeleskey, Cornelius, etc.), this non-answer to an interrogatory in a medical malpractice case.

13. Please state the name and address

of the man by whom you became pregnant.

Answer: Objection; *calls for speculation.*

#### AN EXPERT'S BEST FRIEND IS ...

From **Ernest Reynolds, III** of Fort Worth, this excerpt from his direct examination of an expert witness who had consulted with him on several other cases. The opposing attorney was **Tom Webb** of San Angelo.

Q. We know each other personally; is that correct?

A. We do.

Q. I have even been introduced to your wife, your children, *and your dogs*; is that correct?

A. I think that's right.

Mr. Webb: May it please the court, we have been pretty tolerant, but *on the deposition we spent 10 pages on dogs. I don't want to be an obstruction but I object to the dogs.* I would like for us to get on with the case. That's not relevant that he has met his dog.

Mr. Reynolds: May we proceed, Your Honor?

The Court: *I'll at least let you inquire as to his present dog's name.*

Mr. Reynolds: Q. What is the name of your present dog?

The Witness: A. Well, I actually have two now, one that you know and a new one. And the old —

Mr. Webb: He's gone beyond it, judge. We have spent 20 minutes on deposition on this and I object to it.

The court: *Okay. Let's go. We have gone to the dogs.*

Mr. Reynolds: Will you give the dog my best regards?

The Witness: Indeed.

Contributions to *et cetera* should be mailed to: Chief Judge Jerry Buchmeyer, U.S. District Court, Northern District of Texas, 1100 Commerce St., 15th Floor, Dallas 75242.