

Docket Call



BAYLOR UNIVERSITY SCHOOL OF LAW

WINTER 2004-05

BAYLOR
LAWYERS:
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IN A SERVING
PROFESSION

ROAD ^{TO} BACK
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ATTORNEYS
LEAD TEXAS
TRIAL LAWYERS
ASSOCIATION

PLUS: **Gih Gayle Awarded the Legion d'Honneur** Judge T. John Ward Honored as Baylor Lawyer of the Year
U.S. Fifth Court of Appeals Visits Baylor Law School Bill Underwood Saves a Life **Texas Prosecutors Meet at Law Center** Baylor Law Receives "Tier One" Ranking from *U.S. News* **Baylor Young Lawyer of the Year Honored**

A Landmark For Adminis

July 2, 2004 marked a day of new beginnings for Texas administrative law and another legal victory for Baylor Law affiliates. An overruling of a motion for rehearing by the Texas Supreme Court brought an end to the 13-year tug-of-war spawned by guidelines of the Texas Workers' Compensation Commission.



Jane Slone



Ron Bert



James Loughlin

IN ACCORDANCE WITH THE "NEW" WORKERS' COMPENSATION law of 1991, the Texas Legislature directed the Commission to establish fee guidelines that would limit the amount of reimbursement workers' compensation insurers paid to hospitals for in-patient services provided to workers' compensation patients.

The Commission's new hospital fee guideline was set to go into effect on Sept. 1, 1992. Shortly before that date, the Texas Hospital Association (THA) filed a suit for declaratory judgment to invalidate the guideline on the grounds that it did not comply with the "reasoned justification" requirements of the Administrative Procedure Act (APA). THA's motivation to invalidate the guideline was its claim that it did not pay hospitals enough. The trial court denied THA's validity challenge.

However, the court of appeals reversed, holding that the guideline was invalid because the Commission had not provided an adequate reasoned justification, as required by the APA. This portion of the litigation finally ended in 1997 when the Texas Supreme Court denied the Commission's petition for review, thereby upholding the court of appeals' decision invalidating the guideline.

Throughout the course of the litigation, which lasted almost five years, Texas hospitals continued to treat injured workers and submit bills to workers' compensation insurers for payment. The hospitals were paid by the insurers under the Commission's hospital fee guideline. Once the guideline was finally invalidated, the hospitals began to file claims through the Commission's medical dispute resolution process seeking from the insurers the difference between their billed

charges and the amount paid under the now invalid guideline. This resulted in over 20,000 claims with a total alleged value estimated at \$350 million.

Prior to the adoption of the hospital fee guideline, the Commission had adopted another rule which stated that all medical disputes must be filed with the Commission within one year from the date of service in dispute. Under this so-called "one-year" rule, the vast majority of the hospitals' claims for additional reimbursement would be time-barred. However, the Commission was not applying this rule to resolve the disputes. When these disputes were appealed to the State Office of Administrative Hearings (SOAH), the Administrative Law Judge (ALJ) ruled against the insurers, holding that the one-year rule did not apply to bar the hospitals' claims.

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Various workers' compensation insurers, represented by Jane Stone and partner James Loughlin, then filed a suit for declaratory judgment in district court seeking a declaration that the Commission's one-year rule applied to bar the hospitals' claims for additional reimbursement. Loughlin, a 1996 Baylor law graduate, contacted Baylor Professor Ron Beal for assistance with the "juicy" administrative law case.

"Professor Beal," Loughlin explained "is widely regarded as the foremost expert on Texas administrative law, and I knew his assistance would be invaluable to our case. His personality made working with him an absolute pleasure and really added to my enjoyment of the case. The fact that I have access to top experts in their field, like Professor Beal, and that he was willing to help with our case, makes me even more appreciative of my Baylor law degree."

The question posed by the case was whether the mere commencement of a declaratory judgment action challenging the validity of a rule automatically tolled or suspended all other independent causes of action subject to the same rule. In other words, by the hospitals challenging the validity of the guideline, did this suspend the need for the hospitals to file medical dispute claims within one year from the date of service?

The trial court ruled in favor of the insurers and our Baylor affiliated legal counsel, prompting an appeal by the hospitals. The

Austin Court of Appeals upheld the trial court's ruling in a landmark decision for administrative law. For the first time since the APA was adopted in 1975, the judiciary expressly held that the validity of a rule may be challenged within an agency proceeding. A section 2001.038 declaratory judgment action may be used to assert a validity challenge to a rule, but it is not the exclusive method to do so.

who has excelled in the practice of law and even though he gets most of the credit, I watched him use skills that he was taught at the law school. I can see the effects of our rigorous curriculum."

Loughlin sings praises of Baylor's curriculum and esteemed faculty. "It is the day-to-day practice of law that has taught me to fully appreciate the true value of Baylor's broad

“Nothing makes me prouder and validates the quality of teaching at Baylor Law School more than actually working with alumni on real cases...”
Professor Ron Beal

Second, for the first time the judiciary held that if a Section 2001.038 declaratory judgment action is used to challenge the validity of a rule, the mere commencement of the action does not suspend all other proceedings where the rule is to be applied and a party must affirmatively seek an injunction from the court to suspend such proceedings or to suspend any time limitations for filing such claims. The case came to a final conclusion on July 2, 2004, when the Texas Supreme Court overruled the hospitals' motion for rehearing on their petition for review. As a result, the bulk of the hospitals' claims for additional payment are now barred.

"Nothing makes me prouder and validates the quality of teaching at Baylor Law School more than actually working with alumni on real cases," said Professor Beal. "James Loughlin is an excellent attorney

curriculum," he said. "Baylor's required curriculum instills a broad knowledge in all areas of law that is extremely helpful to attorneys in their chosen area of practice."

Jane Stone, Loughlin's partner and University of Texas graduate, is coincidentally affiliated with Baylor due to her relation to the late Abner E. Lipscomb, a Baylor Law professor in the 1930s. He wrote the definitive piece on Texas administrative law entitled "Judicial Control of Administrative Action in Texas: A Study in Administrative Law," which appeared in the *Baylor Bulletin* in 1938.

Stone and Loughlin, along with attorney David Swanson, combined energies to form the law firm of Stone Loughlin & Swanson, L.L.P. The Austin-area firm, established early this year, specializes in administrative law.