

FLAHIVE, OGDEN & LATSON

ADVISORY NO. 1

TOPIC:Effect of Eagle Pass Injunction on Implication of New Act.

DISCUSSION: As of the mailing date of this advisory, we know of no actual written order of the Eagle Pass Court's pronouncement enjoining the new Act. We have obtained an unofficial transcription of the Court's oral ruling, which we believe to contain the Court's order in a substantially correct order at this time. A copy of the pronouncement from the bench is attached to this advisory.

The Court found the inability of most employees to elect not to be covered by the Act and the automatic application of the AMA Guidelines to be unfair and unreasonable. The Court concluded that these features of the Act were accordingly unconstitutional. The Eagle Pass trial court enjoined the Commission from issuing any final decision on any worker injured after January 1, 1991, insofar as a final award of impairment income benefits or supplemental income benefits is concerned.

The Attorney General's Office immediately filed a notice of appeal with the trial court. This has the effect of automatically staying the injunction announced by the Court. The injunction has accordingly been stayed pending an appeal of this interlocutory order of the Court. The state has twenty days from the date of the entry of the written order to file its appeal. Because the Eagle Pass trial court has not yet entered its order, the twenty day time frame for appeal has not yet begun. The trial judge will leave the bench on January 1, 1991. We can accordingly expect that the order will be entered prior to that date.

After entry of the trial judge's order, the state will have the election to appeal either the Court of Appeals in San Antonio or to the Supreme Court. The appeal will be filed by the state under special rules allowing for accelerated appeals in civil cases. This provides for an expedited schedule that should provide for a very quick review and decision on a much faster time track than would be expected in normal appeals.

It is quite probable that the case could be submitted for consideration in February or March. Of course, if the state elects to file its appeal with the Supreme Court, it could eliminate the intermediary Court of Appeals.

The new Workers' Compensation Act, passed by the Legislature in 1989, will be in effect, and will apply to all of our obligations, both procedural and substantive, imposed by the new Act.

AS OF JANUARY 1, 1991, THE NEW ACT IS IN EFFECT!