

**ADVISORY NO. 387**  
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**TOPIC:       DWC HAS APPEALED DECLARATORY JUDGMENT**  
**REGARDING DWC ADVISORY 2003-10**

On October 17, 2005, FO&L received a copy of DWC's Notice of Appeal of the Travis County District Court Judgment declaring that DWC Rule 130.1 was valid, that Advisory 2003-10b was an invalid attempt at *ad hoc* rulemaking, and that DWC was enjoined from enforcing its Advisory. The effect of the judgment was to supersede the DWC Advisory and render it inapplicable retroactively to all claims in which this issue had been preserved by carrier action.

Appeal of the judgment by DWC automatically suspends the injunctive relief granted by the Court in absence of a clear understanding to the contrary. However, at least one carrier represented by this firm will be filing a motion requesting the Court to decline to supersede the judgment. This request is permitted by the Texas Rules of Appellate Procedure. The relief is discretionary with the Court.

We are working with the Attorney General and we are in the process of preparing a motion to be filed with the Court. If the Attorney General does not agree to the requested relief, the matter will be decided by the Court. Until that is decided or until further FO&L Advisory, we recommend that our clients treat Advisory 2003-10b as if it remains in effect.