

ADVISORY NO. 437
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TOPIC: TEXAS SUPREME COURT OVERRULES DOWNS

This morning, the Texas Supreme Court overruled *Continental Cas. Co. v. Downs*, and held that the 60-day deadline to contest the compensability of injuries under the Texas Workers' Compensation Act applies to all claims no matter what the injury date.

In *Southwestern Bell v. Mitchell*, a majority of the court wrote:

We have observed that “in the area of statutory construction, the doctrine of *stare decisis* has its greatest force”[\[25\]](#) because the Legislature can rectify a court’s mistake, and if the Legislature does not do so, there is little reason for the court to reconsider whether its decision was correct. But when the Legislature does not acquiesce in the court’s construction, when instead it immediately makes clear that the proper construction is one long adopted by the agency charged with enforcing the statute, judicial adherence to the decision in the name of *stare decisis* may actually disserve the interests of “efficiency, fairness, and legitimacy” that support the doctrine. It is hardly fair or efficient to give effect to a judicial construction of a statute for a brief period of time when the Legislature has reinstated for future cases the same rule that had been followed before the court’s decision. The doctrine of *stare decisis* does not justify inequity and confusion in such a narrow gap of time.

That is precisely the situation here. In *Downs*, we construed section 409.021(a) of the Workers' Compensation Act to provide that a carrier that did not pay or dispute a claim by paragraph (a)'s seven-day deadline could not contest compensability.[\[26\]](#) We issued our opinion on June 6, 2002, denied rehearing on August 30, and issued our mandate on September 9. The Legislature convened in regular session on January 14, 2003. House Bill 2199 was filed on March 11. After minor changes in committee, the bill added the following paragraph (a-1) to section 409.021, stating:

An insurance carrier that fails to comply with Subsection (a) does not waive the carrier’s right to contest the compensability of the injury as provided by Subsection (c) but commits an administrative violation subject to Subsection (e).[\[27\]](#)

The effect of the amendment was to restore the rule the Texas Workers' Compensation Commission had applied for a decade.

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Thus, *Downs* is simply an anomaly in the law. Prior cases unaffected by *Downs*, and cases controlled by House Bill 2199, are all treated alike. The rule for them is the same. Were we to adhere to *Downs*, a different rule would apply only in those cases caught in the *Downs* gap. *Stare decisis* does not warrant an obstinate insistence on precedent that appears to be plainly incorrect.

Three justices dissented, including Chief Justice Jefferson, who was, ironically, the author of the original dissenting opinion in *Downs*.