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Introducing our new mini-newsletter

Medical malpractice update

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Malpractice - Accidents - Insurance Disputes

# Can Texas patients sue HMOs?

**Governor George W. Bush said "Yes"**

**President George W. Bush says "No"**



President George W. Bush, whose election team accuses opponents of flip-flopping on issues, has done a little flip-flopping himself.

## Governor Bush

As Texas governor, Bush vetoed a 1997 Patient Bill of Rights law, which included the right of those denied necessary medical attention to sue HMOs and health insurers to obtain treatment. When Texas' legislature passed the bill a second time, but with a majority that precluded a veto, Bush permitted it to pass but refused to sign it.

## Candidate Bush

As a presidential candidate and compassionate conservative in 1999, Bush took credit for the Texas patients' rights law, noting it was a good model for federal legislation. During his third debate with Al Gore, Bush claimed, "If I'm president...people will be able to take their HMO insurance company to court. That's what I've done in Texas, and that's the kind of leadership style I'll bring to Washington."

## Visit [BenGlassLaw.com](http://BenGlassLaw.com)

Our Web site continues to be the premier small-firm Web site in the country. It gets over 60,000 hits a month, and thousands of documents are downloaded from the site each month. It is continually updated with both news from our firm and news from various Virginia wire services.

The site was recently profiled in *Lawyers Weekly USA*, a national newspaper for attorneys. Visit the site. We promise that you will find something of interest to you. While visiting, sign up for our monthly electronic newsletter.

## President Bush

In March 2004, however, Bush administration attorneys lined up behind the health-insurance industry in a Supreme Court patients' rights case that focused on Texas. But this time, President Bush's lawyers asked the justices to eliminate Texas' right-to-sue stipulations and to bar Texans from suing their HMOs for denying them benefits.

Lawyers for the U.S. Solicitor General argued that individual states' claims of patients' rights to sue "are subject to complete preemption" under federal law and should be rejected. Bush administration attorneys said that if patients could sue HMOs, health-care costs would increase and employers would suffer additional economic problems.

Many Supreme Court-watchers felt that a majority of the Supreme Court justices would ultimately render a verdict supporting the president's 2004 position.

## 2004's Supreme Court case

Cigna ordered one of its insured patients in Sugar Land, Texas, to leave a hospital 24 hours after a complex hysterectomy and other surgical procedures. Her physician objected, but Cigna discharged her anyway. She was readmitted when complications arose. Outraged, she sued Cigna under Texas' Patient Bill of Rights law, stating that being expelled from the hospital too soon violated medical-care standards. The Supreme Court's June 2004 decision decided that patients cannot sue their HMOs for these types of decisions.

## CASES WE ARE HANDLING

We have reached a substantial confidential settlement on behalf of an estate of a man whose broken neck was not diagnosed after he was taken to the hospital. This 83-year-old gentleman was involved in an automobile accident and taken to a local hospital. Suspecting that the cause of the accident had something to do with his heart, the physicians focused on a cardiac problem. Unfortunately, this gentleman had suffered a bad fracture of the C7 vertebrae in his neck. While he had been able to walk into the hospital, approximately 28 hours after he arrived he became paralyzed from the chest down. Our lawsuit, which claimed that the neck was not properly evaluated, was settled approximately two weeks prior to trial.

We have sued a local arthritis specialist after our client developed severe complications to Remicade, an antiarthritic drug. We claim that Remicade should not have been prescribed to this gentleman, who had a clear history of tuberculosis, and that once he began to get ill, his physician did not properly evaluate his symptoms. The patient developed severe respira-

tory arrest and spent several months in a hospital in a coma.

We are representing a woman in her claim against a local rehabilitation hospital and its physicians. This long-time thyroid-disease sufferer fell and hit her head, and was admitted to a local hospital. After receiving good acute care, she was transferred to the rehabilitation center. Unfortunately, when she arrived at the rehabilitation center, the physicians there failed to recognize that she needed to continue to be on her thyroid medication. The sudden withdrawal of the thyroid medication caused a stroke and a permanent disabling injury.

We are representing a 35 year old gentleman who was severely injured when he was crushed by a falling garage door at a factory in Luray, Virginia. The injury caused severe knee, ankle, and heel fractures. This case is filed in the federal court in Harrisonburg, Virginia. The factory has denied that it is responsible for our client's injuries. Trial will be held in December.



To speed service and to save our clients money on fee time, duplicating, and mailing, our firm is increasingly e-filing court documents over the Internet.

As more courts accept digital documents, we have joined the more than 40,000 lawyers who are working better and smarter by using information-

system digital technologies. In 2003, attorneys filed about ten million documents online using technology that enhances and speeds information transmission, storage, and reproduction. As with any digital online technology, e-filing court documents requires software that has been programmed to maximize client security and privacy.

The benefits to clients are growing all the time:

- Everyone has better access to more court documents. No one must wait while a court clerk retrieves and photocopies briefs.
- The system will deliver justice in a more timely manner.
- Our firm can file and access documents 24/7 from our office, home, or while traveling.
- By looking at digitally filed documents, we can observe how other lawyers approach their cases.

## Doctor's idea to stop treating lawyers denounced by the American Medical Association

Several months ago, the headlines screamed that there was a proposal before the American Medical Association (AMA) to endorse refusing care to lawyers involved in medical malpractice cases. That proposal generated a lot of headlines, but there was almost no media coverage of what happened next.

When the AMA met in June for its annual meeting, many doctors stood up to denounce the resolution in passionate speeches. The resolution, which asked that the AMA tell doctors that it was not unethical to refuse to care for plaintiff's lawyers and their families, was ultimately withdrawn by its sponsor, Dr. J. Chris Hawk.

Someone probably ought to send Dr. Hawk one of our articles telling him how he can really fight the insurance companies and showing him that insurance premiums actually have nothing to do with the amount of malpractice claims.

## Appeals Court affirms multi-million dollar verdict against UnumProvident

Last month, the Ninth Circuit Court of Appeals affirmed a huge verdict against the Paul Revere Insurance Company and its parent corporation, UnumProvident. The case involved a chiropractor who ran her own business and had bought a disability policy from Paul Revere in 1989.

The insurance company accepted and paid the claim for 11 months before terminating payments. After it terminated benefits, the insurance company attached the chiropractor's bank account for the premiums until it was drained. It then cancelled the policy.

The doctor sued Paul Revere and UnumProvident for breach of contract, breach of the covenant of good faith, and intentional misrepresentation. The jury returned a verdict of \$7.6 million, and the Ninth Circuit Court of Appeals recently affirmed that verdict. The court upheld the jury's finding that the insurance company had engaged in a biased investigation and that a letter terminating benefits was misleading and deceptive.

For a complete report on this case, please e-mail us at [Ben@BenGlassLaw.com](mailto:Ben@BenGlassLaw.com).

## More than 100 years of pro bono work

The largest pro bono project in the history of American jurisprudence is winding down. Trial Lawyers Care (TLC) was a comprehensive process to reach and assist victims of the September 11, 2001, terrorist attacks. It provided free legal services to those who filed claims with the September 11 Victim Compensation Fund, which issued its final awards on June 15, 2004.

More than 1,000 lawyers donated their services through TLC, some from as far away as Canada, Mexico, England, and Australia. More than 1,700 individuals were helped. About 1,000 claims were related to people who were killed in the attacks. The remainder were related to those who were injured.

TLC estimates that it will have secured awards of \$2.2 billion for the claimants. If lawyers had charged 15 percent contingency fees, they would have earned more than \$300 million. The aggregate hours devoted by the lawyers amounted to more than 100 years of time. All of the lawyers who worked to represent these victims did so without any pay whatsoever.

Our firm is proud to have represented claimants in two of the cases. Attorney **Sandra Rohrstaff** represented the husband and young children of a woman who was killed at the Pentagon.

**Ben Glass** represented a woman who was burned at the Pentagon.

Approximately 30 lawyers throughout Virginia participated in the work of Trial Lawyers Care.

## More *Silly* lawsuits

The public "drumbeat" continues to be that individuals are clogging the court system with frivolous lawsuits. The insurance industry has spent millions of dollars to convince you that verdicts are too high and that individuals are bringing corporate America to its knees with frivolous lawsuits.

*Let's see.*

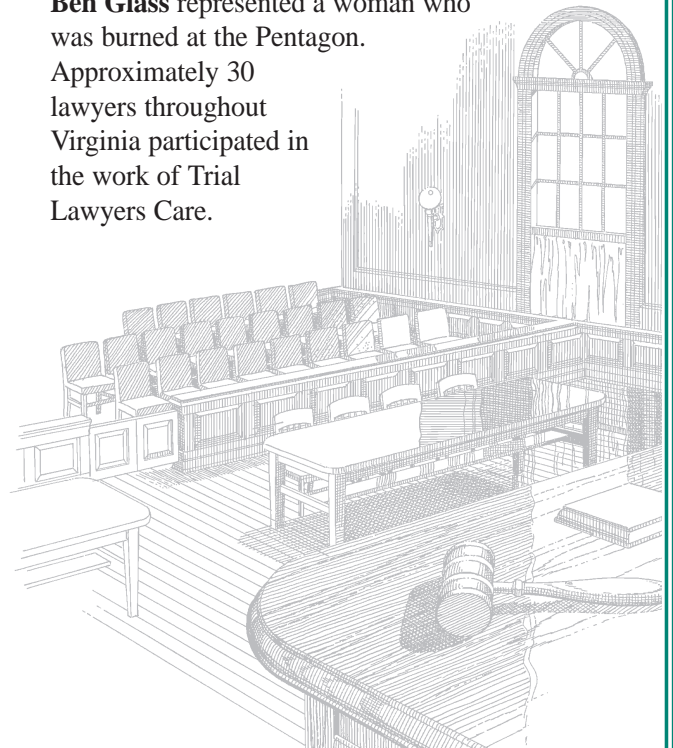
Earlier this summer, Anheuser-Busch ran a new ad calling Miller beer products the "queen of carbs" and stating that Miller was "South African owned."

This was an apparent response to Miller's ad campaign that claimed that they were running for "president of beers" and called Anheuser-Busch un-American for refusing to debate them.

*Geez.*

As soon as the new Anheuser-Busch ads hit the air, Miller rallied its lawyers to run into court to file a silly lawsuit against Anheuser-Busch. The court, however, ruled that Anheuser-Busch could say that "Miller was purchased by South African breweries" and that "Miller is South African owned."

We wonder how much money was spent on *that* frivolous lawsuit!



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### *New report reveals what the automobile insurance salespeople don't want you to know*

Everyone knows that lawyers don't sell insurance. Unfortunately, however, we see many people who have either received bad advice from insurance salespeople or have not listened to the advice that was given. Our new report explains your automobile insurance policy. It points out what coverages you really should be spending your money on. Ironically, the most important coverage is one that the insurance industry doesn't seem to want to sell you. Get your copy of this report by e-mailing us at [Ben@BenGlassLaw.com](mailto:Ben@BenGlassLaw.com).

## *Leveling the Playing Field Between You and the Insurance Companies*

### *Client of the month: ANITA HOOD*

This month, we would like to recognize a former client and long-time friend, **Anita Hood**. For many years, Anita assigned referees for all of the adult soccer leagues. Today, she is our "chief proofreader" and is always e-mailing me with the small errors that sneak through either in this newsletter or on our Web site. Of course, she also refers clients to us because she knows that getting an attorney's advice early can often mean that you will not need to hire an attorney at all. Anita, for all you have done for us over the years, we want to say *thank you!*

### *Introducing our new mini-newsletter*

As you know, we publish this newsletter four times a year. In two months, we will introduce our new "mini-newsletter," which will be mailed to you in between issues of this larger newsletter. Be on the lookout for this neat little postcard that will contain even more interesting information about legal issues and helpful tips on dealing with the insurance companies.

### *Medical malpractice UPDATE Caps don't reduce doctors' rates*

Despite medical injury caps passed by the Florida and Texas legislatures in 2003, physicians' insurance rates continue to rise in those two states. The much-touted cap solution to rising medical malpractice insurance rates didn't keep Florida and Texas insurers from asking for and receiving policy rate increases for 2004.

In Florida, which put a \$500,000 ceiling on non-economic damages in malpractice cases, the state's Office of Insurance Regulation announced a "presumed factor" rate increase of 7.8 percent for 19 different insurers.

Two months after a \$750,000 cap on noneconomic damages (\$250,000 limit on an individual physician's liability) was incorporated into Texas' constitution, its insurance commissioner announced that a physician-owned insurer that covered a third of all Texas doctors asked for a 35.2 percent insurance rate increase for doctors and a 67.9 percent increase for hospitals and other institutional health-care providers. Although a second large insurer decreased rates 12 percent, reductions in coverages and increases in deductibles effectively neutralized its effect.