# The Department of Administrative Law and the Wooley Case

# Learning Objectives for this Module

## Learn how the legislature can fundamentally change the powers of an agency.

## Learn the pros and cons of central panel ALJ decisionmaking.

## Learn how the DAL creates a bias against regulation in Louisiana.

## Learn why the Wooley case ultimately leaves State Farm without a clear answer.

# Reading Assignment

## [*Wooley v. State Farm Fire and Cas. Ins. Co*., 893 So.2d 746 (La. 2005)](http://biotech.law.lsu.edu/cases/adlaw/state/Wooley-sc-I.htm)

# Background Information on the DAL and Wooley

## Regulation of Insurance

### McCarron-Ferguson Act - 1945

#### With a few exceptions, leaves the regulation of insurance to the states.

##### Insurers are organized by state

##### The national insurers such as State Farm are holding companies of state companies.

##### States do not have the information or expertise to do the job

### Implications of state regulation - risk pools

#### Insurance works better if you can aggregate large numbers of policy holders who do not have identical risk exposure.

##### You would not want to do homeowners wind insurance only on the coast.

##### You would not want to do fire insurance for cabins in the western woods.

#### It is more difficult to predict the risks on smaller pools

##### Uncertainty increases premiums

##### Uncertainty increases rate volatility.

#### Medical malpractice insurance as an example.

##### Insured by specialty class and procedures done, by state.

##### No state has very many neurosurgeons

###### Small pool risk – high rates and premium volatility.

###### No state has enough to make risk management worthwhile.

##### If we had national medical malpractice risk pooling, we could have lower and more stable rates and better risk management.

#### Heath Insurance

##### Prior to the ACA, most private insurance was set up under ERISA and was not regulated by either the state or federal government.

##### The ACA provided a federal standard for the basic coverage of medical insurance plans.

##### States are big enough for decent risk pools, but the pools are fragmented across companies and employers.

### Bottom-line – The Insurance Commissioner is an important office.

## Fairness in Adjudications

### Anti-regulatory forces like to attack adjudications as being biased in favor of agencies. This is a very powerful argument in state legislatures, where few people understand administrative law.

### One major complaint is that ALJs are biased in favor of agencies because they are part of the agency.

#### Experience with federal ALJs shows that it is more likely that they will be biased against the agency.

#### This happens because they forget that they are supposed to represent the agency, not be a referee like an Article III judge.

#### The problem is that if they starting thinking like a referee, there is no one to present the agency’s case.

#### Interviews with SSI ALJs show them saying they have to rule for the claimant because there is no one advocating for the agency.

### The key question in thinking about fairness is fairness to who?

#### The regulated party is visible.

#### Who does the agency represent?

##### EPA?

##### State health department?

##### FDA?

#### What happens when the ALJs see themselves are referees rather than hybrid decisionmakers who represent the public good while trying to find the truth in adjudications?

## ALJs in LA

### Prior to the creation of DAL the LA APA did not have specific provisions authorizing ALJs or their credentials

### The ALJS were employed by the agencies

### They were selected for expertise in the area they regulated.

#### Some were not lawyers, but were experts in the system they administered.

#### If they are making decisions in a narrow domain, do they really need to be lawyers?

## The LA Worker’s Compensation Model

### The worker’s compensation agency is intended to provide an administrative resolution of comp claims within the statutory benefits system.

#### It displaces the traditional tort system.

#### The tradeoff is quick and sure payment of regulated benefits in return for elimination of traditional tort defenses against claims by employees.

### In 1988 the legislature gave the ALJs in the worker’s compensation system the power to issue final judgments.

#### The worker’s comp agency had no role in the final judgment.

#### The worker or the employer could appeal to the district court.

### This system was declared an unconstitutional violation of separate of powers in 1990.

#### The ALJ would to be issuing a final, enforceable judgment, which can only be done by a Louisiana Article V judge.

#### The case was overruled with a constitutional amendment to allow worker’s comp ALJs to issue final judgments.

### This was used as a model for the DAL (Department of Administrative Law) legislation in 1995.

#### The irony is that the LA workers compensation system was a disaster.

#### The ALJs saw themselves as an extension of the plaintiff’s bar and uncritically granted claims.

#### Premiums went to the highest in the US and low wage employers fled the state.

#### Bad doctors and unscrupulous lawyers conspired to transform minor injuries into permanent disabilities to run up fees.

#### This was finally addressed by legislation limiting the discretion of the ALJs and forcing them to abide by medical care guidelines.

#### Claims have dropped and there is now pressure to get injured workers off narcotics and get them proper rehabilitation.

## Key Provisions of the DAL - 1995

### The DAL shall handle all adjudications required by the LAPA,

#### that the ALJ shall issue the final decision or order and

#### the agency shall have no authority to override the decision or order,

#### no agency or official thereof shall be entitled to judicial review of an adjudication.

### that the governor shall appoint, and the Senate confirm, a director for DAL, who, in turn, shall employ the ALJs, and that the current ALJs employed by the various affected agencies shall be transferred to and employed in the DAL.

### (Some agencies such as medical licensing are excluded)

## The Big Picture

### Pushed by concerns about fairness to the regulated parties

#### Smoke screen to pass the law

#### Like family farming and the farm bill

#### Protects little guys, like Exxon

### But there are big problems in a lot of little agencies

#### LA has 300/400+ boards and agencies

#### No systematic staffing or procedure

#### Gresham's law in the big agencies

## Key Questions

### How does a central panel improve fairness?

#### Fairness to whom - who is the agency representing?

#### What core agency attribute do you lose?

### Why does finality mean that the ALJs are deciding legal and not just factual questions?

## \*\* The Regulatory Ratchet \*\*

### What is the effect of having the ALJ bind the agency without appeal, while allowing the regulated party to appeal to the courts?

# State Separation of Powers - *Wooley v. State Farm Fire and Cas. Ins. Co.*, 893 So.2d 746 (La. 2005)

## What are the two questions before the court?

### Are ALJs unconstitutionally acting as unelected judges?

### Has the legislature unconstitutionally limited the power of a constitutional officer, the Insurance Commissioner?

### The District court focused on the ALJs calling themselves judges and using the judges entrance.

#### Are these really legal factors?

#### Why are they politically significant?

## Article V Courts in LA

### Article V, sec. 1 vests the judicial power of the state in the courts making up the judicial branch of government, the supreme court, courts of appeal, district courts, and other constitutionally-authorized courts.

#### Further, La. Const. art. V, sec. 22(A) provides that all judges shall be elected.

#### Finally, Article V, sec. 16 grants district courts original jurisdiction of all civil and criminal matters and appellate jurisdiction as provided by law.

### While a court's jurisdiction and judicial power traditionally flow from these constitutional grants, Article II, secs. 1 and 2 also establish the basis for inherent judicial powers which are not specifically enumerated in the constitution.

## Original Jurisdiction

### Turning to the issue of whether Act 739 divests the district courts of original jurisdiction, we find that because the approval of insurance policy forms is not a civil matter within the meaning of La. Const. art. V, sec. 16(A), they are not within the scope of the district courts' constitutional grant of original jurisdiction.

### Can the legislature change original jurisdiction?

## How does the Court say that agencies are hybrids?

### (This looks like a 1930s United States Supreme Court delegation case)

### What are the legislative functions of an agency?

### What are the executive functions?

### What are the judicial functions?

### Why are these only "quasi-judicial"?

### Does this make "quasi-judicial" a circular definition?

## The holding on whether ALJs are Article V judges:

### "Turning now to the issue of whether the Act violates the constitutional mandate of an elected judiciary, we find that because the executive branch ALJs employed by the DAL do not exercise judicial power, they are not required to be elected. Pursuant to our constitutional scheme, the authority to exercise judicial power is vested in elected officials. ... Because we have already determined that the ALJs are authorized to perform quasi-judicial, rather than judicial, functions, there is no constitutional requirement that they be elected."

### "Because we find the ALJs are not authorized to exercise judicial power, we find the Act 739 does not violate La. Const. art. V, sec. 22(A)."

## What does the Court see as defining Judicial Power?

### [92]...The testimony in the record reveals that ALJs do not have the power to enforce their decisions and orders, a power that unquestionably lies in Article V courts. The ALJs simply are not constitutionally allowed to exercise the judicial power of the state and Act 739 does not impermissibly attempt to authorize the exercise of judicial power.

### "The ALJs make administrative law rulings that are not subject to enforcement and do not have the force of law."

## What is the effect of an ALJ ruling if it cannot be enforced?

### Who does have the enforcement power?

### What did the legislature intend for the agency to do with the ALJ's ruling?

### Did the court ignore the plain language of the DAL enabling law?

### What would the court have to rule if they read the law the way legislature intended?

#### Why would they dodge this?

## You are counsel for State Farm

### What are you worried that the agency will do if you rely on the ALJ’s ruling?

#### How would you have to fight that?

#### What court would you end up in?

### Do you tell State Farm to go ahead and use the policy based on the ALJ's ruling?

#### What about the res judicata act?

## Does the Res Judicata Statute, La. R.S. 13:4231, Apply to the Agency?

### Pursuant to this statute, then, a second action is precluded when all of the following criteria are satisfied:

#### (1) the judgment is valid;

#### (2) the judgment is final;

#### (3) the parties are the same;

#### (4) the cause or causes of action asserted in the second suit existed at the time of final judgment in the first litigation; and

#### (5) the cause or causes of action asserted in the second suit arose out of the transaction or occurrence that was the subject matter of the first litigation.

#### Burguieres v. Pollingue, 02-1385, p. 8 (La. 2/25/03), 843 So.2d 1049, 1053.

### Judgment by whom?

#### Why does res judicata not apply?

## Legislative Power over the Insurance Commission

### Did the 1973 constitution provide specific powers and duties for the insurance commissioner?

#### Where do the powers of the Insurance Commissioner come from?

#### In general, are there any limits to the legislature’s power to change powers it has given to an agency?

### The legislature took away the power of the agency to challenge the ALJ’s ruling in court.

#### Are there limitations on the power of the legislature to change the rights of private parties to bring legal claims?

#### What is the lawsuit has already started?

#### Would any of these theories apply to agencies?

##### Assume that the EPA has filed climate change lawsuits against coal-fired power plants.

##### Assume that Ted Cruz is swept into the White House in the 2016 election, along with huge majorities in both houses of Congress.

##### The congress passed and President Cruz signs a bill abolishing the enforcement powers of the EPA under the Clean Air Act, leaving the EPA only the power to study pollution and post voluntary recommendations on the Internet.

##### The EPA says you cannot take away the power to sue for claims that are already being litigated.

##### Who wins?

#### What does the Louisiana Supreme Court hold about the legislature's authority to limit the office of Insurance Commissioner?

## Does The Commissioner Have Another Way to Get Into Court?

### What is a declaratory ruling?

### Why would it be exactly on point in this case?

### Has the legislature prevented the commissioner from requesting one?

### This was remanded to the Appeals Court

# Remand: Wooley v. State Farm, 928 So.2d 618, 2005-1490 (La.App. 1 Cir. 06)

## On Remand:

### The "existing facts" of the present controversy, for our purposes, are simply these: The ALJ made an adjudication that the RCU form met La. R.S. 22:621's requirement of compliance with law, an adjudication which is not subject to judicial review at the request of the Commissioner and with which the Commissioner is now bound by law to comply. A litigant not asserting a substantial existing legal right is without standing to seek a declaratory judgment, and such lack of standing renders any judicial opinion sought an impermissible advisory opinion. Such is the present position of the Commissioner.

## Changing this Ruling

### Can the legislature change the Wooley decision by statute?

#### What about the law they passed saying we really mean it?

### The worker compensation law was declared unconstitutional in Moore v. Roemer because the judges were making final decisions

#### How was that fixed?

### The legislature tried this with Wooley, but the voters rejected the amendment.

## Where does the remand leave the issue of the enforceability of the ALJ’s ruling?

# Evaluation Questions

## State Separation of Powers

### How does separation of powers differ in the states as compared to the federal government?

### How does the position of Attorney General of Louisiana differ from the Attorney General of the United States as relates to separation of powers?

### What is a central panel model for ALJs?

### What are pros and cons of a central panel model?

### How does the DAL legislation change the relationship between the agency and the ALJ, i.e., how is the LA system now different from the Federal system?

## *Wooley*

### Before the DAL legislation, the ALJs were part of their constitute agencies.

#### Who do they report to after the DAL legislation?

#### Does this raise separation of powers issues?

### Louisiana created the central panel ALJs to reduce bias – what is the theory for why they would be less biased than agency ALJ?

### Louisiana is concerned about fairness to the regulated party – which party does this ignore?

### Why is it especially hard to assure consistent policy in adjudications in LA?

### Why does allowing the regulated party, but not the agency, to appeal the central panel ALJ’s decision reduce regulation?

### How are LA central panel ALJs more like Article III judges than are ALJs in the federal system?

### How does having a central panel of ALJs, as in Louisiana, address separation of functions?

### What is the separation of powers issue in the *Wooley* case?

### What does the court say is the key attribute of an Article V judge?

### How did the LA SC explain why LA ALJs are not Article V judges and thus do not need to be elected?

### Why is the LA SC's definition of a judge and an ALJ circular?