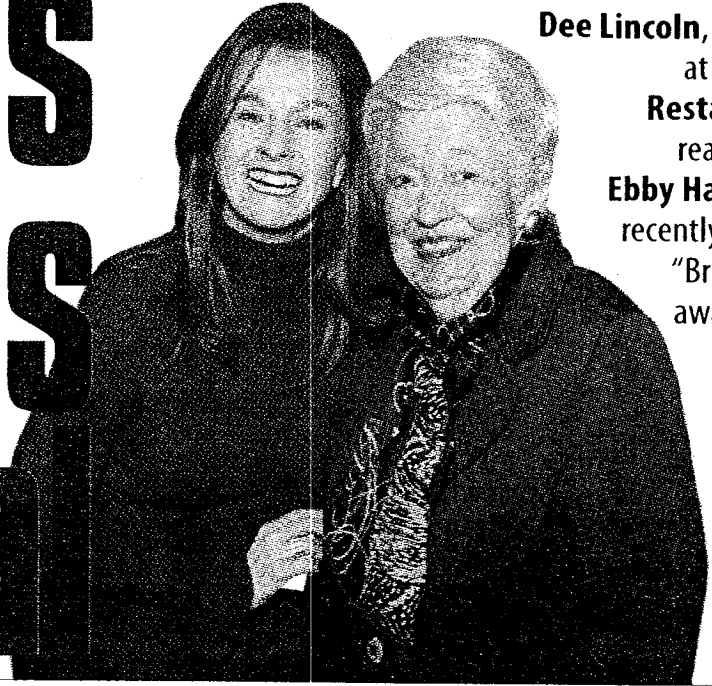


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Brilliant women

Dee Lincoln, left, partner at Del Frisco's Restaurant, and real estate icon Ebbby Halliday were recently honored as "Brilliantly You" award winners.



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Parkland faces overtime suit

Challenge brought by former nurse could affect how thousands are paid

BY DAVE MOORE | STAFF REPORTER

Angela Valcho is suing Parkland Health & Hospital System, her former employer, alleging that it failed to pay her and other nurses overtime for work they performed during a three-year period.

The outcome of this case could

have ramifications for many of the thousands of nurses who work or have worked there in the past three years, though other employees are not currently part of this litigation.

Parkland "has had a policy and practice of failing to pay overtime pay to its hourly nursing employ-

ees for all hours worked in excess of 40 hours per work week," Valcho claims in her lawsuit.

Valcho, a resident of Carrollton, worked at Parkland from July 2000 to August 2007, and regularly worked more than 40 hours a week, but wasn't compensated for all the overtime to which she

was entitled, her lawsuit alleges. The litigation doesn't specify the amount of money Valcho is seeking.

"She was an hourly rate employee, and what happens is when they clock in and clock out the payroll

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PARKLAND: No. of overtime pay lawsuits in North Texas up 88% between 2000 and 2007

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system automatically deducts one-half hour for lunch, and she was frequently interrupted during lunch," Memphis attorney Alan Crone, who is representing Valcho, told the *Dallas Business Journal*. "There were days when she couldn't take her lunch because of the staffing situation."



CRONE

Parkland, a 968-bed hospital with nearly 140,000 emergency room visits in 2006, is one of the busiest in the Metroplex, according to *Dallas Business Journal* research.

Neither hospital administrators nor its lawyers would comment for this article, saying they cannot speak on pending litigation. But, in their response to Valcho's complaint, Parkland denies all of Valcho's allegations.

Attempts to reach Valcho were unsuccessful.

Rise in suits

The number of lawsuits alleging unpaid overtime in the North Texas U.S. District Court has increased 88% between 2000 and 2007, when 47 such cases were filed, according to *Dallas Business Journal* research. But the number is actually down from a 2004 peak, when 97 cases were filed, *DBJ* research indicates.

In the first two months of 2008, another 10 overtime-pay lawsuits were filed in North Texas District court, according to the *DBJ* analysis.

"I would say it is the most prevalent type of workplace class-action litigation," Mary Goodrich Nix, an attorney in the Dallas office of Gordon & Rees, said in an e-mail to the *DBJ*. In the Parkland lawsuit, "It's going to boil down to whether Parkland kept good records," said Goodrich Nix, who has no involvement in the case. She also said there will no doubt be intense debate over the accuracy of any records that were kept.

If a court finds in favor of Valcho, it could mean a substantial hit to the Dallas County-owned hospital, which had 2006 revenue of \$1.6 billion, according to *DBJ* research.

The hospital has 2,358 full-time nurses, according to information from the hospital's public relations office. Crone was unwilling to speculate how much the damages against Parkland might total if he is successful in his case.

In 2007, more than 311,000 employees na-

tionwide collected about \$163 million in overtime back wages as a result of government enforcement action, according to U.S. Department of Labor Statistics. That's up about 37%, or \$44 million, from the \$119 million in 2005.

Those figures don't include back wages won in proceedings where the Department of Labor was not involved, such as the one Valcho has launched.

Goodrich Nix said that pay-related lawsuits have been on the upswing since 2002, and that they've become a fairly common threat to large businesses.

In January 2007, the Department of Labor announced that Wal-Mart agreed to pay \$33 million in back wages related to how the company calculated its overtime compensation. The issues involved how Wal-Mart treated incentives in the calculation of employees' overtime pay. The agreement also addressed payment of overtime to certain salaried interns, manager trainees and programmer trainees that the company had considered "exempt," meaning they typically were not eligible for overtime pay. Other firms to take a hit recently include:

■ Fort Worth-based RadioShack (NYSE: RSH), which agreed to pay about \$8.8 million in November to settle a series of lawsuits brought by store managers seeking the recovery of unpaid overtime wages of more than 4,000 current and former RadioShack employees that were misclassified as workers exempt from receiving overtime wages.



DUNN

■ Dallas-based Centex Corp. (NYSE: CTX), which in 2006 settled a lawsuit filed in late 2004 by workers claiming unpaid overtime. The terms of the settlement weren't released, and Centex was released from liability.

■ Countrywide Financial Corp., which agreed to a \$30 million settlement under California labor laws, regarding the compensation of call-center account executives. Countrywide Financial has about 10,000 employees in the Dallas-Fort Worth area, according to *Dallas Business Journal* research.

■ Seattle-based Starbucks, which on March 3 agreed to pay an undisclosed settlement based on allegations made by a Houston Starbucks assistant manager who alleged he was forced to work off the clock.

What's key for workplaces trying to defend against these lawsuits is their ability to put

the onus of recording work time on employees, Goodrich Nix said.

Even so, employers still must track those hours, be able to prove that they have tracked them, and pay accordingly, she said.

Rogge Dunn, who has handled more than 30 such cases, attributes part of the increase of employment litigation to personal-injury lawyers who are looking for more promising fields of law in light of tort reform.

Dunn, a lawyer at the Dallas office of Clouse Dunn Khoshbin LLP, said that often timecards can become a greater problem for companies than a solution, especially if employees forget to clock out for the day, or if they forget to clock in.

He said if there's a dispute over how much an employee worked, the onus usually goes in favor of the employee. That means it's up to employer to be able to prove that the employee didn't work the hours he or she claimed.

The only way to do that, Dunn said, is to make sure there are people or procedures in place to make sure hourly employees are properly recording their work hours and breaks.

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