

GENO BORCHARDT

by BRENDA SAPINO JEFFREYS

The haunting memories of the Texas A&M University bonfire accident two years ago are being rekindled as lawyers file personal-injury suits before the statute of limitations runs out in 13 days.

Eleven students and one graduate were killed and 27 students injured when a half-built bonfire on the campus of Texas A&M University collapsed in the early morning hours of Nov. 18, 1999. But it wasn't until March 2001, more than 16 months later, before the first personal-injury suit was filed. Two more suits were filed in late October, and one of the plaintiffs' lawyers says he will sue on behalf of several others, some killed and some injured, before the statute of limitations runs out on the two-year anniversary of the accident.

sary of the accident.

The sluggish action seems a bit odd in an era when plaintiffs lawyers file suits practically before the ink dries on newspaper reports of accidents and disasters. Part of the delay in this case may be due to the extreme loyalty A&M generates among its graduates and students. It could relate to the difficulty of winning the suits — lawyers need to find a way around provisions of the Tort Claims Act that limit damages against a state university.

But Geno Borchart, who filed a suit on Oct. 26, says he believes many of the families of those involved in the accident were simply waiting for the university to step up.

"The families expected that Texas A&M and its officials would stand up and [be] responsible and try to deliver justice themselves. And to date, the A&M officials have not fully accepted responsibility . . . as evi-

▶ see More, page 21

MORE SUITS FILED AS ANNIVERSARY OF BONFIRE COLLAPSE NEARS

continued from page 1

denced by their denials on file at the courthouse," says Borchardt, a plaintiffs lawyer in Fort Worth.

"I know that there's lots of theories on that," says Dallas lawyer Steven DeWolf, who represents the family of Christopher Breen, who was killed in the accident.

"People have speculated that A&M puts pressure on folks. People have speculated that there's a tradition at A&M, and nobody wants to sue within the A&M corps," DeWolf says. "Some say it's just too tough to sue a state university."

In a suit filed Oct. 24 in federal court in Galveston, DeWolf alleges that the university and five top officials knowingly put Breen and others working on the bonfire in danger. He also brings state claims similar to claims in the two other suits, which are pending in Probate Court in Tarrant County.

Although they seek unspecified damages in *Sean Breen, et al. v. Texas A&M University, et al.*, DeWolf, a partner in Bellinger & DeWolf, says it is more about getting university officials to accept responsibility than money for Breen's family.

"It's really an issue of getting those folks to step



Steve DeWolf says the suit is more about getting university officials to accept responsibility than money for his client's family.

because of statutory immunity designed to protect taxpayers.

city officials. He says the university is back in the suit as a third-party defendant.

The law would limit damages to \$250,000 to an individual and \$500,000 for an incident.

Veteran plaintiffs lawyer Joseph Jamail of Houston says it will be hard for the plaintiffs' lawyers to get to A&M

shows the depth of care about the institution, and the institution's care for others, that more lawsuits were not filed and were not filed sooner," says Louis Gohmert Jr., former president of the Aggie Bar Association.

Because he's a state district judge in Tyler, Gohmert declines comment on the merits of the litigation, but says he would recuse himself if any of the bonfire suits were filed in his court.

A 1975 graduate of A&M, Gohmert says he worked on the bonfire every year he attended the university in College Station.

"The camaraderie that you feel, of working and sweating and moving and building something like that, is so strong. The kind of people I saw out on the bonfire at 2 and 3 in the morning, I'd... see people willing to lay down their lives for others," he says.

A&M hasn't had a bonfire since 1998, although plans call for resuming it in 2002. Tradition calls for the burning of the bonfire on the eve of the football game between A&M and the University of Texas.

W. Mike Baggett, a partner in Winstead Sechrest & Minick, is a former president of the A&M Association of Former Students and former chairman of the university's foundation. He was a yell leader at A&M in 1968, and his son, Carl, is a former student body president and former redpot head stack. Because of all that, Baggett says his thoughts about the litigation issue are emotional instead of purely legal.

"I would not sue A&M or anybody, I tell you right now," says Baggett.

"Do I think A&M did anything wrong? I think they have done what's done for many, many years... It was... an accident," he says.

Stephen Hollas, an officer in the Aggie Bar Association and a partner in Horlen, Holt & Hollas in College Station, says he's not happy about the litigation, but not surprised by it.

"We're a fairly litigious society," Hollas says. "Most Aggies would not have done that, filed suit, but it didn't shock me that it happened."

After the first suit was filed in March, two lawyers with undergraduate degrees from Texas A&M stepped up to represent some of the defendant students on a pro bono basis.

Michael Guerra, a McAllen-based partner in Watts & Heard, says he was a redpot in 1987 and 1988 and decided to offer to represent the students because they probably can't afford to pay for lawyers. While he and Jody Mask, a partner in Weltin Mask of Houston, continue to work on the litigation, Guerra says most of the student defendants are now represented by lawyers hired by insurance companies.

He says that even though he's an Aggie, he is a

It "shows the depth of care about the institution, and the institution's care for others, that more lawsuits were not filed and were not filed sooner," says Louis Gohmert Jr., an A&M alum.

"It appears to be a very, very difficult suit," says Jamail, a partner in Jamail & Kolius.

The suit Fort Worth lawyer Borchardt filed Oct. 26 on behalf of the family of Chad A. Powell is similar to the suit Keith filed. Borchardt says he didn't name the university as a defendant in *In Re: Estate of Chad A. Powell, Deceased* to

avoid the "extremely unfair and unjust" caps on liability.

Borchardt, a partner in McGartland & Borchardt, and Keith, of the Law Firm of Darrell Keith, allege negligence and gross neglect on the part of the defendants and seek unspecified actual and punitive damages for their clients. They allege, additionally, the statutory limit on punitive damages violates the plaintiffs' constitutional rights to due process and equal protection.

Defense attorneys in Keith's suit, *In Re: Estate of Jerry Don Self, Deceased*, have filed motions to change the venue from Tarrant County to Brazos County, home of Texas A&M. Probate Judge Steve King will hear that motion in January, and Keith was taking limited depositions of A&M officials on Oct. 31 and Nov. 1 in connection with the venue issue.

"A Close-Knit Group"

Keith says his client, Jacquelynn Kay

Self, is courageous because she was the first family member to sue the university over the tragic accident.

"What I call the Aggie Nation is a very close-knit group, which in large part considers itself above the law in my opinion. They are very resentful of anyone outside the A&M family seeking to hold them accountable for their wrongful conduct," he alleges.

That loyalty may be affecting the number of suits filed.

"It's pretty amazing, a tribute to A&M, and just

Part of the delay in this case may be due to the extreme loyalty A&M generates among its graduates and students.




Joseph Jamail, a veteran plaintiffs lawyer, says it will be hard for plaintiffs lawyers to get to A&M because of statutory immunity designed to protect taxpayers.

up to the plate," he says. Assistant Attorney General S. Ronald Keister, who is defending five Texas A&M officials in the first suit filed over the bonfire accident, did not return a telephone message by presstime on Nov. 1. An A&M spokeswoman says more than \$400,000 out of a relief fund established by the Association of Former Students has gone to families. A press spokesman for the Texas Office of the Attorney General, Michael Viesca, declines comment.

Plaintiffs lawyer Darrell Keith of Fort Worth filed the first suit on March 28 on behalf of the estate of accident victim Jerry Don Self. Keith initially sued the university, along with four university officials, two crane operators, two construction companies and 15 student leaders. (The students are known as redpots for the distinctive hard hats they wear while working on the project.)

But Keith says he later nonsuited the university to prevent the cap on damages against the institution from limiting efforts to collect damages from the univer-

plaintiffs lawyer and isn't upset the suits were filed.

Notes Guerra, "I don't have a problem with people using the court system." 

Brenda Sapino Jeffreys' e-mail address is bjeffreys@texaslawyer.com.