SUPREME COURT OF TEXAS UPDATE
May 2024 through June 2025

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Special thanks to all the Staff Attorneys and
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I. SCOPE OF THIS PAPER

This paper surveys cases that the Supreme Court of Texas decided from May 1, 2024, through June 30, 2025. Petitions granted but not yet decided are also included.

The summaries do not constitute the Court's official descriptions or statements. Readers are encouraged to review the Court's official opinions for specifics regarding each case. The Court appreciates suggestions and corrections, which may be sent via email to kelly.canavan@txcourts.gov.

II. DECIDED CASES

A. ADMINISTRATIVE LAW

1. Administrative Procedure Act

a) *In re Carlson*, 712 S.W.3d 71 (Tex. Apr. 25, 2025) [24-0081]

At issue in this case is whether a mandamus petition became moot after the Comptroller issued the final decision the relators had requested.

Tom and Becky Carlson filed an administrative contested case against the Comptroller, alleging a takings claim. The Comptroller referred the case to the State Office of Administrative Hearings. After referral, the administrative law judge granted the Comptroller's motion to dismiss for lack of jurisdiction, agreeing that the case was untimely filed. SOAH advised the Carlsons that the Comptroller needed to issue a final order before any further action could be taken in the case. The Comptroller informed the Carlsons that it would issue a final order, but later changed its mind, informing them that SOAH's order granting the motion to dismiss was a final order. By then, the deadline to file a motion for rehearing—a prerequisite to appeal—had passed.

The Carlsons filed a mandamus petition in the Supreme Court, asking the Court to compel the Comptroller to issue a final order. After briefing and oral argument before the Court, the Comptroller issued a final decision in the underlying case. The parties agreed that the issuance of the final decision rendered the mandamus proceeding moot. The Court agreed and dismissed the mandamus petition for lack of jurisdiction.

b) *Kensington Title-Nev., LLC v. Tex. Dep't of State Health Servs.*, 710 S.W.3d 225 (Tex. Mar. 28, 2025) [23-0644]

This case addresses when a party can obtain a declaratory judgment regarding the applicability of an administrative rule under Section 2001.038(a) of the Administrative Procedure Act.

Kensington acquired real property in Denton, Texas, on which the prior owners had left behind radioactive personal property. Shortly thereafter, Kensington began implementing a plan approved by the Department of State Health Services to clean up the material, but Kensington ceased those activities when it was brought into an ongoing tax suit against the prior owners that subjected the radioactive personal property to a lien. The Department issued a notice that Kensington violated an administrative rule by possessing radioactive material without a license, and it sought a penalty. An administrative law judge found a violation and recommended a $7,000

penalty, which the Department adopted.

In the pending tax dispute, Kensington amended its pleading to add a cause of action under Texas Government Code Section 2001.038(a) to declare the rule inapplicable, arguing that Kensington neither owned nor possessed the material. The Department filed a plea to the jurisdiction, arguing Kensington challenged the Department's application of the rule rather than the rule's applicability, and thus the Department's immunity from suit was not waived. The trial court denied the Department's plea but the court of appeals reversed, holding that Kensington's Section 2001.038(a) challenge failed to allege a proper rule-applicability challenge.

The Supreme Court reversed. The Court first held that Kensington had standing to bring a Section 2001.038(a) challenge because Kensington alleged that the Department rule, if enforced, would interfere with Kensington's rights and the requested declaration would redress its injury. The Court then held that Kensington alleged a proper rule-applicability challenge, explaining that Kensington's request for a declaration of whether the Department's rules could apply to nonlicensees like Kensington—who own real property on which radioactive material was abandoned—falls within the statute's scope. The Court remanded the case to the trial court to resolve the merits of the challenge.

c) *Save Our Springs All., Inc. v. Tex. Comm'n on Env't Quality*, ___ S.W.3d ___, 2025 WL 1085176 (Tex. Apr. 11, 2025) [23-0282]

This suit for judicial review involves claims that TCEQ (1) misapplied its "antidegradation" rules in granting a wastewater discharge permit and (2) failed to make "underlying fact" findings as required by section 2001.141 of the Administrative Procedure Act.

TCEQ rules prohibit permitted discharges into high-quality waterbodies that would either (1) disturb existing water uses or (2) degrade water quality. The City of Dripping Springs applied for a permit to discharge wastewater into Onion Creek. Predictive modeling estimated that dissolved oxygen levels at the mixing point would drop more than 20% but would remain at sufficient levels to protect existing uses and then quickly return to baseline levels. Taking into consideration other water-quality parameters, TCEQ's Executive Director concluded that overall water quality would not suffer and proposed to grant the City's application.

Contested-case and judicial-review proceedings ensued. A local environmental group, Save Our Springs Alliance, asserted that a significant reduction in dissolved oxygen level constitutes degradation of water quality as a matter of law. The administrative law judge rejected SOS's parameter-by-parameter antidegradation methodology as reflecting a misreading of the applicable rules. TCEQ agreed and granted the permit. The trial court vacated and enjoined the City's permit. A divided court of appeals reversed and upheld the permit.

The Supreme Court affirmed,

holding that TCEQ did not misread or misapply its rules. TCEQ's practice of assessing degradation of water quality on a whole water basis, rather than affording decisive weight to numeric changes in individual water-quality parameters, conforms to the antidegradation standards as written. SOS's additional complaint that TCEQ's final order was void for want of sufficient underlying fact findings was not preserved for judicial review. That complaint also failed on the merits because the language in TCEQ's antidegradation rules is not "statutory language" for which thee statute requires additional fact findings.

2. Medicaid Eligibility

a) *Tex. Health & Hum. Servs. Comm'n v. Est. of Burt*, 689 S.W.3d 274 (Tex. May 3, 2024) [22-0437]

The issue in this case is whether an interest in real property purchased after a Medicaid applicant enters a skilled-nursing facility qualifies as the applicant's "home," excluding it from the calculation that determines Medicaid eligibility.

The Burts lived in a house in Cleburne for many years and then sold it to their adult daughter and moved into a rental property. About seven years later, the Burts moved into a skilled-nursing facility. At that time, their cash and other resources exceeded the eligibility threshold for Medicaid assistance. Later that month, the Burts purchased a one-half interest in the Cleburne house from their daughter, reducing their cash assets below the eligibility threshold. They then applied for Medicaid. The Burts passed away, and the Health and Human Services Commission denied their application after determining that the Burts' partial ownership interest in the Cleburne house was not their home and therefore was not excluded from the calculation of the Burts' resources. After exhausting its administrative remedies, the Burts' estate sought judicial review. The trial court reversed, and the court of appeals affirmed the trial court's judgment. The court of appeals held that whether a property interest qualifies as an excludable "home" turns on the property owner's subjective intent and that the Burts considered the Cleburne house to be their home.

The Supreme Court reversed and rendered judgment for the Commission. In an opinion authored by Justice Bland, the Court held that under federal law, an applicant's "home" is the residence that the applicant principally occupies before the claim for Medicaid assistance arises, coupled with the intent to return there in the future. An ownership interest in property acquired after the claim for Medicaid assistance arises, using resources that are otherwise available to pay for skilled nursing care, is insufficient. The Court observed that federal and state regulations provide that the home is the applicant's "principal place of residence," which coheres with the federal statute and likewise requires residence and physical occupation before the claim for assistance arises.

Chief Justice Hecht dissented. He would have held that an applicant's home turns on the applicant's subjective intent to return to the house, even if the applicant had not owned or occupied it before admission to skilled-

nursing care, and that the Burts satisfied that standard.

3. Public Information Act

a) *Univ. of Tex. at Austin v. GateHouse Media Tex. Holdings, II, Inc.*, 711 S.W.3d 655 (Tex. Dec. 31, 2024) [23-0023]

The issue in this case is whether the Texas Public Information Act gives the University of Texas discretion to withhold records of the results of disciplinary proceedings.

The Austin–American Statesman sent a PIA request to the University, seeking the results of disciplinary proceedings in which the University determined that a student was an alleged perpetrator of a violent crime or sexual offense and violated the University's rules or policies. The University declined to provide the information, asserting that the federal Family Educational Rights and Privacy Act does not require this information's disclosure.

The Statesman filed a statutory mandamus proceeding in the trial court, seeking to compel the disclosure. It then moved for summary judgment, arguing that the PIA revokes the discretion granted by FERPA. The trial court granted the Statesman's motion, ruling that the records are presumed subject to disclosure because the University failed to comply with the PIA's requirement that a decision of the Office of Attorney General be sought. The court of appeals affirmed.

The Supreme Court reversed and rendered judgment for the University. The Court first held that the plain language of Section 552.026 of the PIA—which states that the act "does not require the release" of education records "except in conformity with" FERPA—grants an educational institution discretion whether to disclose an education record if the disclosure is authorized by FERPA. The Court then held that the University was not required to seek an OAG decision before withholding the records. The Court reasoned that the PIA provision imposing the requirement of an OAG decision does not apply to records withheld under Section 552.026, and it noted OAG's policy refusing to review education records to determine their compliance with FERPA.

4. Public Utility Commission

a) *Pub. Util. Comm'n of Tex. v. Luminant Energy Co.*, 691 S.W.3d 448 (Tex. June 14, 2024) [23-0231]

The main issue is whether orders issued by the Public Utility Commission during Winter Storm Uri exceed the Commission's authority under Chapter 39 of the Public Utility Regulatory Act.

The 2021 storm caused almost 50% of Texas' power-generation equipment to freeze and go offline, stressing the state's electrical grid. When mandatory blackouts failed to return the grid to equilibrium, the Commission determined that its pricing formula was sending inaccurate signals to market participants about the state's urgent need for additional power. In two orders, the Commission directed ERCOT to adjust the pricing formula so that electricity would trade at the regulatory cap.

Luminant Energy Co. challenged the orders in a statutory suit for judicial review against the Commission

in the court of appeals. The court of appeals agreed with Luminant that the orders violate Chapter 39 by directing ERCOT to set a single price for electricity.

The Supreme Court reversed and rendered judgment affirming the orders. Luminant's challenge rested on Chapter 39's express preference for competition over regulation. But the Court pointed to other language in Chapter 39 commanding the Commission and ERCOT to ensure the reliability and adequacy of the electrical grid and acknowledging that the energy market will not be completely unregulated. After applying the whole-text canon of statutory construction, the Court held that Luminant had not overcome the presumption that agency rules are valid. The Court went on to hold that the orders substantially comply with the Administrative Procedure Act's emergency rulemaking procedures.

b) *Pub. Util. Comm'n of Tex. v. RWE Renewables Ams., LLC*, 691 S.W.3d 484 (Tex. June 14, 2024) [23-0555]

The central issues in this case are: (1) whether the Public Utility Commission's order approving a protocol adopted by the Electric Reliability Council of Texas regarding electricity scarcity-pricing constitutes a "competition rule[] adopted by the commission" under Section 39.001(e) of the Public Utility Regulatory Act, which may be directly reviewed by the court of appeals; and (2) if so, whether the Commission exceeded its authority under PURA or violated the Administrative Procedure Act's mandatory rulemaking procedures in issuing the approval order.

In 2021, Winter Storm Uri strained Texas's electrical power grid to an unprecedented degree. Regulators resorted to mandating blackouts to prevent catastrophic damage to the state's power grid. Simultaneously, the Commission issued emergency orders administratively setting the wholesale price of electricity to the regulatory maximum in an effort to incentivize generators to rapidly resume production.

In the storm's aftermath, ERCOT adopted, and the Commission approved, a formal protocol setting electricity prices at the regulatory ceiling under certain extreme emergency conditions. RWE, a market participant, appealed the Commission's approval order directly to the Third Court of Appeals. The court held the order was invalid, determining that (1) the order constituted a competition rule under PURA and a rule under the APA; (2) by setting prices, the rule was anti-competitive and so exceeded the Commission's statutory authority under PURA; and (3) the Commission implemented the rule without complying with the APA's rulemaking procedures.

The Supreme Court reversed, holding that the Commission's approval order is not a "competition rule[] adopted by the commission" subject to the judicial-review process for such rules. The Court reasoned that PURA envisions a separate path for ERCOT-adopted protocols, which are subject to a lengthy and detailed process before being implemented. The statutory requirement that the Commission approve those adopted protocols before

they may take effect does not transform Commission *approval orders* into Commission *rules* eligible for direct review by a court of appeals. Hence, the court of appeals lacked jurisdiction over the proceeding. Accordingly, the Supreme Court vacated the court of appeals' judgment and dismissed the case for lack of jurisdiction.

5. Texas Clean Air Act

a) *Port Arthur Cmty. Action Network v. Tex. Comm'n on Env't Quality*, 707 S.W.3d 102 (Tex. Feb. 14, 2025) [24-0116]

In this certified question, the Court construed "best available control technology" as used in TCEQ's rules.

Port Arthur LNG sought a permit from the Texas Commission on Environmental Quality to expand its liquefied natural gas plant. To receive a permit, the applicant must show that emission sources at the facility satisfy Best Available Control Technology requirements. Port Arthur Community Action Network, an environmental group, challenged whether BACT was met, arguing that Port Arthur LNG had proposed emission limits for certain pollutants that exceeded the limits TCEQ had previously approved for another plant, the Rio Grande Plant. The Rio Grande Plant has a permit but has yet to be constructed. TCEQ rejected PACAN's challenge and granted a permit to Port Arthur LNG. PACAN appealed this decision to the Fifth Circuit under the federal Natural Gas Act.

The Fifth Circuit certified this question to the Texas Supreme Court: "Does the phrase 'has proven to be operational' in Texas's definition of 'best available control technology' codified at section 116.10(1) of the Texas Administrative Code require an air pollution control method to be currently operating under a permit issued by the Texas Commission on Environmental Quality, or does it refer to methods that TCEQ deems to be capable of operating in the future?"

The Court answered the question as follows. BACT is technology that has already proven, through experience and research, to be operational, obtainable, and capable of reducing emissions. BACT does not extend to methods that TCEQ deems to be capable of operating in the future. Further, BACT is not limited to a pollution control method that is currently operating under a previously granted permit. The earlier permit, such as one for a facility that has yet to be built, might exceed a level of pollution control that is currently available, technically practical, and economically reasonable. A previously permitted emissions level for one facility is neither necessary nor sufficient to establish BACT for other, similar facilities.

B. ARBITRATION

1. Enforcement of Arbitration Agreement

a) *Cerna v. Pearland Urban Air, LLC*, ___ S.W.3d ___, 2025 WL 1478505 (Tex. May 23, 2025) [24-0273]

At issue in this case is whether a challenge to an arbitration agreement's applicability is one for an arbitrator or a court to decide when the agreement itself delegates questions about its scope to the arbitrator.

Abigail Cerna signed a release

containing an arbitration provision upon entering Urban Air Trampoline Park for herself and on behalf of her child. The agreement did not expressly state its duration. They returned to Urban Air for a second visit about three months later and did not sign another release. Her child was injured during the second visit, and Cerna sued Urban Air for negligence. Urban Air moved to compel arbitration under the release she signed during the first visit. Cerna challenged the applicability of the agreement to the second visit and requested that the trial court determine the issue. The trial court denied the motion to compel. The court of appeals reversed, holding that whether the release applied to Cerna's second visit was a challenge to the release's scope that Cerna had agreed an arbitrator would decide.

The Supreme Court affirmed. While courts must decide challenges contesting the existence of arbitration agreements, a challenge that disputes an agreement's existence as to a particular claim is a challenge to the scope of the agreement, not its existence. Cerna's challenge—which conceded the existence of an agreement for her first visit but not the second—was one contesting the scope of the release to a particular claim. Because the release clearly and unmistakably delegated such questions to the arbitrator, the Court held that the arbitrator must decide Cerna's challenge to the agreement's duration.

C. ATTORNEYS

1. Barratry

a) *Pohl v. Cheatham*, ___ S.W.3d ___, 2025 WL 1349691 (Tex. May 9, 2025) [23-0045]

This case concerns the extraterritorial reach of Texas's civil barratry statute.

Texas attorneys were hired by clients in Louisiana and Arkansas to represent them in two separate out-of-state lawsuits. The clients later sued the attorneys and sought to void their legal-services contracts, alleging those contracts were procured by conduct violating Texas's penal statute and disciplinary rule prohibiting barratry. The clients also alleged the attorneys breached their fiduciary duties. The attorneys moved for summary judgment, arguing that the barratry statute did not apply to conduct that occurred outside Texas. The trial court granted summary judgment and dismissed the clients' claims, but the court of appeals reversed.

The Supreme Court reversed as to the statutory claims. Relying on Texas's strong presumption against extraterritorial application of its statutes, the Court first concluded that nothing in the text of the barratry statute indicates the Legislature's clear intent for it to apply to conduct occurring outside Texas. The Court then held that applying the statute in this case would impermissibly give it extraterritorial effect. The Court observed that the statute's focus, as expressed in its text, is to protect clients against unlawful solicitation. Because the conduct relevant to that focus—the in-person acts of solicitation that procured the legal-services contracts—occurred outside Texas, the Court concluded that the clients' civil barratry claims would require the statute to be applied

extraterritorially and therefore were properly dismissed by the trial court. But the Court agreed with the court of appeals that summary judgment should not have been granted on the clients' claims for breach of fiduciary duty.

Justice Busby dissented, reading the statute's text as expressing the Legislature's focus to be on all conduct that violates the penal statute or disciplinary rule prohibiting barratry. Because that includes conduct by these attorneys that occurred in Texas, he concluded that this case involves a permissible domestic application of the statute.

2. Disciplinary Proceedings

a) *Lane v. Comm'n for Law. Discipline*, ___ S.W.3d ___, 2025 WL 1617307 (Tex. June 6, 2025) [23-0956]

The case concerns the application of the limitations period in the Rules of Disciplinary Procedure to a reciprocal discipline proceeding.

Attorney Nejla Lane was suspended by the Northern District of Illinois in 2020 and then by the Illinois Supreme Court in 2023. Following her 2023 suspension, the Commission for Lawyer Discipline sought an identical suspension in Texas. The Board of Disciplinary Appeals imposed a judgment of suspension, and Lane appealed to the Supreme Court.

The Court reversed and dismissed the disciplinary proceeding. The Court rejected the CLD's argument that the limitations rule did not apply to reciprocal-discipline proceedings. The Court also disagreed with BODA's conclusion that the rule's application was waived because Lane failed to plead it. Analyzing the rule's text, the Court held that the disciplinary proceeding was time-barred because Lane's "Professional Misconduct" occurred in 2017, more than four years before the CLD received the "Grievance" upon which it acted.

Justice Boyd and Justice Busby filed dissenting opinions. Justice Boyd argued that the limitations rule does not apply to reciprocal-discipline cases because it is not listed as a defense on which an attorney can rely "to avoid the imposition" of reciprocal discipline and if that list of defenses were not exclusive, Lane waived the limitations defense by failing to plead it. Justice Busby would have held that "Professional Misconduct" for purposes of reciprocal discipline occurs when the attorney has been disciplined in another jurisdiction, so the reciprocal-discipline proceeding here was timely.

3. Legal Malpractice

a) *Henry S. Miller Com. Co. v. Newsom, Terry & Newsom, LLP*, 709 S.W.3d 562 (Tex. Dec. 31, 2024) [22-1143]

The lead issue in this case is whether a client can pursue a legal-malpractice claim against its former attorney where the client's judgment creditor from the underlying case has a financial interest in the malpractice recovery.

Henry S. Miller Commercial Company sued its former attorney, Steven Terry, for malpractice after losing a fraud case. HSM claims that Terry was negligent in failing to designate a responsible third party and by stipulating to HSM's responsibility for its

agent's actions. HSM and its opponent in the fraud case, now a judgment creditor, made an agreement, memorialized in HSM's bankruptcy plan of reorganization, that the creditor would receive the first $5 million of any malpractice recovery and a percentage of additional amounts. The the jury found Terry 100% responsible for the fraud judgment against HSM and awarded actual and punitive damages. After Terry appealed, the court of appeals remanded for a new trial based on jury-charge error.

Both Terry and HSM petitioned for review. In an opinion by Chief Justice Hecht, the Supreme Court addressed Terry's argument that the bankruptcy-plan arrangement giving HSM's judgment creditor an interest in its malpractice recovery constitutes an illegal assignment of the malpractice claim. The Court disagreed, reasoning that HSM retained substantial control over litigation of the claim.

The Court concluded there is some evidence that Terry's negligence caused HSM's damages because the jury likely would have assigned at least partial responsibility to the undesignated third party. However, the only evidence supporting the amount of damages awarded—testimony that the jury would have assigned 85 to 100% fault to the third party based on the expert's "experience"—is conclusory. Since there is evidence of some damages, but no evidence supporting the full amount awarded, the Court agreed with the court of appeals' disposition remanding the case for another trial. Finally, the Court held that there is no evidence that Terry was grossly negligent and that the punitive damages award must therefore be reversed.

Justice Young filed a concurring opinion to further address how the judicial system should respond where a legal-malpractice case is not impermissibly assigned yet still implicates the concerns that led the Supreme Court to preclude such assignments.

Justice Bland dissented in part. She would have held that the expert testimony is legally insufficient to establish legal malpractice as a cause of damage to HSM and rendered judgment for Terry.

D. CLASS ACTIONS

1. Class Certification

a) *Frisco Med. Ctr., L.L.P. v. Chestnut*, 694 S.W.3d 226 (Tex. May 17, 2024) (per curiam) [23-0039]

The issue is whether emergency-room patients who were allegedly charged an undisclosed evaluation-and-management fee after receiving treatment were appropriately certified as a class under Texas Rule of Civil Procedure 42.

Baylor Medical Center at Frisco and Texas Regional Medical Center at Sunnyvale charge ER patients a fee for evaluation and management services. Paula Chestnut and Wendy Bolen allege that they were charged the fee without receiving notice prior to treatment. They sued the hospitals on behalf of themselves and all others similarly situated, seeking class certification under Rule 42 to bring claims under the Texas Deceptive Trade Practices Consumer Protection Act and the Texas Uniform Declaratory Judgments Act. The trial court ordered class certification, concluding that the Rule 42(a)

and (b) requirements were met. It further ordered certification of a Rule 42(d)(1) issue class with respect to four discrete issues.

The hospitals appealed, arguing that the class does not satisfy any of Rule 42(b)'s requirements. The court of appeals agreed that the Rule 42(b) requirements are not met by the class's claims as a whole, but it nonetheless preserved the "Rule 42(d)(1) certification of a Rule 42(b)(2) class action as to . . . three discrete issues" and decertified the class as to every other claim and issue. The hospitals filed a petition for review.

The Supreme Court reversed the part of the court of appeals' judgment that preserved a class certified on discrete issues under Rule 42(d)(1) and remanded the case to the trial court for further proceedings. The Court's precedent mandates that Rule 42(d) cannot be used to manufacture compliance with the certification prerequisites. Instead, Rule 42(d) is a housekeeping rule that functions as a case-management tool that allows a trial court to break down class actions that already meet the requirements of Rule 42(a) and (b) into discrete issue classes for ease of litigation. Once the court of appeals determined that Rule 42(b)'s criteria were not met by the claims as a whole, it should have decertified the class.

b) *USAA Cas. Ins. Co. v. Letot*, 690 S.W.3d 274 (Tex. May 24, 2024) [22-0238]

At issue in this case is whether the trial court erred by certifying a class of insurance claimants whose automobiles USAA had deemed a "total loss."

Sunny Letot's vehicle was rear-ended by a USAA-insured driver. USAA determined that the cost to repair Letot's vehicle exceeded its value. USAA therefore sent Letot checks for the car's value and eight days of lost use and, within days, filed a report with the Texas Department of Transportation identifying Letot's car as "a total loss" or "salvage." Letot later rejected USAA's valuation and checks. She sued USAA for conversion for sending TxDOT the report before she accepted payment. Letot then sought class certification.

The trial court certified a class for both injunctive relief and damages. The class consisted of all claimants for whom USAA filed a report within three days of attempting to pay a claim for a vehicle deemed a total loss. The court of appeals affirmed the certification order.

The Supreme Court reversed. It first concluded that Letot lacked standing to pursue injunctive relief because she could not show that her past experience made it sufficiently likely that she would again be subject to the challenged claims-processing procedures. Without standing to pursue injunctive relief on her own, Letot could not represent a class, so the Supreme Court reversed the certification on that ground and dismissed the claim for injunctive relief.

The Court then held that Letot had standing to pursue damages pursuant to her conversion claim, but that class certification was improper under the predominance and typicality requirements of Texas Rule of Civil Procedure 42. As to predominance, the

Court concluded that Letot could not show that individual issues (including whether the other class members have standing) would not overwhelm the common issue of whether USAA exercised dominion over class members' property when it filed reports concerning their vehicles. As to typicality, the Court held that the unique factual and legal characteristics of Letot's claim rendered that claim atypical of those of the other putative class members.

E. CONSTITUTIONAL LAW

1. Abortion

a) *State v. Zurawski*, 690 S.W.3d 644 (Tex. May 31, 2024) [23-0629]

The issue in this direct appeal is whether Texas's civil abortion law permitting an abortion when the woman has a life-threatening physical condition is unconstitutional when properly interpreted.

The Center for Reproductive Rights, representing obstetricians and women who experienced serious pregnancy complications but were delayed or unable to obtain an abortion in Texas, sought to enjoin enforcement of Texas's civil, criminal, and private-enforcement laws restricting abortion. The Center argued that the laws must be interpreted to allow physicians to decide in good faith to perform abortions for all unsafe pregnancies and pregnancies where the unborn child is unlikely to sustain life after birth. If not so interpreted, the Center charged that the laws violate the due-course and equal-protection provisions of the Texas Constitution. The State moved to dismiss the case on jurisdictional grounds, including standing and sovereign immunity. The trial court entered a temporary injunction, barring enforcement of the laws when a physician performs an abortion after determining in good faith that the pregnancy is unsafe or that the unborn child is unlikely to sustain life.

In a unanimous opinion, the Texas Supreme Court vacated the injunction, holding that it departed from Texas law. The Court held that jurisdiction existed for one physician's claims against the Attorney General to enjoin enforcement of the Human Life Protection Act because she had been threatened with enforcement and her claims were redressable by a favorable injunction. Next, the Court held it error to substitute a good-faith standard for the statutory standard of reasonable medical judgment. Reasonable medical judgment under the law does not require that all physicians agree with a given diagnosis or course of treatment but merely that the diagnosis and course of treatment be made "by a reasonably prudent physician, knowledgeable about [the] case and the treatment possibilities for the medical conditions involved." Under the statute, a physician must diagnose that a woman has a life-threatening physical condition, but the risk of death or substantial bodily impairment from that condition need not be imminent. Under this interpretation, the Court concluded that the Center did not present a case falling outside the law permitting abortion to address a life-threatening physical condition, where the due-course clause would compel an abortion. Nor is the law, which regulates the provision of abortion on medical grounds, based on membership in a protected class

subject to strict scrutiny under the equal-protection clauses.

Justice Lehrmann filed a concurring opinion, emphasizing that a more restrictive law—one requiring imminent death or physical impairment or unanimity among the medical profession as to diagnosis or treatment—would be unconstitutional and a departure from traditional constitutional protections.

Justice Busby filed a concurring opinion, explaining that the Court's opinion leaves open whether the statute is void for vagueness or violates the rule of strict construction of penal statutes and does not decide the extent to which an abortion must mitigate a risk of death or bodily impairment.

2. Due Course of Law

a) *State v. Loe*, 692 S.W.3d 215 (Tex. June 28, 2024) [23-0697]

The issue in this direct appeal is whether a law prohibiting certain medical treatments for children with gender dysphoria likely violates the Texas Constitution.

Parents of children who have been diagnosed with gender dysphoria, along with doctors who treat such children, sought to enjoin enforcement of a Texas statute that prohibits physicians from providing certain treatments for the purpose of transitioning a child's biological sex or affirming a perception of the child's sex that is inconsistent with their biological sex. The trial court entered a temporary injunction enjoining enforcement of the law, concluding that it likely violates the Texas Constitution in three ways: (1) it infringes on the parents' right to make medical decisions for their children; (2) it infringes on the physicians' right of occupational freedom; and (3) it discriminates against transgender children.

The Supreme Court reversed and vacated the injunction. In an opinion by Justice Huddle, the Court concluded that the plaintiffs failed to establish a probable right to relief on their claims that the law violates the Constitution. The Court first concluded that, although fit parents have a fundamental interest in making decisions regarding the care, custody, and control of their children, that interest is not absolute and it does not include a right to demand medical treatments that are not legally available. The Court observed that the Texas Legislature has express constitutional authority to regulate the practice of medicine, and the novel treatments at issue in this case are not deeply rooted in the state's history or traditions such that parents have a constitutionally protected right to obtain those treatments for their children. The Court therefore concluded that the law is constitutional if it is rationally related to a legitimate state purpose, and the plaintiffs failed to establish that it is not.

The Court next concluded that physicians do not have a constitutionally protected interest to perform medical procedures that the Legislature has rationally determined to be illegal, and the law does not impose an unreasonable burden on their ability to practice medicine. Finally, the Court held that the statute does not deny or abridge equality under the law because of plaintiffs' membership in any protected class, so the plaintiffs failed to establish that the law

unconstitutionally discriminates against them.

Justice Blacklock, Justice Busby, and Justice Young filed concurring opinions, although they also joined the Court's opinion. Justice Blacklock observed that the issues in this case are primarily moral and political, not scientific, and he would conclude that the Legislature has authority to prohibit the treatments in this case as outside the realm of what is traditionally considered to be medical care. Justice Busby wrote to clarify that the scope of traditional parental rights remains broad and is limited only by the nation's history and tradition, not by the nature of the state power being exercised. Justice Young noted that there is a considerable zone of parental authority or autonomy that is inviolate, but the parents' claim in this case falls outside it.

Justice Lehrmann filed a dissenting opinion. The dissent would have held that parents have a fundamental right to make medical decisions for their children by seeking and following medical advice, so a law preventing parents from obtaining potentially life-saving treatments for their children should be subjected to strict scrutiny, which this law does not survive.

3. Due Process

a) *Thompson v. Landry*, ___ S.W.3d ___, 2025 WL 1350003 (Tex. May 9, 2025) [23-0875]

The issue in this case is whether a sale of real property to foreclose outstanding tax liens can be set aside on due process grounds if the original owner had notice of the sale before the Tax Code's limitations period ended.

Landry inherited her grandmother's interest in a twelve-acre property. To collect delinquent taxes on the property, the taxing authorities served the record owners by posting notice on the courthouse door. The authorities later obtained a default judgment for the outstanding taxes. Thompson purchased the property at a tax foreclosure sale and satisfied the default judgment. Landry lived on the property before and after the sale, and her husband paid rent to Thompson until Thompson asked the Landrys to vacate. Ten years after the sale of the property, Landry sued to void the default judgment and to quiet title, alleging that citation by posting in the suit for unpaid taxes violated her constitutional right to procedural due process.

The trial court granted Landry's summary judgment motion, declared the default judgment void, and denied Thompson's summary judgment motions based on limitations and equitable defenses. The court of appeals reversed, holding that fact issues existed as to whether Landry's due process rights were violated. It further held that Thompson did not establish her defenses as a matter of law.

The Supreme Court affirmed and remanded the case to the trial court for further proceedings. It held that notice during the limitations period that the property has been sold defeats an action against a subsequent purchaser to recover the property brought outside the limitations period. In such cases, an aggrieved owner had notice of the harm resulting from any constitutional violation and an

adequate legal remedy. An equitable defense is also available to a subsequent purchaser when the former owner had notice of the purchaser's claim to the property outside the limitations period but delayed in seeking relief to the detriment of the purchaser.

4. Free Speech

a) *Tex. Dep't of Ins. v. Stonewater Roofing, Ltd.*, 696 S.W.3d 646 (Tex. June 7, 2024) [22-0427]

The issues in this challenge to Texas's regulatory scheme for public insurance adjusters are whether professional licensing and conflict-of-interest constraints (1) restrict speech protected by the First Amendment and (2) are void for vagueness under the Fourteenth Amendment.

Stonewater offers professional roofing services but is not a licensed public insurance adjuster. A dissatisfied commercial customer claimed that Stonewater was illegally advertising and engaging in insurance-adjusting services. To avoid statutory penalties, Stonewater sued the Texas Department of Insurance, seeking a declaration that two Insurance Code provisions violate the U.S. Constitution. The first requires a license to act or hold oneself out as a public insurance adjuster. The second prohibits a contractor, whether licensed as an adjuster or not, from (1) serving as both a contractor and adjuster on the same insurance claim and (2) advertising dual-capacity services. TDI filed a Rule 91a motion to dismiss, which the trial court granted but the court of appeals reversed.

The Supreme Court reversed and dismissed the suit, holding that Stonewater's pleadings fail to state cognizable First and Fourteenth Amendment claims. Properly construed, the challenged statutes are conventional licensing regulations triggered by the role a person plays in a nonexpressive commercial transaction, not what any person may or may not say. Neither the regulated relationship (acting "on behalf of" the insured customer) nor the defined profession's commercial objective ("settlement of an insurance claim") is speech. False advertising about prohibited activities is not protected speech, and any incidental speech constraints are insufficient to invite First Amendment scrutiny. Additionally, Stonewater's as-applied and facial vagueness claims are foreclosed because the company's alleged conduct clearly violates the statutes.

Justice Blacklock concurred, concluding that no speech is implicated because only representative, or agency, capacity is regulated.

Justice Young's concurrence emphasized two points. First, in his view, regulating agency capacity is nearly irrelevant to the First Amendment's applicability; what is determinative here is that the challenged statutes, at their core, regulate nonexpressive conduct. Second, extant First Amendment jurisprudence is poorly equipped to address legitimate public-licensing regulation that affects speech or expressive conduct more than incidentally.

5. Gift Clauses

a) *Borgelt v. Austin Firefighters Ass'n*, 692 S.W.3d 288 (Tex. June 28, 2024) [22-1149]

The issues in this case are (1) whether article 10 of a collective-

bargaining agreement between the City of Austin and the Austin Firefighters Association violates the Texas Constitution's Gift Clauses; and (2) whether the trial court erred by imposing TCPA sanctions and attorneys' fees on the plaintiffs.

In 2017, the City and the Association entered into a collective-bargaining agreement. Article 10 of the agreement, titled "Association Business Leave," authorizes 5,600 hours of paid time off for firefighters to engage in "Association business activities," which was defined to include activities like addressing cadet classes and adjusting grievances. Article 10 permits the Association's president to use 2,080 of those hours, which is enough for him to work full time while on ABL.

The Gift Clauses in the Texas Constitution prohibit "gifts" of public resources to private parties. Taxpayers and the State sued the City, alleging that article 10 violates the Gift Clauses and seeking declaratory and injunctive relief. Specifically, plaintiffs allege that ABL time has been used for improper private purposes and that the City does not exercise meaningful control over the ABL scheme, but instead approves nearly all ABL requests without maintaining adequate records of how ABL time is used.

The trial court ruled on summary judgment that the text of article 10 is not unconstitutional and awarded the Association attorneys' fees and sanctions under the TCPA. The case proceeded to a bench trial on the issue whether article 10 is being implemented in an unconstitutional manner. The trial court concluded it is not and rendered judgment for the City. The court of appeals affirmed.

In an opinion by Justice Young, the Supreme Court affirmed in part and reversed in part. The Court affirmed the court of appeals' holding that article 10 as written does not constitute an unlawful "gift" of funds. The agreement's text and context impose limits on the use of ABL time, including that all such uses must support the fire department. Allegations of misuse of ABL would constitute violations of the agreement rather than show that the agreement itself is unconstitutional. The Court reversed the TCPA award of sanctions and attorneys' fees, holding that the taxpayers' contentions are sufficiently weighty and supported by the evidence to avoid dismissal under the TCPA.

Justice Busby filed an opinion dissenting in part and concurring in the judgment in part. He would have held that article 10 violates the Gift Clauses because the City does not exercise control over the Association to ensure that firefighters used ABL time only for public purposes. For that reason, he agreed that the TCPA awards must be reversed.

6. Religion Clauses

b) *Perez v. City of San Antonio*, ___ S.W.3d ___, 2025 WL 1675639 (Tex. June 13, 2025) [24-0714]

This certified question concerns the applicability and scope of Article I, Section 6-a of the Texas Constitution.

Gary Perez is a member of the Lipan-Apache Native American Church. The Church worships at a particular area in a public park in San Antonio. In 2023, the City blocked access

to the sacred area to make improvements and announced its intention to remove a large number of trees, which Church members state are integral to their religious practice.

Perez sued the City in federal court, alleging, among other claims, violations of Article I, Section 6-a of the Texas Constitution, which forbids the state from "prohibit[ing] or limit[ing] religious services." The district court declined to grant a temporary restraining order. Perez appealed, and the Fifth Circuit certified the following question:

> Does the "Religious Service Protections" provision of the Constitution of the State of Texas—as expressed in Article 1, Section 6-a—impose a categorical bar on any limitation of any religious service, regardless of the sort of limitation and the government's interest in that limitation?

The Supreme Court answered that the Clause's force is categorical when it applies but its scope is limited and does not reach the type of governmental actions about which Perez complained. As to force, the Court determined that the Clause does not import a strict-scrutiny test. That it was enacted in response to COVID-19 lockdown orders confirms the understanding that the Clause provides greater protection for religious services than the Free Exercise Clause of the First Amendment or the Texas Religious Freedom Restoration Act.

As to the scope of the Clause, the Court declined to comprehensively define the boundaries of the Clause. It rejected proposed definitions from the parties and amici and stated only that the scope did not reach governmental actions taken to preserve and maintain public property for the safety and enjoyment of the public. The Clause generally forbids the government from prohibiting people from gathering for a religious service, restricting the number or relationships of people who can gather for a religious service, or regulating the activities in which people may engage when they gather. The City's decisions were not of that character and were thus not prohibited.

Justice Sullivan dissented. He would have declined to answer the certified question, as any answer in this case would be advisory.

7. Separation of Powers

a) *Elliott v. City of College Station*, ___ S.W.3d ___, 2025 WL 1350002 (Tex. May 9, 2025) [23-0767]

This case presents several justiciability issues, including the political-question doctrine and mootness.

Shana Elliott and Lawrence Kalke live in the City of College Station's extraterritorial jurisdiction. They have no vote in City elections, but their properties are subject to regulation under certain City ordinances. Elliott and Kalke sued for a declaration that local regulation without a right to vote in local elections violates the Texas Constitution's "republican form of government" clause. The City's plea to the jurisdiction asserted that the constitutional claims were nonjusticiable for several reasons, including under the political-question doctrine. The trial court granted the City's plea and dismissed the suit with prejudice. While the appeal was pending, the

legislature adopted a process for ETJ residents to unilaterally opt out of a municipality's ETJ. That law became effective the day after the court of appeals issued its opinion affirming the dismissal judgment. On petition for review, the parties disputed whether the new law mooted the plaintiffs' constitutional claims.

Citing the constitutional-avoidance doctrine, the Supreme Court vacated the lower-court judgments and the court of appeals' opinion. The Court explained that, whether or not mere enactment of the opt-out process mooted the constitutional claims altogether, the law now provides nonjudicial recourse that offers prompt and complete relief for the plaintiffs' alleged injuries. The amended ETJ statute so significantly altered the legal regime that judicial exposition on sweeping questions of constitutional law would be both unnecessary and imprudent at this time. The Court remanded to the trial court with instructions to abate the suit to allow the plaintiffs a reasonable opportunity to complete the opt-out process, a matter of mere paperwork.

Dissenting in part, Justice Sullivan would have permitted the plaintiffs to continue litigating their republican-form-of-government claims on remand.

b) *In re Dallas County*, 697 S.W.3d 142 (Tex. Aug. 23, 2024) [24-0426]

At issue in this case is the constitutionality of S.B. 1045, the statute that creates the Fifteenth Court of Appeals.

The fourteen existing courts of appeals districts are all geographically limited, but the Fifteenth district includes all counties, and its justices will be chosen in statewide elections beginning in the November 2026 general election. Until then, the justices will be appointed by the Governor, subject to confirmation by the Senate. By statute, the Fifteenth Court will have exclusive intermediate appellate jurisdiction over various classifications of cases. S.B. 1045 requires any such cases pending in other courts of appeals to be transferred to the Fifteenth Court.

This petition involves one of the pending appeals subject to transfer. Dallas County and its sheriff sued officials of the Texas Health and Human Services Commission regarding HHSC's alleged failure to transfer certain inmates from county jails to state hospitals. The trial court denied HHSC's plea to the jurisdiction, so HHSC appealed to the Third Court of Appeals, noting in its docketing statement that the case is one that must be transferred to the Fifteenth Court if still pending by September 1. Invoking this Court's original jurisdiction, the County then filed a Petition for Writ of Injunction. The County argues that, for several reasons, S.B. 1045's creation of the Fifteenth Court is unconstitutional. As relief, the County asks the Court to prevent the appeal from being transferred.

The Supreme Court denied relief. It first concluded that it had jurisdiction to consider the County's petition and construed it as seeking mandamus relief.

On the merits, the Court rejected each of the County's three core arguments. First, it held that neither

the text nor history of Article V, § 6(a) of the Texas Constitution prohibits the legislature from adding an additional court of appeals with statewide reach. It next held that the same constitutional provision expressly granted the Legislature sufficient authority to give the Fifteenth Court exclusive intermediate appellate jurisdiction over certain matters, as well as to decline to vest that court with criminal jurisdiction. Finally, the Court held that the Governor's initial appointments to the Fifteenth Court do not violate Article V, § 28(a)'s requirement that vacancies on a court of appeals must be filled in the next general election. A vacancy must arise sufficiently before an election to be placed on the ballot; the Election Code determines that 74 days is needed, and the Court held that this rule, which allows ballots to be timely printed and distributed, adheres to the constitutional requirement. These vacancies arise on September 1, which is fewer than 74 days before the election. Filling the vacancies by appointment until the November 2026 general election, therefore, is lawful, not unconstitutionally void.

c) *In re Tex. House of Representatives*, 702 S.W.3d 330 (Tex. Nov. 15, 2024) [24-0884]

The issue in this case is whether a subpoena issued by the Committee on Criminal Jurisprudence of the Texas House of Representatives required the Texas Department of Criminal Justice to cancel a scheduled execution because the date of the scheduled execution preceded the date on which the inmate was commanded to appear.

Robert Roberson was scheduled to be put to death on October 17, 2024. On October 16, the Committee issued a subpoena requiring Roberson to appear before it to testify about his case and its implications for article 11.073 of the Code of Criminal Procedure. The Committee then obtained a temporary restraining order from a district court preventing the Department from executing Roberson. The Department filed a mandamus petition in the Court of Criminal Appeals, which was granted. The Committee then invoked the Supreme Court's original jurisdiction, seeking a writ of injunction and emergency relief. The Court temporarily enjoined the Department from impairing Roberson's compliance with the subpoena and requested merits briefing.

The Court first confirmed its jurisdiction to resolve the dispute. It concluded that this case raised a justiciable and purely civil-law question concerning the separation of powers and the distribution of governmental authority. The Court explained that it may construe the Committee's petition as one for mandamus, which the Court has authority to issue against the department.

As for the merits, the Court held that the Committee's authority to compel testimony does not include the power to override the scheduled legal process leading to an execution. While the legislative-inquiry power is robust and essential to the functioning of our system of government, the Committee had the opportunity to obtain any testimony relevant to its legislative task long before Roberson's scheduled execution. The Committee's subpoena, moreover, intruded on authority vested in the other branches: the judiciary's authority to schedule a lawful execution, the executive's authority to determine whether clemency is proper, and the legislature's own authority, which created the legal framework for capital punishment. The

Committee thus lacked a judicially enforceable right to prevent the other branches from proceeding with the scheduled execution. That result, the Court said, accommodated the interests of all three branches of government. Accordingly, the Court denied the committee's petition, thereby superseding its temporary order.

d) *Webster v. Comm'n for Law. Discipline*, 704 S.W.3d 478 (Tex. Dec. 31, 2024) [23-0694]

The issue in this case is whether the Texas Constitution's separation-of-powers doctrine renders the Commission for Lawyer Discipline's lawsuit against First Assistant Attorney General Brent Webster nonjusticiable.

After the 2020 presidential election, the State of Texas moved for leave to invoke the U.S. Supreme Court's original jurisdiction to sue four other states regarding those states' election-law changes. The first assistant appeared as counsel on the initial pleadings. After the State's lawsuit was dismissed for lack of standing, an individual filed a grievance with the commission alleging that the first assistant committed professional misconduct. The commission eventually agreed and initiated disciplinary proceedings. Invoking the separation of powers, the district court dismissed for lack of subject-matter jurisdiction. The court of appeals reversed, holding that neither the separation-of-powers doctrine nor sovereign immunity bars the case.

The Supreme Court reversed. In an opinion by Justice Young, the Court observed that generally, scrutiny of statements made directly to a court within litigation is by the court to whom those statements are made. In contrast with such direct scrutiny, the commission's collateral scrutiny seeks to second-guess the contents of the initial pleadings filed at the attorney general's direction on behalf of the State, which intrudes into the attorney general's constitutional authority both to file petitions in court and to assess the propriety of the representations that form the basis of those petitions. The separation-of-powers balance is delicate. While courts retain inherent authority to compel all attorneys to adhere to standards of professional conduct within litigation (hence why direct review remains available), the other branches lack the authority to control the attorney general's litigation conduct (which is why collateral review outside the litigation process would push too far). This Court's ultimate authority to regulate the practice of law does not depend on allowing the commission to bring its unprecedented lawsuit. Because this lawsuit does not allege criminal or ultra vires conduct, the first assistant is not subject to collateral review of either the choice to file a lawsuit or the representations in the suit's initial pleadings. The Court therefore reinstated the district court's judgment of dismissal.

Justice Boyd filed a dissenting opinion that rejected the Court's newly minted distinction between the judicial branch's "direct" and "collateral" enforcement of the disciplinary rules. In his view, the constitutional separation of powers prohibits a branch of government from exercising a power that belongs to another branch but does not separate the powers that exist within a single branch or restrict the means by which a branch may exercise a power it

properly possesses. He thus would have held that the separation-of-powers doctrine does not deprive the courts of subject-matter jurisdiction.

8. Takings

a) *Tex. Dep't of Transp. v. Self*, 690 S.W.3d 12 (Tex. May 17, 2024) [22-0585]

The issues in this case are whether a subcontractor's employees were TxDOT's "employees" under the Texas Tort Claims Act and whether TxDOT acted with the required intent to support an inverse condemnation claim when it destroyed the Selfs' property.

As part of a highway maintenance project, TxDOT contracted with a private company to remove brush and trees from its right-of-way easement on a tract of land owned by the Selfs. That company further subcontracted Lyellco, which ultimately removed 28 trees that were wholly or partially outside the State's right of way. The Selfs sued TxDOT for negligence and inverse condemnation. TxDOT filed a plea to the jurisdiction, and the parties disputed whether (1) Lyellco's employees were TxDOT's "employees" under the Act; (2) TxDOT employees exercised such control that they "operated" or "used" the equipment to remove the trees under the Act; and (3) TxDOT intentionally removed the trees, given its mistaken belief that the trees were inside the right-of-way. The trial court denied TxDOT's plea to the jurisdiction. The court of appeals affirmed in part and reversed in part. Both parties filed petitions for review.

The Supreme Court reversed the court of appeals' judgment, rendered judgment dismissing the negligence cause of action, and remanded the cause of action for inverse condemnation to the trial court for further proceedings. Regarding negligence, the Court held immunity was not waived because the Selfs had not shown either that the subcontractor's employees were in TxDOT's "paid service" or that TxDOT employees "operated" or "used" the motor-driven equipment that cut down the trees. Regarding inverse condemnation, the Court held the Selfs had alleged and offered evidence that TxDOT intentionally directed the destruction of the trees, which was sufficient to support the inverse condemnation claim. The Court rejected TxDOT's argument that its mistaken belief that the trees were in the right-of-way negated its intentional acts in directing the subcontractors to destroy the trees.

F. CONTRACTS

1. Damages

a) *White Knight Dev., LLC v. Simmons*, ___ S.W.3d ___, 2025 WL 1668348 (Tex. June 13, 2025) [23-0868]

The issue in this case is whether a seller awarded specific performance for breach of contract may also be compensated for expenses incurred due to the buyer's delay in performance.

White Knight Development purchased land from Dick and Julie Simmons. White Knight later invoked a "buy-back" provision that required the Simmonses to repurchase the property. The Simmonses refused, and White Knight sued. After a bench trial, the trial court found that the Simmonses breached the contract and awarded White Knight specific performance of

the buy-back provision as well as a monetary award for various expenses White Knight incurred.

The court of appeals modified the judgment to delete the monetary award. Although it concluded that courts may award equitable compensation along with specific performance in narrow circumstances, it held that such an award was impermissible because the trial court did not expressly state that its monetary award was equitable.

The Supreme Court reversed in part. The Court held that in limited circumstances a plaintiff may both obtain specific performance and recover equitable compensation for the breaching party's delay in performing to restore the plaintiff to the position it would have occupied had the contract been timely performed. The Court explained that recoverable expenses must be reasonable, foreseeable, directly traceable to the delay in performance, and, in cases in which the buyer breached, incurred in connection with the seller's care and custody of the property during the delay. The Court concluded that the court of appeals erred by deleting the entire monetary award without analyzing whether some expenses were recoverable, so it remanded the case to the court of appeals.

2. Interpretation

a) *Am. Midstream (Ala. Intrastate), LLC v. Rainbow Energy Mktg. Corp.*, ___ S.W.3d ___, 2025 WL 1478174 (Tex. May 23, 2025) [23-0384]

This case involves contract interpretation, repudiation, and lost-profits damages.

American Midstream owns the Magnolia natural gas pipeline. Rainbow, a natural gas trading company, contracted with American Midstream to transport natural gas on the Magnolia. The parties' contract required American Midstream to provide "firm" transportation and balancing services except where the contract excused its performance. American Midstream limited its balancing services on various occasions and claims that it was excused from performing under the contract. Rainbow claimed American Midstream repudiated the contract during a conference call. A month later, after continuing to ship gas under the contract, Rainbow terminated the contract, citing American Midstream's breach and repudiation.

Rainbow sued American Midstream for breach of contract, repudiation, fraud, fraudulent inducement, and negligent misrepresentation. After a bench trial, the court found for Rainbow on all its claims, and Rainbow elected to recover on its breach-of-contract claim. The court of appeals affirmed.

The Supreme Court reversed. The Court held that the trial court improperly inserted language that the parties did not include themselves. The Court first remanded the parties' breach-of-contract claims for the trial court to determine whether the contract excused American Midstream's performance. Second, the Court rendered judgment for American Midstream on Rainbow's repudiation claim because American Midstream's communication of its interpretation of the contract, standing alone, was not repudiation. And third, the Court rendered

judgment for American Midstream on Rainbow's tort claims because there was no falsity in American Midstream's representations that it could provide firm balancing services unless the contract excused its performance. The Court further held that Rainbow did not prove its lost-profits damages with reasonable certainty because it sought recovery for a new and untested enterprise.

b) *Bd. of Regents of the Univ. of Tex. Sys. v. IDEXX Labs., Inc.*, 690 S.W.3d 12 (Tex. June 14, 2024) [22-0844]

The issue is whether royalty provisions in a licensing agreement are ambiguous.

IDEXX Labs develops and sells veterinary diagnostic tests to detect disease in dogs. To improve its products that detect heartworm, Labs obtained a license for a Lyme disease peptide patented by the University of Texas. Under the license agreement, the amount of the royalty owed to the University depends on how a test for Lyme disease is packaged with other tests. One provision grants the University a 1% royalty for products sold to detect Lyme and "one other veterinary diagnostic test." Another provision grants a 2.5% royalty on the sales of products that detect Lyme and "one or more" tests "to detect tickborne diseases."

Each of the Labs products at issue test for heartworm, Lyme disease, and at least one other tickborne disease. For years, Labs paid the University royalties of 1%. The University sued, claiming it is owed royalties of 2.5%. The trial court granted the University's motion for partial summary judgment on the applicable royalty rate. The court of appeals reversed, concluding that the royalty provisions are ambiguous. The court characterized the parties' competing interpretations as "equally reasonable" and reasoned that when the provisions are considered separately and in the abstract, each could logically be read to apply.

The Supreme Court reversed, holding that the provisions are not ambiguous. The Court emphasized that contractual text is not ambiguous merely because it is unclear or the parties disagree about how to interpret it. A reviewing court must read the text in context and in light of the circumstances that produced it to ascertain whether it is genuinely uncertain or whether one reasonable meaning clearly emerges. After applying that analysis, the Court concluded that the provisions are most reasonably interpreted to require 2.5% royalties. The Court remanded the case to the court of appeals to address remaining issues, including defenses raised by Labs.

G. CORPORATIONS

1. Nonprofit Corporations

a) *S. Methodist Univ. v. S. Cent. Jurisdictional Conf. of United Methodist Church*, ___ S.W.3d ___, 2025 WL 1774174 (Tex. June 27, 2025) [23-0703]

At issue is whether a nonmember, nonprofit corporation may be sued by a controlling religious conference for amending the corporation's articles of incorporation without the conference's approval when those articles provided that no amendments shall be made without such approval.

Southern Methodist University is a nonmember, nonprofit corporation founded by a predecessor-in-interest to the South Central Jurisdictional Conference of the United Methodist Church. Since its founding, SMU's articles of incorporation have stated that it is to be owned and controlled by the Conference and that the articles may not be amended without Conference approval. In 2019, without Conference approval, SMU's board of trustees amended its articles to remove these and other provisions and filed a sworn certificate of amendment with the Texas Secretary of State. The Conference sued SMU, seeking declaratory relief regarding the validity of the 2019 amendments and asserting, among others, claims for breach of contract and filing a materially false amendment certificate.

The trial court dismissed some of the Conference's claims under Rule 91a before granting summary judgment for SMU on the remaining claims. The court of appeals reversed in pertinent part, holding that the Conference was authorized to challenge the 2019 amendments under the Business Organizations Code, that SMU's articles constituted a contract between SMU and the Conference, and that issues of fact precluded summary judgment on the Conference's false-filing claim.

The Supreme Court affirmed in part and reversed in part. After concluding that the church-autonomy doctrine did not deprive it of subject matter jurisdiction, the Court held that Business Organizations Code Section 22.207, which authorizes a religious conference to control a nonprofit educational corporation's board of directors, allows the controlling conference to sue the corporation for engaging in conduct that its articles of incorporation do not permit. Next, it held that, based on the pleadings, the Conference could pursue its breach-of-contract claim as a third-party beneficiary of SMU's articles, which constitute a contract between SMU and the State. Finally, the Court held that SMU was entitled to summary judgment on the Conference's false-filing claim because, considering the statements in the amendment certificate as a whole, the certificate did not constitute a "materially false instrument" as a matter of law. The Court remanded for further proceedings on the declaratory-judgment and breach-of-contract claims.

Justice Young concurred to express additional views on the church-autonomy doctrine.

Justice Bland dissented in part. She agreed that the Conference had authority to pursue its declaratory-judgment claims but would have reinstated the trial court's dismissal of the breach-of-contract claim.

2. Quo Warranto Actions

a) *Paxton v. Annunciation House, Inc.*, ___ S.W.3d ___, 2025 WL 1536224 (Tex. May 30, 2025) [24-0573]

The issue presented is whether the trial court erred in granting injunctive relief based on the unconstitutionality of several state laws.

Annunciation House, Inc., a charitable organization, provides shelter to migrants. Based on suspicion it was violating state law that prohibits the harboring of illegal aliens, the Attorney General sought to inspect its

records. He threatened to revoke its charter if it did not produce them.

Annunciation House sued the Attorney General, seeking declaratory relief that the statute authorizing his records request was unconstitutional. The Attorney General retracted the original records request but sought leave to file a quo warranto action to revoke Annunciation House's charter. The Attorney General claimed he had evidence of systemic harboring, a crime under Texas law. Annunciation House sought declaratory relief that the quo warranto action was also unconstitutional and requested injunctive relief.

The trial court granted summary judgment to Annunciation House. It held the records-request statute was unconstitutional for lack of a mechanism for pre-compliance review. As to the quo warranto filing, the Attorney General failed to adequately prove that Annunciation House harbored aliens; even if he had, alien harboring was not grounds for a quo warranto action; even if it were, the filing would violate the Texas Religious Freedom Restoration Act; and beyond all of that, the quo warranto action was unconstitutional on other grounds.

The Attorney General appealed directly to the Supreme Court, which reversed. It held the Attorney General has constitutional authority to file quo warranto actions, and denial of leave to file would require a facial showing that there was no legal basis to proceed. The Court rejected the trial court's conclusion that alleged criminal-law violations were an insufficient basis for quo warranto proceedings. It further held the Attorney General met his filing burden by plausibly alleging that Annunciation House violated the alien-harboring statute, and neither RFRA nor the Fourth Amendment defeated those allegations at the filing stage. As to alleged constitutional barriers to filing, the alien-harboring statute was neither unconstitutionally vague nor preempted by federal law, and a quo warranto action brought under the statute did not violate Annunciation House's constitutional rights as applied. As to the injunction against further records requests, Texas law guarantees an opportunity for pre-compliance review, so the statute was not unconstitutional. The Court accordingly reversed the trial court's judgment, vacated its orders in Annunciation House's favor, and remanded to that court for further proceedings.

H. ELECTIONS

1. Ballots

a) *In re Dall. HERO*, 698 S.W.3d 242 (Tex. Sept. 11, 2024) [24-0678]

This case concerns the interplay between citizen- and council-initiated ballot propositions to amend the charter of the City of Dallas.

Nonprofit Dallas HERO spearheaded the collection of signatures for three petitions to amend the city charter. After confirming that the petitions met statutory requirements and negotiating with HERO on the specific ballot language for the three propositions, the City passed an ordinance setting a November 2024 special election. The citizen-initiated propositions, if passed, would amend the city charter to authorize, and waive the City's governmental immunity for, citizen suits to force compliance with the law; compel

the City to conduct an annual community survey, the results of which would affect the city manager's compensation and job status; and require the City to appropriate a certain percentage of revenue for police hiring, compensation, and pension funding.

The City then approved three council-initiated propositions on the same topics for the same election. HERO filed a petition for writ of mandamus in the Supreme Court under the Elections Code.

The Court granted mandamus relief in part. Ballot language submit a question with such definiteness and certainty that the voters are not misled by omitting information that reflects the proposition's character and purpose. The Court concluded that the council-initiated propositions would confuse and mislead voters because they contradict and would supersede the citizen-initiated propositions without acknowledging those characteristics. The Court directed the City to remove the council-initiated propositions from the ballot but rejected HERO's request for additional revisions to the wording of the citizen-initiated propositions.

b) *In re Rogers*, 690 S.W.3d 296 (Tex. May 24, 2024) (per curiam) [23-0595]

This case concerns the statutory duty of an emergency services district's board of commissioners to call an election to modify the district's tax rate when presented with a petition containing the required number of signatures.

In the fall of 2022, voters in Travis County Emergency Services District No. 2 circulated a petition to change the sales and use tax rates in their district. The petition gathered enough signatures to surpass the threshold required by law. However, the district's Board rejected the petition, claiming it was "legally insufficient." The Board has never contended any of the petition signatures are invalid for any reason. Relators, three of the petition signatories, sought a writ of mandamus directing the Board to hold an election on their petition.

The Supreme Court conditionally granted mandamus relief. The Court first concluded that it had jurisdiction to grant relief against the Board because the Legislature authorized the Court to issue writs of mandamus to compel performance of a duty in connection with an election, and the duty here was expressly imposed on the Board. Second, the Court held that the Board has a ministerial, nondiscretionary duty to call an election to modify or abolish the district's tax rate based on a petition with the statutorily required number of signatures. The Court thus directed the Board to determine whether the petition contains the required number of valid signatures and, if so, to call an election.

I. EMPLOYMENT LAW

1. Age Discrimination

a) *Tex. Tech Univ. Health Scis. Ctr.–El Paso v. Flores*, 709 S.W.3d 500 (Tex. Dec. 31, 2024) [22-0940]

This case concerns Tech's jurisdictional plea in the plaintiff's age-discrimination case.

Tech employee Loretta Flores, age fifty-nine, applied to be chief of

staff for Tech's president, Dr. Richard Lange. Flores had previously complained of age discrimination by Tech and Lange in connection with an earlier reassignment. While interviewing Flores, Lange asked her age. He later testified that the question was intended to address the "elephant in the room"—Flores's prior discrimination complaint. Amy Sanchez, the thirty-seven-year-old director of Tech's office of auditing services, also applied for the chief-of-staff position. Lange hired Sanchez.

Flores sued Tech for age discrimination and retaliation. Tech filed a jurisdictional plea based on sovereign immunity, which the trial court denied. The court of appeals reversed on retaliation but affirmed on age discrimination. Tech filed a petition for review.

The Supreme Court reversed. In an opinion by Justice Lehrmann, the Court held that Flores did not present sufficient evidence that the reason for not hiring her was untrue and a mere pretext for discrimination. The Court pointed to the undisputed evidence that both candidates have relevant experience and qualifications and declined to second-guess the manner in which Lange weighed those qualifications. The Court further reasoned that Lange's asking Flores's age is not evidence of pretext when viewed in the context of his knowledge of her prior discrimination claim. The Court thus held that Flores failed to raise a genuine issue of material fact that age was a motivating factor in Lange's hiring decision.

Justice Blacklock concurred, opining that the *McDonnell Douglas* formula has no foundation in the statutory text governing discrimination claims. He emphasized that the chief of staff is a person in whom the president places significant trust and that there is no basis in the record for a reasonable factfinder to conclude that Lange subjectively believed Flores would be better suited to the position than Sanchez if not for her age.

Justice Young also concurred, echoing Justice Blacklock's call for reexamination of the Court's burden-shifting framework for analyzing discrimination claims.

2. Disability Discrimination

a) *Dall. Cnty. Hosp. v. Kowalski*, 704 S.W.3d 550 (Tex. Dec. 31, 2024) (per curiam) [23-0341]

This case concerns disability-based discrimination and retaliation.

Sheri Kowalski served as Director of Finance at Parkland Hospital. In late 2017, Kowalski asked Parkland management to make changes to her workstation to alleviate neck and upper back pain. Parkland had Kowalski and her medical provider complete several forms. Kowalski repeatedly disclaimed having any ADA-covered disability and complained that the tedious process was unnecessary. Around the same time, Kowalski's position at Parkland was eliminated. Kowalski sued, alleging disability discrimination and retaliation under Chapter 21 of the Labor Code.

The trial court denied Parkland's plea to the jurisdiction, concluding that Kowalski had created a fact issue on her discrimination and retaliation claims. The court of appeals affirmed.

The Supreme Court held that Kowalski failed to create a fact issue on any of her claims. Evidence of neck pain without a showing that the pain significantly limits any activity, the Court explained, is no evidence of a disability under Chapter 21. Further, Parkland's having directed Kowalski to its formal accommodation process is not evidence that Parkland regarded Kowalski as disabled. Finally, the Court noted that Kowalski's complaints that Parkland did not require another employee to complete the same process—absent a showing that either employee is disabled—is no evidence that Parkland was on notice of disability-based discrimination. Kowalski's repeated insistence—confirmed by her medical provider—that she does not have a disability further illustrated these points. Without a fact issue on any claim, Parkland's plea to the jurisdiction should have been granted.

Accordingly, the Court reversed the court of appeals' judgment, rendered judgment for Parkland, and dismissed the case for lack of jurisdiction.

3. Employment Discrimination

a) *Butler v. Collins*, ___ S.W.3d ___, 2025 WL 1478180 (Tex. May 23, 2025) [24-0616]

This certified question concerns whether Chapter 21 of the Texas Labor Code, which governs causes of action arising out of various forms of discrimination, harassment, and retaliation in the workplace, abrogates certain common law tort claims against individual coworkers.

After Southern Methodist University denied Professor Cheryl Butler's application for tenure, Butler filed suit against SMU and various SMU employees, alleging she was subjected to a racially discriminatory tenure process. Butler asserted various statutory and common law claims, including Chapter 21 claims against SMU and common law claims of fraud, defamation, and conspiracy to defame against the employee defendants. The defamation claims stemmed from allegedly false statements the employee defendants made about Butler during the tenure process. The federal district court granted a motion to dismiss the common law claims brought against the employee defendants, holding the claims were abrogated by Chapter 21. The Fifth Circuit certified the question whether Chapter 21 abrogates "a plaintiff-employee's common-law defamation and/or fraud claims against another employee to the extent that the claims are based on the same course of conduct as discrimination and/or retaliation claims asserted against the plaintiff's employer."

The Supreme Court answered the question "no." In *Waffle House, Inc. v. Williams*, the Court held that Chapter 21 provides the exclusive remedy against an employer when the "gravamen of a plaintiff's case" is Chapter 21-covered discrimination. However, Chapter 21 does not subject individual employees to liability, and the Court concluded that nothing in Chapter 21 indicates legislative intent to immunize a non-employer from recognized common law claims based on that individual's own tortious conduct. In so holding, the Court emphasized that to the extent the employer's and employee's conduct caused the same

injury, the plaintiff is not entitled to a double recovery. The Court further noted that Butler's Chapter 21 and defamation claims are premised on alternative causation theories with respect to any employment-related damages.

4. Sexual Harassment

a) *Fossil Grp., Inc. v. Harris*, 691 S.W.3d 874 (Tex. June 14, 2024) [23-0376]

The issue in this workplace sexual-harassment case is whether the summary-judgment record bears any evidence that a company knew or should have known its employee was being harassed and failed to take prompt remedial action.

Shortly after Fossil Group hired Nicole Harris as a sales associate, the assistant store manager sent her sexually explicit content through social media. Harris told some colleagues about the conduct but did not tell anyone in management. After a brief term of employment, Harris voluntarily resigned. A week later, her store manager learned of the harassment from another source, met with her, and immediately reported it to human resources. Fossil then fired the assistant store manager.

Harris sued Fossil for a hostile work environment, alleging that she had reported the harassment by an email through Fossil's anonymous reporting system days before she resigned. Fossil moved for summary judgment, challenging the email's existence with a report from the system showing that it never received the complaint and asserting that its subsequent actions were prompt and remedial. The trial court granted summary judgment. But the court of appeals reversed, holding that Harris's testimony regarding her email is some evidence Fossil knew of the harassment without taking remedial action.

The Supreme Court reversed the court of appeals' judgment and reinstated the trial court's take-nothing judgment. The Court held that (1) Fossil's actions following the date of the email, even if taken in response to learning of the harassment from another source, were sufficiently prompt and remedial as a matter of law to avoid liability, and (2) Harris did not adduce evidence that Fossil knew or should have known of the harassment before that date.

Justice Blacklock filed a concurring opinion, emphasizing that federal Title VII sexual-harassment authorities do not play any formal role beyond what the Court has already recognized in the interpretation and application of Texas statutory law on sexual harassment.

Justice Young filed a concurring opinion, concluding that Harris's testimony regarding her email at most raised a presumption that Fossil was notified of her harassment, which Fossil rebutted through its generated report that it did not receive her complaint through the anonymous reporting system.

5. Whistleblower Actions

a) *City of Denton v. Grim*, 694 S.W.3d 210 (Tex. May 3, 2024) [22-1023]

In this case, the Court addressed the scope of the Texas Whistleblower Act. Plaintiffs Grim and Maynard were employees of the City of Denton. They

sued the city under the Whistleblower Act after they were terminated. They alleged they were fired for reporting that city council member Briggs had violated the Public Information Act and the Open Meetings Act by meeting at her home with a reporter and disclosing confidential vendor information. The trial court rendered judgment on the jury's verdict for plaintiffs. A divided court of appeals affirmed.

The Supreme Court reversed and rendered judgment for the city. The Act only applies to reports of a violation of law "by the employing governmental entity or another public employee." Briggs was not "another public employee" because Denton's city council members are not paid for their service. The case thus turned on whether Briggs' actions could be imputed to the city as the plaintiffs' "employing governmental entity." The Court answered that question no. The evidence showed that Briggs had acted alone and was not acting on behalf of the city or the city council. Under Texas law, a city council acts as a body through a duly called meeting. Under principles of agency law, a city might authorize a single city council member to act on the city's behalf, but there was no evidence here to support such a theory. It was undisputed that Briggs acted entirely on her own, without the knowledge of other council members or employees, and that she did not purport to be acting for the city. On the contrary, Briggs opposed the city council's support for a new power plant and this opposition motivated her communications with the reporter.

J. EVIDENCE

1. Privilege

a) *In re Richardson Motorsports, Ltd.*, 690 S.W.3d 42 (Tex. May 10, 2024) [22-1167]

The issue in this case is whether a minor's psychological treatment records are discoverable under the patient-litigant (*i.e.*, patient-condition) exceptions to the physician-patient and mental-health-information privileges.

Father purchased an ATV from Richardson. During a ride with his two children, E.B. and C.A.B, a recalled steering mechanism malfunctioned, causing the vehicle to roll over. E.B. suffered physical injuries and contemporaneously witnessed her brother's death. E.B. later sued Richardson for negligence, seeking damages for her physical injuries and for mental anguish. During discovery, Richardson requested E.B.'s psychological treatment records from E.B.'s treating psychologist and pediatrician, and E.B. moved to quash the requests, claiming privilege under Texas Rules of Evidence 509(c) and 510(b). The parties primarily disputed the extent to which E.B.'s mental condition was at issue and the applicability of the patient-condition exceptions.

Following the trial court's denial of the motions to quash, E.B. filed a petition for writ of mandamus. The court of appeals conditionally granted mandamus relief vacating the trial court's orders, holding that E.B.'s routine claim of mental anguish was insufficient to trigger the patient-condition exceptions.

Richardson filed a petition for writ of mandamus in the Supreme Court and the Court conditionally

granted relief. After rejecting the argument that bystander recovery alone was sufficient to trigger the exceptions, the Court held that E.B.'s mental condition is part of both her claim and Richardson's causation defense. As such, the patient-condition exceptions to privilege apply and E.B.'s records are discoverable.

K. FAMILY LAW

1. Division of Marital Estate

a) *In re J.Y.O.*, 709 S.W.3d 485 (Tex. Dec. 31, 2024) [22-0787]

This divorce case concerns the characterization and division of a discretionary performance bonus, the marital residence, and a retirement account.

Lauren and Hakan Oksuzler were married in 2010. The trial court granted them a divorce in December 2019, but litigation continued relating to the division of the marital estate. One issue is a performance bonus of $140,000 that Hakan received from his employer, Bank of America, in early 2020. The evidence shows that Hakan has received a bonus annually as part of his compensation; that the bonus is discretionary and contingent on Hakan's and the Bank's performance during the previous calendar year; and that Hakan must still be employed by the Bank on the date of payment to receive it. The Supreme Court held that the characterization of a bonus—like any compensation—depends on when it was earned and that a discretionary bonus paid after divorce for work performed during marriage is community property. Because the bonus Hakan received in 2020 was for work performed during marriage, it is community property.

The second issue is the marital residence, which Hakan owned before marriage but refinanced during marriage. The deed executed in connection with the refinancing lists both Hakan and Lauren as grantees. The Supreme Court affirmed the court of appeals' judgment that Hakan and Lauren each own an undivided one-half interest in the home as tenants in common. Texas caselaw establishes a "gift presumption" in the context of real-property conveyances between spouses. When the marital home was purchased by one spouse before marriage, and a new deed executed during marriage purports to convey an interest in the home to the other spouse, it raises a presumption that the owner spouse intended to give the other spouse an undivided one-half interest in the property as a gift. This presumption can be rebutted by clear-and-convincing evidence that a gift was not intended, but the Court held Hakan presented no evidence to rebut the presumption here.

As to Hakan's 401(k) account, the Court noted Hakan contributed to the both during the marriage. It was therefore presumptively community property, and any separate property within the account must be traced to contributions made before marriage. The Court held that Hakan failed to overcome the community-property presumption.

The Court thus affirmed in part, reversed in part, and remanded to the trial court for further proceedings.

2. Divorce Decrees

a) *In re Marriage of Benavides*, 712 S.W.3d 561 (Tex. Apr. 25, 2025) [23-0463]

This case concerns the effect of one spouse's death on the appeal from a divorce decree.

When Carlos and Leticia Benavides married, they signed pre- and post-marital agreements stating that each spouse's property would belong solely to that spouse. In 2011, Carlos's adult children filed for guardianship over Carlos's person and estate. Soon after, Carlos signed documents that named Leticia as his executor and left his estate to her. The guardianship court determined that Leticia lacked standing to contest the guardianship and appointed guardians for Carlos.

Carlos's daughter Linda moved Carlos from his marital home onto her property. She was later appointed as Carlos's permanent guardian. Linda then filed for divorce on Carlos's behalf on the ground that he and Leticia had lived apart for three years. The trial court granted the divorce. Leticia appealed, but Carlos died two weeks later. The court of appeals held that Carlos's death mooted the appeal.

The Supreme Court reversed. It held that Carlos's death did not moot the appeal because whether the marriage ended by divorce or by death substantially affects Leticia's property interests under the 2011 Will, which has not yet been determined to be invalid.

The Court also held that to whatever extent the law may allow a guardian to seek a divorce on her ward's behalf, it requires the court to grant the guardian the express authority to file for divorce and to find that the divorce would promote the ward's well-being and protect his best interests. The lower court did not make such a finding in this case and, because Carlos died, cannot do so. The Court therefore vacated the divorce decree and dismissed the case.

Chief Justice Blacklock concurred. While he agreed the Court did not need to reach the issue of whether a guardian can seek a divorce on her ward's behalf, he noted the long-held traditional view that a guardian cannot obtain a divorce on behalf of a ward who cannot express his desire to divorce.

3. Spousal Support

b) *Mehta v. Mehta*, ___ S.W.3d ___, 2025 WL 1733267 (Tex. June 20, 2025) [23-0507]

At issue in this case is whether the trial court abused its discretion in awarding spousal maintenance in a divorce decree.

Before they divorced, Hannah and Manish Mehta had three children, one of whom was a "medically fragile" child. The trial court ordered Manish to pay child support and spousal maintenance to Hannah. Manish appealed. The court of appeals reversed the spousal maintenance award, concluding that Hannah presented insufficient evidence that she would lack sufficient property after the divorce to meet her minimum reasonable needs. Hannah petitioned the Supreme Court for review.

The Court reversed and reinstated the spousal maintenance award. The Court held that the court of appeals erred by considering only the incomplete quantitative evidence of Hannah's expenses to the exclusion of other

evidence, including testimony that she was unable to pay essential, basic living expenses. The Court also concluded that courts may consider child support payments received by the spouse seeking maintenance, provided that the court also considers child-related expenses that the custodial spouse will incur. Hannah provided sufficient evidence that she would lack sufficient property after the divorce to provide for her minimum reasonable needs. Because Hannah also established that she is the custodial parent of a disabled child requiring substantial care and personal supervision, the trial court did not abuse its discretion in finding that she was eligible for spousal maintenance.

Justice Lehrmann filed a concurring opinion, emphasizing that courts determining eligibility for spousal maintenance should consider all available income—including child support payments—and all reasonable expenses—including child-related expenses—because both materially affect the seeking spouse's ability to meet her minimum reasonable needs.

4. Termination of Parental Rights

a) *In re A.V.*, 697 S.W.3d 657 (Tex. Aug. 30, 2024) (per curiam) [23-0420]

The issue in this case is whether evidence of a parent's drug use alone is sufficient to terminate parental rights for endangerment.

The trial court terminated both parents' rights to A.V. after hearing evidence that both parents used drugs during pregnancy, did not complete court-ordered services including drug testing and refraining from drug use, and only sporadically attended visitation. The court of appeals affirmed, citing its own precedent for the proposition that mere illegal drug use is sufficient to terminate. The Supreme Court subsequently clarified that illegal drug use accompanied by circumstances indicating related dangers to the child can establish a substantial risk of harm, in *In re R.R.A.*, 687 S.W.3d 269 (Tex. 2024).

The Supreme Court denied the parents' petition for review, reaffirming the endangerment review standards set forth in *R.R.A.* in a per curiam opinion. The evidence detailed by the court of appeals shows a pattern of behavior sufficient to support the court of appeals' decision under the *R.R.A.* standards.

b) *In re N.L.S.*, ___ S.W.3d ___, 2025 WL 1687924 (Tex. June 13, 2025) (per curiam) [23-0965]

The issue in this case is whether legally sufficient evidence supported the trial court's finding that a parent engaged in conduct that endangered his child's well-being.

The Department of Family and Protective Services removed N.L.S. and from his mother's home and initiated termination proceedings against the parents, including Petitioner, N.L.S.'s father. Father has an extensive criminal history and has been incarcerated for most of N.L.S.'s life.

The trial court terminated Father's parental rights to N.L.S., finding that he engaged in conduct or knowingly placed N.L.S. with persons who engaged in conduct that endangered

N.L.S.'s physical or emotional well-being under Family Code Section 161.001(b)(1)(E) and that termination was in N.L.S.'s best interest.

The court of appeals reversed. It held the evidence was legally insufficient to support termination because the Department did not establish a causal link between Father's criminal conduct and any alleged endangerment to N.L.S.

The Supreme Court reversed. It held that a parent's pattern of behavior that presents a substantial risk of harm to the child permits a factfinder to reasonably find endangerment under Subsection (E). Proof that the parent's conduct directly harmed the child is not required. Father's pattern of escalating criminal convictions, his choice to not monitor N.L.S.'s safety during his incarceration, and his minimal efforts to be part of N.L.S.'s life supported the trial court's endangerment finding. The Court remanded to the court of appeals to review the factual sufficiency of the endangerment finding, as well as the legal and factual sufficiency of the finding that termination was in N.L.S.'s best interest.

Chief Justice Blacklock filed a dissenting opinion. He would have affirmed the court of appeals' judgment that the evidence was legally insufficient to support termination under Subsection (E).

c) *Stary v. Ethridge*, ___ S.W.3d ___, 2025 WL 1271689 (Tex. May 2, 2025) [23-0067]

At issue in this case is the standard of proof that must support a domestic violence protective order barring parent-child contact for longer than two years.

Christine Stary and Brady Ethridge divorced in 2018 and agreed to share custody of their three children. In 2020, Ethridge applied for a protective order against Stary, alleging that Stary had committed conduct constituting felony family violence. The trial court granted the order, which, among other restrictions, prohibited Stary from communicating with her children for Stary's lifetime. The court of appeals affirmed, holding that due process does not require clear and convincing evidence to grant a lifetime protective order against a parent because such an order does not terminate parental rights.

The Supreme Court reversed. The Court first held that the protective order deprived Stary of her fundamental right to make decisions concerning the care, custody, and control of her children by prohibiting all contact with them. The Court next held that due process requires clear and convincing evidence to support the requisite findings for protective orders barring parent-child contact exceeding two years. Like parental termination orders, no-contact protective orders exceeding two years break the ties between parent and child and thus require a heightened evidentiary burden to reduce the risk of an erroneous deprivation of the fundamental right to parent. Finally, the Court held that a trial court must consider the best interest of the child in deciding whether to prohibit parental contact beyond two years.

The Court remanded the case to the trial court for a new protective order hearing in light of the standards announced.

L. FEDERAL PREEMPTION

1. Railway Labor Act

a) *Boeing Co. v. Sw. Airlines Pilots Ass'n*, ___ S.W.3d ___, 2025 WL 1717008 (Tex. June 20, 2025) [22-0631]

This case concerns preemption under the Railway Labor Act and associational standing.

SWAPA represents Southwest Airlines pilots and negotiates collective bargaining agreements with Southwest on their behalf. Boeing manufactures planes, and in 2011, launched the new 737 MAX. Southwest wanted its pilots to fly the MAX; the pilots refused. SWAPA alleges that Boeing inserted itself into SWAPA's negotiations with Southwest and falsely assured SWAPA that the MAX was safe to fly without additional training. SWAPA relied on Boeing's misrepresentations when it entered into a new contract, agreeing to fly the MAX. But after two MAX planes crashed, the FAA grounded them.

SWAPA sued Boeing. Boeing filed a plea to the jurisdiction arguing that (1) the Railway Labor Act preempts SWAPA's claims and (2) SWAPA lacks "associational standing" to pursue the claims on the individual pilots' behalf. In response to Boeing's standing challenge, SWAPA members assigned their claims against Boeing to SWAPA. Boeing then amended its plea to argue that the assignments are void as against public policy because they attempt to circumvent Texas law's associational-standing and class-action requirements. The trial court granted the plea and dismissed SWAPA's claims with prejudice.

The court of appeals held that (1) the Railway Labor Act does not preempt SWAPA's claims, (2) SWAPA lacks associational standing to pursue the claims on its members' behalf, but (3) the assignments are not void. The court modified the judgment so that it dismissed SWAPA's associational claims without prejudice.

The Supreme Court affirmed. It held that SWAPA's claims were not preempted because they do not depend on the interpretation of a collective bargaining agreement and the assignments are not void as against public policy. SWAPA therefore has standing to pursue its members' individual claims in a second suit, and the court of appeals did not err in modifying the judgment to dismiss without prejudice. The Court remanded to the trial court for further proceedings on the claims SWAPA asserted on its own behalf.

Justice Bland dissented in part. She would hold that the assignments are void because they attempt to circumvent statutory requirements for associational standing.

M. GOVERNMENTAL IMMUNITY

1. Official Immunity

a) *City of Houston v. Sauls*, 690 S.W.3d 60 (Tex. May 10, 2024) [22-1074]

The issue in this interlocutory appeal is whether a city established that official immunity would protect its police officer from liability in a wrongful-death suit for the purpose of retaining its governmental immunity under the Tort Claims Act.

Officer Hewitt was responding to a priority two suicide call when his vehicle struck a bicyclist crossing the

road, tragically ending the bicyclist's life. At the time of the accident, Hewitt was traveling 22 miles per hour over the speed limit and without lights or sirens to avoid agitating the patient on arrival. The bicyclist's family sued the City of Houston for wrongful death based on Hewitt's alleged negligence.

Relying on Hewitt's official immunity, the City moved for summary judgment, asserting that its governmental immunity was not waived. The trial court denied the motion, and the court of appeals affirmed, holding that the City did not establish Hewitt's good faith through the required need–risk balancing factors.

The Supreme Court reversed the court of appeals' judgment. Emphasizing that the good-faith test is an objective inquiry, the Court held that the City established Hewitt was (1) performing a discretionary duty while acting within the scope of his authority in responding to the priority-two suicide call and (2) acting in good faith, given that a reasonably prudent officer in the same or similar position could have believed his actions were justified in light of the need–risk factors. Because the plaintiffs failed to controvert the City's proof of Hewitt's good faith, the Court dismissed the case.

b) *City of Mesquite v. Wagner*, 712 S.W.3d 609 (Tex. May 2, 2025) (per curiam) [23-0562]

At issue in this case is whether an on-duty K-9 police officer was acting in good faith when his police service dog bit a fleeing criminal suspect.

Jason Crawford, an officer for the Mesquite Police Department, was on overnight K-9 duty when he received a call for assistance at the scene of a burglary in progress. When Officer Crawford arrived, he was directed to pursue multiple fleeing suspects on foot. One such suspect, Anthony Wagner, was arguing loudly with another officer while he was being placed in custody. Although Officer Crawford held his service dog, Kozmo, to his left side as he attempted to pass the altercation occurring on his right, Kozmo abruptly lunged toward Wagner, causing Officer Crawford to trip over the leash and fall. Kozmo bit Wagner, who was treated at a nearby hospital. Wagner sued the City of Mesquite, alleging his injury was caused by Officer Crawford's negligent handling of Kozmo.

The City filed a plea to the jurisdiction, arguing that it was entitled to governmental immunity because Officer Crawford retained official immunity at the time of the incident. The trial court denied the plea. The court of appeals affirmed, holding the City failed to establish that Officer Crawford was acting in good faith.

The Supreme Court reversed, holding Officer Crawford was entitled to official immunity that afforded the City derivative governmental immunity. Considering Officer Crawford's sworn affidavit submitted with the City's plea, the Court emphasized that Officer Crawford's description of the chaotic conditions was sufficient evidence of good faith that Wagner failed to controvert.

2. Texas Labor Code

a) *Tex. Tech Univ. Sys. v. Martinez*, 691 S.W.3d 415 (Tex. June 14, 2024) [22-0843]

The issue in this case is whether the plaintiff's petition alleged sufficient facts to demonstrate a valid employment-discrimination claim against university entities and thus establish a waiver of immunity.

Pureza "Didit" Martinez was terminated at age 72 from her position at the Texas Tech University Health Sciences Center. She sued the Center for age discrimination. Her petition also named as defendants Texas Tech University, the TTU System, and the TTU System's Board of Regents.

The University, the System, and the Board jointly filed a plea to the jurisdiction. They argued that only the Center, Martinez's direct employer, could be liable for her employment-discrimination claim. Martinez responded that she alleged sufficient facts to impose liability under the Labor Code against the other defendants. The trial court denied the plea. The court of appeals reversed the trial court's order as to the University, though it allowed Martinez to replead. The court affirmed as to the System and the Board, concluding that Martinez's allegations were sufficient. The System and the Board petitioned the Supreme Court for review.

The Court reversed. In an opinion by Justice Huddle, the Court first noted that to affirmatively demonstrate a valid employment-discrimination claim against defendants other than her direct employer, Martinez needed to allege sufficient facts showing that those defendants controlled access to her employment opportunities and that they denied or interfered with that access based on unlawful criteria. The Court held that Martinez's factual allegations and the exhibits attached to and incorporated in her petition fail to demonstrate she has a valid claim against the System or the Board. Because Martinez's petition does not affirmatively demonstrate that she cannot cure the jurisdictional defect, the Court remanded to the trial court to allow her to replead.

Justice Young filed a dissenting opinion. He would have held that Martinez's allegations are sufficient at this stage of the litigation, particularly under the Court's duty to liberally construe her pleading in a way that reflects her intent.

3. Texas Tort Claims Act

a) *City of Austin v. Powell*, 704 S.W.3d 437 (Tex. Dec. 31, 2024) [22-0662]

The issue in this case is whether the Texas Tort Claims Act waives the City of Austin's governmental immunity.

Officers Brandon Bender and Michael Bullock were involved in a police chase. Officer Bullock was closely following Officer Bender's vehicle. Officer Bender decided to make a sudden right turn. Unable to slow in time, Officer Bullock struck the side of Officer Bender's car. The two cars lost control, and Officer Bullock's car hit Noel Powell's minivan, which was stopped at the intersection.

Powell sued the City. The City filed a plea to the jurisdiction under the Act's emergency-response exception. To establish the emergency exception,

it was Powell's burden to create a fact issue on either Officer Bullock's compliance with an applicable statute or his recklessness during the chase. The trial court denied the City's motion, and the City filed an interlocutory appeal. The court of appeals affirmed, holding that there is a fact issue about whether Officer Bullock's actions were reckless.

The Supreme Court reversed. The Court held that the City's immunity to suit is not waived. First, no statute specifically applies to Officer Bullock's actions during the chase, and thus no fact issue could arise as to compliance with one. Second, no evidence supports characterizing Officer Bullock's actions as reckless. Reckless requires more than a momentary lapse in judgment. There must be evidence that the officer consciously disregarded a high degree of risk. Here, the accident report listed Officer Bullock's inattentiveness and failure to keep a safe following distance as reasons for the accident. At most, this evidence shows that Officer Bullock was negligent. Powell offered no other evidence to create a fact issue as to recklessness. Because the plaintiff must establish a waiver of sovereign immunity, Powell's inability to provide evidence essential to the emergency exception means that the City should have prevailed on its plea to the jurisdiction. Accordingly, the Court reversed the court of appeals' judgment and rendered judgment dismissing the case for lack of jurisdiction.

b) *City of Houston v. Gomez*, ___ S.W.3d ___, 2025 WL 1716878 (Tex. June 20, 2025) (per curiam) [23-0858]

This case concerns the circumstances in which a city's immunity is waived under the Texas Tort Claims Act when a police officer is responding to an emergency call.

A Houston police officer responding to an armed robbery in progress collided with another vehicle. The other driver sued the City of Houston for negligence. The City filed a plea to the jurisdiction, arguing the Act's waiver of immunity did not apply because the officer was responding to an emergency call. The trial court granted the plea, but the court of appeals reversed, concluding there was a disputed fact question as to whether the officer acted with conscious indifference or reckless disregard for the safety of others. On remand, the trial court denied the City's renewed plea to the jurisdiction, and the court of appeals affirmed. As to the officer's alleged recklessness, the court of appeals concluded that its original decision controlled as the law of the case.

The Supreme Court reversed and dismissed the claim. The Court held that the officer's actions amounted to no more than ordinary negligence, so there was no fact issue as to whether the officer acted with conscious indifference or reckless disregard. The Court also concluded that the court of appeals should have analyzed the evidence under this Court's more recent controlling precedents rather than relying on the law of the case doctrine.

c) *City of Houston v. Manning*, ___ S.W.3d ___, 2025 WL 1478506 (Tex. May 23, 2025) (per curiam) [24-0428]

The main issue in this case is whether the Texas Tort Claims Act waived the City of Houston's governmental immunity against claims based on negligence per se.

After a city fire engine operated by William Schmidt struck Chelsea Manning's vehicle, Manning sued the City, asserting various claims including negligence per se under the TTCA's waiver of immunity. To prove that Schmidt was negligent per se, Manning relied on various statutory standards of care under the Transportation Code. The City moved for summary judgment, asserting governmental immunity, but the trial court denied the City's motion. The court of appeals affirmed in relevant part. Viewing negligence per se, like simple negligence, as just one method of proving a breach of duty, the court held that the TTCA's waiver included claims based on negligence per se.

The Supreme Court affirmed in part. Citing Section 101.021(1) of the TTCA, which, among other things, waives governmental immunity for harm resulting from "negligence," the Court held that Manning's negligence per se claims were within the scope of the TTCA's waiver. When the statutory standard of care providing the basis for a negligence per se claim functions merely to define more precisely what conduct breaches the common law duty, the claim remains one for negligence and falls within the scope of the waiver. The Court remanded the case to the court of appeals for reconsideration of the City's other issues in light of the Court's recent decisions.

d) *City of Houston v. Rodriguez*, 704 S.W.3d 462 (Tex. Dec. 31, 2024) [23-0094]

The issue in this interlocutory appeal is whether the City of Houston established that official immunity protects its police officer from liability in a high-speed pursuit case.

Assisting in a prostitution sting, Officer Corral pursued a suspect fleeing in a stolen car at a high rate of speed. The suspect suddenly turned on a side street, and Corral followed. While making the turn, Corral hit the curb and struck a vehicle waiting at a stop sign. Corral later testified that he hit the curb due to his brakes not working. The driver and passenger of the vehicle sued the City.

The Texas Tort Claims Act waives a city's immunity from suit for injuries caused by its employee's negligence in operating a vehicle if the employee would be personally liable. But when government officials perform discretionary duties in good faith and within their authority, the law shields them from personal liability. The City moved for summary judgment based on Corral's official immunity. The trial court denied the motion, and the court of appeals affirmed. Relying on Corral's testimony that the brakes were not working, the intermediate court inferred that the brakes were deficient. Because Corral did not explain when he became aware that he was driving with deficient brakes, the court held that a fact issue on good faith precludes summary judgment.

The Supreme Court reversed and rendered judgment dismissing the case. The Court held that (1) a governmental employer bears the burden to assert and prove its employee's official immunity in a manner analogous to an affirmative defense; (2) when viewed in context, Corral's statement communicated that the brakes were functional, but their use did not accomplish his intended result of stopping the car before it hit the curb; and (3) the City established as a matter of law Corral's good faith in making the turn.

Justice Busby concurred to make two observations: evidence of an officer's recklessness may inferentially rebut the good-faith prong of official immunity, and the Court's opinion should not be construed as sanctioning the decision to initiate a high-speed chase to apprehend a suspected nonviolent misdemeanant.

e) *City of Killeen–Killeen Police Dep't v. Terry*, 712 S.W.3d 101 (Tex. Apr. 25, 2025) (per curiam) [22-0186]

The issue in this case is whether the Texas Tort Claims Act waived the City of Killeen's governmental immunity in a suit involving a collision with a police cruiser.

Terry sued the City's police department after a police cruiser responding to a 9-1-1 call struck his vehicle. The City filed a plea to the jurisdiction asserting governmental immunity. The trial court denied the plea, and the court of appeals affirmed.

The Supreme Court held that the court of appeals' analysis was inconsistent with its recent decision in *City of Austin v. Powell*, 704 S.W.3d 437 (Tex. 2024). Under *Powell*, which addressed the Tort Claims Act's "emergency exception," a court must first assess compliance with any applicable laws or ordinances and only then, and if necessary, turn to assessing the officer's alleged recklessness. Moreover, this suit also implicates the Tort Claims Act's distinct 9-1-1 exception, which may independently remove the plaintiff's claims from the Act's immunity waiver and should be addressed on remand.

Accordingly, the Supreme Court granted the City's petition for review, vacated the court of appeals' judgment, and remanded the case to the court of appeals for further proceedings.

4. Ultra Vires Claims

a) *City of Buffalo v. Moliere*, 703 S.W.3d 350 (Tex. Dec. 13, 2024) (per curiam) [23-0933]

The issue in this case is whether a city's governing body had authority to terminate a police officer and therefore is immune from suit.

The City of Buffalo's City Council fired police officer Gregory Moliere after he violated department policy by engaging in a high-speed chase while a civilian was riding along, resulting in an accident. Moliere sued the City, its mayor, and the City Council members, alleging that the City Council has no authority to fire him. The trial court dismissed Moliere's claims based on governmental immunity.

The court of appeals reversed. It held that there is a fact issue whether the City Council had authority to fire Moliere, so he properly alleged an ultra vires claim that should not have been summarily dismissed. The appellate

court concluded that the Local Government Code requires the City Council to pass an ordinance specifically authorizing termination of police officers and that the City's policy manuals are ambiguous and therefore created a fact issue regarding the City Council's authority to terminate Moliere.

In a per curiam opinion, the Supreme Court reversed and held that, to the extent Moliere alleged an ultra vires claim based on the City Council's lack of authority to fire him, the trial court properly dismissed that claim. The Court noted that the Local Government Code authorizes the City Council to "establish and regulate" the City's police force and that the City Council passed an ordinance requiring its approval of all police officers' hiring or appointment. The Court concluded that the statute and ordinance, considered together, authorize the City Council as a matter of law to terminate Moliere. The Court remanded to the court of appeals to consider a previously unaddressed argument regarding Moliere's separate claim that the City Council members violated Moliere's due process when he was terminated.

b) *Image API, LLC v. Young*, 691 S.W.3d 831 (Tex. June 21, 2024) [22-0308]

At issue is the interpretation of a statute requiring the Health and Human Services Commission to conduct annual external audits of its Medicaid contractors and providing that an audit "must be completed" by the end of the next fiscal year.

HHSC hired Image API to manage a processing center for incoming mail related to Medicaid and other benefits programs. In 2016, HHSC notified Image that an independent firm would audit Image's performance and billing for years 2010 and 2011. Image cooperated fully. The audit, completed in 2017, found that HHSC had overpaid Image approximately $440,000.

Image sued HHSC's executive commissioner for ultra vires conduct, alleging that she has no legal authority to audit Medicaid contractors outside the statutory timeframe. Image sought a declaration that the 2016 audit for years 2010 and 2011 violated the Human Resources Code and an injunction preventing HHSC from conducting or relying on any noncompliant audit. The parties filed cross-motions for summary judgment, and HHSC also filed a plea to the jurisdiction. The lower courts ruled for HHSC. The court reasoned that the lack of any textual penalty for noncompliance, coupled with HHSC's heavy workload, supported "forgo[ing] the common man's interpretation of 'must'" and construing the deadline as directory rather than mandatory.

The Supreme Court affirmed the part of the court of appeals' judgment dismissing Image's claims arising from the 2016 audit, while clarifying the mandatory–directory distinction in Supreme Court caselaw. After agreeing with the court of appeals that Image is a Medicaid contractor, the Court emphasized that a statute requiring an act be performed within a certain time, using words like shall or must, is mandatory. The deadline is therefore mandatory because it states that a statutorily required audit "must be completed" within the time prescribed. What consequences follow a failure to comply is

a separate question, which turns on whether a particular consequence is explicit in the text or logically necessary to give effect to the statute. Because there is no textual clue that the relief Image seeks is what the Legislature intended, the Court held that an injunction prohibiting HHSC from collecting overpayments found by the 2016 audit would be error. The Court remanded the case to the trial court for further proceedings on remaining claims.

N. INSURANCE

1. Policies/Coverage

a) *Ohio Cas. Ins. Co. v. Patterson-UTI Energy, Inc.*, 703 S.W.3d 790 (Tex. Dec. 20, 2024) [23-0006]

The issue in this case is whether an excess-insurance policy covers the insured's legal-defense expenses.

Patterson provides oil-and-gas equipment and services. To cover its risk, Patterson purchased a primary policy and multiple levels of excess policies from its broker, Marsh USA, Inc. A drilling-rig incident led to lawsuits against Patterson. The settlements and defense expenses triggered an excess policy from Ohio Casualty after exhausting the coverage limits of the lower-level policies. Ohio Casualty funded portions of the settlements but refused to indemnify Patterson for defense expenses.

The trial court granted Patterson's motion for summary judgment, concluding that the policy covers defense expenses. The court of appeals affirmed.

The Supreme Court reversed, holding that the policy does not cover Patterson's defense expenses. According to the Court, a "follow-form" excess policy like the one at issue in this case can incorporate an underlying policy to varying degrees. At all times, however, courts interpreting the agreement must start with the text of the excess policy, not that of the underlying policy. Here, the underlying policy undisputedly covers defense expenses. The court of appeals began with the underlying policy and thus erroneously concluded that the excess policy also covers defense expenses because it does not expressly exclude them. The court should instead have looked first to the excess policy, which provides its own statement of coverage that does not include defense expenses.

Accordingly, the Court reversed the court of appeals' judgment, rendered judgment for Ohio Casualty, and remanded the case to the trial court for further proceedings between Patterson and Marsh.

2. Pre-Suit Notice

a) *In re Lubbock Indep. Sch. Dist.*, 700 S.W.3d 426 (Tex. Oct. 25, 2024) (per curiam) [23-0782]

This case concerns the interpretation of an Insurance Code provision requiring pre-suit notice.

The Lubbock Independent School District sent a pre-suit notice to numerous insurance companies that provided the District with layers of coverage during two separate storms. Each notice stated that the "specific amount alleged to be owed" was $20 million. After filing suit, the District estimated in its initial disclosures that the covered damages would range from $100 to $250 million.

The insurers sought an abatement, asserting that the notice failed to comply with the Insurance Code's requirement that pre-suit notice include "the specific amount alleged to be owed by the insurer on the claim." The trial court denied the abatement, but the court of appeals granted the insurers' petition for writ of mandamus and directed the trial court to grant the abatement. The court of appeals held that the statute does not permit a claimant "to equivocate, or suggest an estimate, or offer a placeholder sum that might be changed after further investigation takes place"; instead, the statute requires the notice to "clearly articulate" the "precise sum alleged to be owed."

The Supreme Court disagreed with that holding. The Court observed that federal courts have consistently held that the "specific amount" language requires only that the notice assert a specific dollar amount; it does not require that the notice provide a "fixed and final total dollar sum" that is free from estimate and can never change. The Court commented that the federal courts' construction appears to be the one most consistent with the statute as a whole, especially in light of statutory provisions suggesting that the amount awarded may vary from the amount stated in the notice. But because the District's notice was inadequate for other reasons, the Court denied the District's mandamus petition in a per curiam opinion.

O. INTENTIONAL TORTS

1. Defamation

a) *Roe v. Patterson*, 707 S.W.3d 94 (Tex. Feb. 14, 2025) [24-0368]

In two certified questions, the United States Court of Appeals for the Fifth Circuit asks, "Can a person who supplies defamatory material to another for publication be liable for defamation?" and "If so, can a defamation plaintiff survive summary judgment by presenting evidence that a defendant was involved in preparing a defamatory publication, without identifying any specific statements made by the defendant?"

Jane Roe alleges she was sexually assaulted while attending Southwest Baptist Theological Seminary. Southwest later removed President Leighton Patterson, citing in part Patterson's mishandling of Roe's allegations. Seeking Patterson's reinstatement, a group of donors published a letter stating that Roe had lied to the police and falsely characterized a consensual relationship as assault. Roe sued Southwest and Patterson for defamation, claiming that Patterson's agent was the source of defamatory statements in the letter. The district court granted summary judgment for Southwest and Patterson, and the Fifth Circuit certified questions regarding liability for defamation.

The Supreme Court answered "yes" to both questions. It held that a person who supplies defamatory material to another for publication may be liable if the person intends or knows that the defamatory material will be published. A plaintiff may survive summary judgment without identifying the

specific statements the defendant made if the evidence is legally sufficient to support a finding that the defendant was the source of the defamatory content.

2. Fraud

a) *Keyes v. Weller*, 692 S.W.3d 274 (Tex. June 28, 2024) [22-1085]

At issue is whether Section 21.223 of the Business Organizations Code limits a corporate owner's personal liability for torts committed as a corporate officer or agent.

David Weller spent several months in employment negotiations with MonoCoque Diversified Interests LLC, which is wholly owned by Mary Keyes and Sean Nadeau. The parties exchanged emails detailing compensation terms, Weller's salary, a training supplement, and payments based on quarterly revenues. Weller declined other employment opportunities and accepted MonoCoque's employment offer. MonoCoque and Weller subsequently disagreed on the terms of the required compensation, and Weller resigned. MonoCoque denied owing Weller any additional compensation.

Weller sued MonoCoque for breach of contract and asserted fraud claims against Keyes and Nadeau individually, alleging that they are personally liable for their own tortious conduct. Keyes and Nadeau moved for summary judgment on the ground that Section 21.223 bars the claims against them individually because they were acting as authorized agents of MonoCoque. The trial court granted the motion, but the court of appeals reversed and remanded for further proceedings.

The Supreme Court affirmed. In a unanimous opinion by Justice Lehrmann, the Court explained that Section 21.223 does not shield a corporate agent who commits tortious conduct from direct liability merely because the agent also possesses an ownership interest in the company. Because Weller's claims against Keyes and Nadeau stemmed from their allegedly fraudulent conduct as MonoCoque's agents, not as its owners, they were not entitled to summary judgment on the ground that Section 21.223 shields them from liability.

Justice Busby concurred, opining that the statutory text and the Court's opinion provide guidance on future analysis of Section 21.223's effect on a shareholder's liability for tortious acts not committed as a corporate agent.

Justice Bland concurred, emphasizing the distinction between a shareholder's conduct in his role as an owner and conduct in his role as a corporate agent acting on the company's behalf.

b) *Roxo Energy Co. v. Baxsto, LLC*, ___ S.W.3d ___, 2025 WL 1349581 (Tex. May 9, 2025) (per curiam) [23-0564]

This case concerns whether summary judgment was properly granted on fraud claims.

Baxsto as lessee negotiated a mineral interest lease with Roxo. Roxo later purchased Baxsto's mineral rights to the same property. After the sale, Baxsto sued Roxo for fraud. Baxsto claimed Roxo had misled Baxsto into agreeing to an unproductive lease and then selling its mineral interests below market value by

misrepresenting (1) Roxo would not "flip" the lease but would instead make significant investments to develop it, (2) the amount of the bonus Roxo would pay Baxsto under the lease relative to other mineral owners in the area, and (3) Baxsto would pay the bonus before recording the lease. The trial court granted summary judgment against Baxsto on all claims. The court of appeals reversed.

The Supreme Court reversed the court of appeals and reinstated the trial court's judgment. The Court concluded that some of the alleged oral misrepresentations were contradicted by the parties' written agreements. The Court noted the parties were sophisticated and experienced, and could have included in their agreements the alleged oral promises. In these circumstances Baxsto's claims failed on the fraud element of justifiable reliance.

Regarding Roxo's alleged failure to disclose that it had recorded the lease earlier than the agreements permitted, the Court held Roxo had no duty to disclose facts to Baxsto because the parties lacked a confidential or fiduciary relationship. Insofar as Baxsto asserted an affirmative misrepresentation by Roxo regarding when Roxo would record the lease, there was no evidence that, in making this alleged representation, Roxo intended to induce Baxsto to sell its mineral interests as Baxsto claimed.

3. Tortious Interference

a) *Inwood Nat'l Bank v. Fagin*, 706 S.W.3d 342 (Tex. Jan. 31, 2025) (per curiam) [24-0055]

The issue in this case is whether a party can be liable for tortious interference with a trust agreement where the grantor's obligation to transfer property into the trust was conditioned on a third party's approval and the condition was not satisfied.

Kyle Fagin and his then-wife, Christy, signed a trust agreement for an inter vivos trust naming Kyle as the sole beneficiary. It provided that Christy intended to transfer her shares of Inwood Bank stock—her separate property—to the trust "upon approval" by Inwood. But Christy changed her mind and informed Inwood she no longer wished to complete the transfer, so Inwood never approved it. Kyle, individually and as trustee and beneficiary of the trust, sued Inwood. Among other claims, he alleged that Inwood tortiously interfered with the trust agreement by convincing Christy to revoke her intended transfer of the shares.

The trial court granted Inwood's motion for summary judgment on all claims, and the court of appeals reversed as to the tortious interference claim.

The Supreme Court held that summary judgment in Inwood's favor on the tortious interference claim was proper. The trust agreement did not vest Kyle with any contractual right to the shares absent Inwood's approval. The transfer of the shares was expressly conditioned on Inwood's approval, and that condition was never satisfied. Because the trust agreement's plain language contemplated only a future intent to transfer the shares, not a present transfer or gift, the trust agreement did not vest Kyle with any legal right to the shares with which Inwood could have interfered. Accordingly, the

Court reversed the court of appeals' judgment in part and reinstated the trial court's take-nothing judgment.

P. INTEREST

1. Simple or Compound

a) *Samson Expl., LLC v. Bordages*, 662 S.W.3d 501 (Tex. June 7, 2024) [22-0215]

The issues in this case are collateral estoppel and whether a late-charge provision in a mineral lease calls for simple or compound interest.

Samson Exploration holds oil-and-gas leases on properties owned by the Bordages. Each lease has an identical late-charge provision that provides for interest on unpaid royalties at a rate of 18%. A late charge is "due and payable on the last day of each month" in which a royalty payment was not made. After the Bordages sued to recover unpaid royalties and interest, Samson paid the unpaid royalties and the amount of interest it believed to be due, which Samson calculated by applying 18% simple interest to the unpaid royalties.

The parties continued to dispute whether the late-charge provision provides for simple or compound interest. On cross-motions for summary judgment, the trial court determined that the provision calls for compound interest and ordered Samson to pay another $13 million in compounded late charges. The court of appeals affirmed.

The Supreme Court reversed and remanded for further proceedings. The Court addressed first the Bordages' argument that Samson is collaterally estopped from relitigating the interpretation of the late-charge provision. In another case involving a different landowner, the court of appeals concluded that an identical late-charge provision called for compound interest, and the Supreme Court denied Samson's petition for review. The Court held that nonmutual collateral estoppel will not prevent a party from relitigating an issue of law in the Supreme Court when the Court has not previously addressed the issue, and the Court deems the issue to be important to the jurisprudence of the State.

The Court turned next to interpreting the late-charge provision. The Court held that because Texas law disfavors compound interest, an agreement for interest on unpaid amounts is an agreement for simple interest absent an express, clear, and specific provision for compound interest. Temporal references such as "per annum," "annually," or "monthly," standing alone, are insufficient to sustain the assessment of compound interest. The court of appeals thus erred by construing the language making a late charge "due and payable on the last day of each month" as providing for compound interest.

2. Usury

a) *Am. Pearl Grp., L.L.C. v. Nat'l Payment Sys., L.L.C.*, ___ S.W.3d ___, 2025 WL 1478179 (Tex. May 23, 2025) [24-0759]

This certified question asks the Supreme Court to construe statutory language governing the computation of interest to determine whether a loan agreement is usurious.

American Pearl Group, L.L.C., John Sarkissian, and Andrei Wirth entered into a loan agreement with National Payment Systems, L.L.C., which

included a specified total amount to be repaid over forty-two months of payments and a payment schedule listing each individual payment's allocation towards principal and interest. But the agreement did not list an exact percentage interest rate.

Pearl sued NPS seeking a declaration that the loan agreement and a related option agreement violated Texas usury law because the total amount of interest under the agreement was more than the maximum allowable amount. The federal district court granted NPS's motion to dismiss, utilizing the "spreading" method for calculating interest and determining that, based on that calculation, the total amount of interest was less than the statutorily maximum allowable amount.

The Fifth Circuit reversed the dismissal of Pearl's usury claim relating to the option agreement but, as to the loan agreement, recognized that the "spreading" method derived from two Texas Supreme Court decisions involving distinguishable interest-only loans and that there was a lack of clear guidance for computing the maximum allowable interest for the loan. The Fifth Circuit therefore certified a question to the Supreme Court, asking whether calculating the maximum allowable interest rate "by amortizing or spreading, using the actuarial method" requires courts to base interest calculations on the declining principal balance for each payment period, rather than the total principal amount of the loan proceeds.

The Supreme Court answered in the affirmative and held that when a loan provides for periodic principal payments, the mandate to use the "actuarial method" found in the Texas Finance Code requires courts to calculate the maximum permissible interest based on the declining principal balance for each payment period. The Court emphasized that the Legislature changed the statutory text from requiring the "equal parts" approach to requiring the "actuarial method," a term with a well-established meaning in financial and legal contexts. The Legislature's changing of statutory text is presumed to be deliberate and therefore must be respected.

Q. JURISDICTION

1. Mandamus Jurisdiction

a) *Paxton v. Am. Oversight*, ___ S.W.3d ___, 2025 WL 1774176 (Tex. June 27, 2025) [24-0162]

The issue in this case is whether Section 552.321 of the Government Code gives district courts jurisdiction to issue a writ of mandamus against two constitutional executive officers, the Governor and Attorney General.

Beginning in 2022, American Oversight sent various Public Information Act requests to the Governor's office and the Attorney General's office. Both offices provided some information. Both obtained opinions authorizing withholding of other information. As to other information requested, the offices found no responsive documents. American Oversight filed a petition for writ of mandamus in district court against the Governor and the Attorney General. The Governor and Attorney General filed pleas to the jurisdiction, arguing sovereign immunity was not waived. The district court denied the

pleas, and the court of appeals affirmed.

The Supreme Court reversed, holding the district court lacked jurisdiction to issue a writ of mandamus against either officer. Under Section 22.002(c) of the Government Code, "only the supreme court has the authority to issue a writ of mandamus . . . against any of the officers of the executive departments of the government of this state." Section 22.002(a) further provides that even the Supreme Court may not issue such a writ against the Governor. Section 552.321(b) of the Public Information Act provides that "[a] suit filed by a requestor under this section must be filed in a district court for the county in which the main offices of the governmental body are located." The Supreme Court previously held that district courts generally have no jurisdiction over executive officer respondents. Any exception to this rule would require express statutory authorization by the legislature naming district courts as the proper fora. The Court held that Section 552.321(b) does nothing to expressly authorize district courts as the proper fora for mandamus suits against constitutional executive officers.

Justice Young filed a concurring opinion. Noting that the Court's opinion properly did not reach the question whether any court in this state could exercise mandamus jurisdiction over the Governor, he suggested it was unlikely any court may properly do so.

1. Mootness

a) *Tex. Dep't of Fam. & Protective Servs. v. Grassroots Leadership, Inc.*, ___ S.W.3d ___, 2025 WL 1642437 (Tex. May 30, 2025) [23-0192]

The issues in this case are whether the plaintiffs' claims are moot and whether, if they are, courts may nonetheless adjudicate them on the ground they raise an issue of considerable public importance.

The case began with a Texas Department of Family and Protective Services rule establishing licensing requirements for family residential centers used to detain immigrant families who had illegally entered the United States. Without a valid state license, the federal government could not detain minors there for more than a brief time. Several mothers detained at facilities licensed under the rule, along with Grassroots Leadership, Inc., challenged the rule as invalid under state law.

The trial court held the rule was invalid and enjoined the department from granting licenses under it. The court of appeals initially reversed, holding that the plaintiffs lacked standing, but this Court reversed. On remand, the court of appeals held the claims were moot because the detainees were no longer at the facilities and the capable-of-repetition-yet-evading-review exception to mootness did not apply. But the court invoked a "public-interest exception" to mootness which allowed it to reach the merits of the case. It then affirmed the trial court's invalidation of the rule.

The Supreme Court reversed the court of appeals' judgment as to jurisdiction. All plaintiffs had been released from the facilities, and none had demonstrated a reasonable likelihood

of being re-detained with minor children, so the court of appeals correctly described the case as moot. For the same reasons, the capable-of-repetition exception did not apply. The Court then held that, under the Texas Constitution's text, structure, and history, a live dispute is essential at all stages of litigation, regardless of the importance of the underlying issues. Thus, there is no such thing as a public-interest exception to mootness in Texas, and the court of appeals erred in relying on that exception to reach the merits. Accordingly, the Court vacated the court of appeals' judgment as to the merits, and rendered a judgment of dismissal without prejudice for lack of subject-matter jurisdiction.

2. Personal Jurisdiction

a) *BRP-Rotax GmbH & Co. KG v. Shaik*, ___ S.W.3d ___, 2025 WL 1727903 (Tex. June 20, 2025) [23-0756]

The issue in this case is whether the trial court had specific personal jurisdiction over Rotax under the stream-of-commerce-plus test.

Sheema Shaik suffered serious injuries in a plane crash in Texas. Rotax is the designer and manufacturer of the airplane's engine. Shaik and her husband sued Rotax in Texas for strict liability, negligence, and gross negligence. Rotax is an Austrian company. An independent Bahamian distributor, Kodiak, purchased the engine at issue in Austria, shipped it to the Bahamas, and then sold it to its sub-distributor in Florida, which in turn sold the engine to the Texas company that installed the engine into the plane that crashed.

Rotax filed a special appearance challenging the trial court's personal jurisdiction over Rotax given its lack of physical presence in or direct connection to Texas. The trial court denied the special appearance, and the court of appeals affirmed. It held that under the stream-of-commerce-plus test, Rotax had sufficient indirect contacts with Texas for Texas courts to exercise specific personal jurisdiction.

The Supreme Court reversed. It reiterated that stream-of-commerce jurisdiction requires a stream, not a dribble, caused by the defendant rather than only by third parties. The engine here came to Texas by the unilateral actions of third parties—not any "stream" engineered, controlled, or manipulated by Rotax. Instead, under a distribution agreement, Rotax's sole relevant distributor, Kodiak, had substantial discretion in marketing and advertising Rotax products and was responsible for warranty claims and establishing repair centers throughout its territory, which spanned nearly the entire Western Hemisphere. No other evidence showed that Rotax purposefully availed itself of the privilege of doing business in Texas. Thus, the Supreme Court rendered judgment dismissing the Shaiks' claims against Rotax for lack of personal jurisdiction.

Justice Busby filed a concurring opinion, urging the U.S Supreme Court to reconsider its current approach to personal jurisdiction, which yields unpredictable and inconsistent outcomes in factually similar cases and is unmoored from the federal Constitution's text and history.

b) *Hyundam Indus. Co. v. Swacina*, ___ S.W.3d ___, 2025 WL 1717010 (Tex. June 20, 2025) (per curiam) [24-0207]

The issue in this case is whether the trial court had specific personal jurisdiction over a foreign manufacturer for claims based on an allegedly defective product.

Johari Powell was injured when her 2009 Hyundai Elantra stalled in the center lane of traffic and another car rear-ended her. Powell alleges that her Elantra stalled because its fuel pump failed.

Paul Swacina, on behalf of Powell and her minor children, sued multiple defendants for various causes of action, including Hyundam Industrial Company, Ltd., the manufacturer of the Elantra's fuel pump. Hyundam filed a special appearance requesting that the trial court dismiss the case against it for lack of personal jurisdiction. In support, it attached an affidavit by Jinwook Chang, a Hyundam director, detailing the fuel pump's manufacturing and sales processes. Swacina responded with evidence purporting to show that Hyundam was subject to personal jurisdiction in Texas and objected to Chang's affidavit for lack of personal knowledge. The trial court overruled Swacina's objection and denied Hyundam's special appearance. The court of appeals affirmed.

The Supreme Court reversed and dismissed the case against Hyundam for lack of personal jurisdiction. The Court held that the affidavit was sufficiently based on Chang's personal knowledge because Chang detailed his experience at Hyundam, the knowledge he obtained in his roles, and the documents he reviewed to prepare his affidavit. The Court further held there was no evidence Hyundam targeted Texas, so it did not purposefully avail itself of the Texas market. Hyundam designing the fuel pump for North American specifications did not constitute additional conduct targeting Texas. Nor did Swacina's evidence that a replacement fuel pump was purchased in Texas, Hyundam maintained a website in English, and Hyundai Motor Company sold Elantras in the United States show that Hyundam targeted Texas.

3. Ripeness

a) *The Commons of Lake Hous., Ltd. v. City of Houston*, 711 S.W.3d 666 (Tex. March 21, 2025) [23-0474]

This case concerns when an inverse-condemnation or takings claim becomes ripe.

The Commons is the developer of a master-planned community, parts of which are located within the City's 100-year or 500-year floodplains. In 2018, the City passed a Floodplain Ordinance, which raised the required elevation for new residential structures within the floodplains. The Commons sued the City for inverse condemnation and takings. The City filed a plea to the jurisdiction arguing that the claims were unripe because the City had not made a final decision on a permit or application. The Commons argued that the City unreasonably withheld a decision, so its claims were ripe under the futility doctrine.

The trial court denied the City's plea, and the court of appeals reversed.

The court of appeals held that The Commons's claims were barred by governmental immunity because the Floodplain Ordinance was a valid exercise of the City's police power and made pursuant to the National Flood Insurance Program and could not, therefore, constitute a taking.

The Supreme Court reversed. It rejected the notion that the City's exercise of police power excuses it from paying for taking property, stating that whether a regulation constitutes a valid exercise of the police power is irrelevant to whether the regulation causes a compensable taking. It then rejected the argument that a takings claim must fail as a matter of law if it is based on a local ordinance adopted to comply with the National Flood Insurance Program. The cases relied upon by the court of appeals were inapposite because they concerned facial challenges to the NFIP, whereas this case concerned an as-applied challenge. The Court did not address whether The Commons can prevail on its as-applied challenge on remand.

Finally, the Court held that The Commons's claims were ripe and it had standing to pursue them. The City's assertions that The Commons could never obtain a permit indicate the finality of the City's decision. The Commons had standing because it possessed a vested interest in the property at issue and its claim is redressable. The Court remanded the case to the trial court.

4. Service of Process

a) *Tex. State Univ. v. Tanner*, 689 S.W.3d 292 (Tex. May 3, 2024) [22-0291]

The main issue in this case is whether diligence in effecting service of process is a "statutory prerequisite to suit" under Section 311.034 of the Government Code and, thus, a jurisdictional requirement in a suit brought against a governmental entity.

In 2014, Hannah Tanner was injured after being thrown from a golf cart driven by her friend, Dakota Scott, a Texas State University employee. Shortly before the two-year statute of limitations ran in 2016, Tanner filed a lawsuit under the Texas Tort Claims Act against the University, Scott, and another defendant. Tanner did not serve the University until 2020, three-and-a-half years after limitations had run. The University filed a plea to the jurisdiction, alleging that Tanner failed to use diligence in effecting service on the University and arguing that Tanner's untimely service meant that she had failed to satisfy a statutory prerequisite to suit under Section 311.034. The trial court granted the plea, but the court of appeals reversed.

The Supreme Court reversed and remanded. The Court held that the statute of limitations, including the requirement of timely service, is jurisdictional in suits against governmental entities and that the University's plea to the jurisdiction was the proper vehicle to address Tanner's alleged failure to exercise diligence. The Court reasoned that diligence is a component of timely service and pointed to its precedent holding that if service is diligently effected after limitations has expired, the date of service will relate back to the date of filing. The Court also noted that the statute of limitations for personal injuries requires a person to

"bring suit" within two years of the date the cause of action accrues, and it cited precedent establishing that "bringing suit" includes both filing the petition and achieving service of process.

The Court went on to hold that Tanner could not establish diligence in service on the University. But rather than render a judgment of dismissal, the court remanded to the court of appeals to address in the first instance Tanner's alternative legal theory under the Tort Claims Act that her service on Scott satisfied her obligation to serve the University.

5. Standing

a) *Tex. Right to Life v. Van Stean*, 702 S.W.3d 348 (Tex. Nov. 22, 2024) (per curiam) [23-0468]

This case concerns a motion to dismiss under the Texas Citizens Participation Act in a suit challenging the constitutionality of the Texas Heartbeat Act.

The plaintiffs allege that the defendants organized efforts to sue those who may be or may be perceived to be violating the Texas Heartbeat Act. The defendants filed a motion to dismiss under the TCPA, which the trial court denied. The defendants filed an interlocutory appeal, and the court of appeals held that the TCPA does not apply to the plaintiffs' claims. It therefore affirmed the trial court's order. The defendants petitioned for review.

The Supreme Court held that the court of appeals erred by determining the TCPA's applicability before addressing the disputed jurisdictional question of the plaintiffs' standing. The Court explained that the standing inquiry is not influenced by the TCPA's multi-step framework, the second step of which requires a plaintiff to show clear and specific evidence of each element of every claim. That heightened standard is relevant only if the TCPA applies. But *whether* it applies (or, if it does, whether a plaintiff can satisfy the clear-and-specific-evidence requirement), are merits questions that a court may not resolve without first assuring itself that it has subject-matter jurisdiction.

The Court further held that under its precedents, a pending TCPA motion cannot create jurisdiction when a court lacks jurisdiction to entertain the underlying case. A claim for fees and sanctions under the TCPA can prevent an appeal from becoming moot, but only if a court with subject-matter jurisdiction had already determined that the TCPA movant prevails. If the plaintiffs here lack standing, then no court ever had jurisdiction to declare the defendants to be prevailing parties. Accordingly, the Court reversed the court of appeals' judgment and remanded the case to that court for further proceedings.

6. Subject Matter Jurisdiction

a) *Hensley v. State Comm'n on Jud. Conduct*, 692 S.W.3d 184 (June 28, 2024) [22-1145]

This case raises jurisdictional issues arising from a suit under the Texas Religious Freedom Restoration Act.

Justice of the Peace Dianne Hensley declined to officiate marriages for same-sex couples due to her

religious beliefs but referred those couples to another officiant. The Commission issued a public warning against Hensley for violating the Canon proscribing extra-judicial conduct that casts doubt on a judge's capacity to act impartially as a judge. Rather than appeal the warning to a Special Court of Review, Hensley sued the Commission and its members under TRFRA, alleging that the warning substantially burdens her free exercise of religion. The trial court granted the defendants' plea to the jurisdiction, which was based on exhaustion of remedies and sovereign immunity. The court of appeals affirmed.

In an opinion by Chief Justice Hecht, the Supreme Court reversed most of the court of appeals' judgment. The Court first held that Hensley was not required to appeal the warning before bringing her TRFRA claim. Even if the Special Court were to reverse the warning, that disposition would not moot Hensley's claims because it would not extinguish the burden on her rights while the warning was in effect. Hensley also seeks injunctive relief against future sanctions, and the Special Court is not authorized to grant that relief.

The Court then concluded that most of Hensley's suit survives the defendants' sovereign-immunity challenges. The Court held that the written letter Hensley's attorney sent the Commission was sufficient presuit notice under TRFRA. The Court clarified that the immunity from liability accorded the defendants under Government Code Chapter 33 does not affect a court's jurisdiction, and it held that Hensley's allegations are sufficient to state an ultra vires claim against the commissioners. The Court affirmed the court of appeals' judgment dismissing one request for a declaratory judgment against the Commission, reversed the remainder of the judgment, and remanded to the court of appeals.

Justice Blacklock and Justice Young filed concurrences. Justice Blacklock opined that the Court should reach the merits of Hensley's TRFRA claim and rule in her favor. Justice Young expressed his view that the Court should only address legal questions in the first instance when doing so is truly urgent, and that test is not met here.

Justice Lehrmann dissented. She would have held that Hensley's suit is barred by her failure to appeal the public warning to the Special Court of Review.

b) *Tex. Windstorm Ins. Ass'n v. Pruski*, 689 S.W.3d 887 (Tex. May 10, 2024) [23-0447]

The issue in this case is whether Section 2210.575(e) of the Insurance Code, which provides that a suit against the Texas Windstorm Insurance Association "shall be presided over by a judge appointed by the judicial panel on multidistrict litigation," deprives a district court of subject-matter jurisdiction over such a suit when the judge is not appointed by the panel.

Stephen Pruski filed two claims with his insurer, TWIA, which partially accepted and partially denied coverage for both claims. Pruski sued TWIA in Nueces County district court under Chapter 2210 of the Insurance Code, seeking damages for improper denial of coverage. The case was assigned to a court without an

appointment by the MDL panel. Pruski argued that the judge was not qualified to render judgment because she was not appointed by the panel, as required by statute. The court denied Pruski's motion for summary judgment, granted TWIA's motion for summary judgment, and rendered a final, take-nothing judgment for TWIA.

The court of appeals reversed, holding that a trial judge who is not appointed by the MDL panel is without authority to render judgment in a suit under Chapter 2210. The court thus held that the trial court's judgment was void and remanded with instructions to vacate the judgment.

The Supreme Court reversed, holding that although the panel-appointment requirement is mandatory, it is not jurisdictional. The Court first explained that a statute can be, and often is, mandatory without being jurisdictional and that classifying a statutory provision as jurisdictional requires clear legislative intent to that effect. The Court then reasoned that nothing in Section 2210.575(e) or Chapter 2210, generally, demonstrates a clear legislative intent to deprive a district court of jurisdiction over a suit against TWIA unless the judge is appointed by the MDL panel. Thus, the trial court did not lack subject matter jurisdiction over the suit simply because the judge was not appointed by the MDL panel. The Court remanded the case to the court of appeals to address additional issues raised by the parties.

7. Territorial Jurisdiction

a) *Goldstein v. Sabatino*, 690 S.W.3d 287 (Tex. May 24, 2024) [22-0678]

The question presented is whether territorial jurisdiction, a criminal concept, is a necessary jurisdictional requirement for a Texas court to enter a civil protective order under Texas Code of Criminal Procedure Chapter 7B.

Goldstein and Sabatino were involved in a romantic relationship in Massachusetts. After a period of no contact, Sabatino found sexually explicit photos on a phone Goldstein had previous lent him. Sabatino began contacting Goldstein about them and refused to return the phone, leading her to fear that he would use the photos to control her and ruin her career. Goldstein was granted a protective order in Massachusetts. Goldstein then moved to Harris County. After receiving notice of several small-claims lawsuits filed by Sabatino against her in Massachusetts, Goldstein filed for a protective order in Harris County under Chapter 7B's predecessor.

The trial court held a hearing on the protective order. Sabatino did not file a special appearance and appeared at the hearing pro se. The trial court found reasonable grounds to believe Goldstein had been the victim of stalking, as defined by the Texas Penal Code, and issued a protective order preventing Sabatino from contacting Goldstein.

On appeal, Sabatino challenged the trial court's subject matter jurisdiction and personal jurisdiction because he was a Massachusetts resident, and the order was predicated on conduct that took place entirely in Massachusetts. The court of appeals vacated the protective order, holding that the trial court lacked territorial jurisdiction,

which the court concluded is a requirement in "quasi-criminal" proceedings.

The Supreme Court disagreed with the court of appeals' territorial jurisdiction analysis but affirmed its judgment because the trial court lacked personal jurisdiction over Sabatino. The Court first held that Chapter 7B protective orders are civil proceedings and, as such, there is no additional requirement of territorial jurisdiction. The Court explained that the historical understanding of territorial jurisdiction in civil cases was subsumed into the minimum contacts personal jurisdiction analysis. Thus, the court of appeals erred by imposing a separate requirement of territorial jurisdiction in a civil case. Nevertheless, Court held that Sabatino did not waive his personal jurisdiction challenge. Because all relevant conduct occurred in Massachusetts, and Sabatino had no contacts with Texas, the trial court lacked personal jurisdiction to enter the order. Accordingly, the Court affirmed the court of appeals' judgment vacating the protective order and dismissing the case.

R. JUVENILE JUSTICE

1. Discretionary Transfer

a) *In re J.J.T.*, 711 S.W.3d 687 (Tex. Mar. 28, 2025) [23-1028]

Under Family Code Section 54.02(j), a juvenile court may transfer an adult respondent to the criminal justice system if it finds that it was "impracticable" for the State to bring the case before the respondent's eighteenth birthday "for a reason beyond the control of the state." The issue in this case is whether the development of probable cause before a respondent turns eighteen necessarily prevents application of the transfer statute.

The State charged J.J.T. with capital murder, alleged to have been committed when he was sixteen years and eight months old. The State did not charge J.J.T. until eleven months after he turned eighteen. The State moved to transfer J.J.T. to the criminal justice system on the alternative grounds that it was not practicable for the State to proceed with the prosecution before J.J.T.'s birthday (1) "for a reason beyond the control of the state" or (2) because, despite the State's diligence, probable cause did not develop until after his eighteenth birthday, and new evidence had been discovered. The juvenile court ordered the transfer, but it blended the two grounds for transfer, relying on the development of probable cause and omitting a diligence finding. The court of appeals reversed and dismissed the case for lack of jurisdiction, holding that, because probable cause had developed before J.J.T.'s eighteenth birthday, it was practicable for the State to proceed as a matter of law.

The Supreme Court reversed, holding that the timing of the development of probable cause is not conclusive as to whether proceeding in juvenile court is "impracticable." Both the juvenile court and the court of appeals erred in merging the two statutory standards in examining whether the State established good cause. Because the State adduced some evidence of impracticability that a juvenile court could have credited even if probable cause had developed before J.J.T.'s eighteenth birthday, the Court

remanded the case for a new transfer hearing.

S. MEDICAL LIABILITY

1. Damages

a) *Noe v. Velasco*, 690 S.W.3d 1 (Tex. May 10, 2024) [22-0410]

The issue in this case is what damages, if any, are recoverable in an action for medical negligence that results in the birth of a healthy child.

Grissel Velasco allegedly requested and paid for a sterilization procedure to occur during the C-section delivery of her third child. Her doctor, Dr. Michiel Noe, did not perform the procedure and allegedly did not inform her of that fact. Velasco became pregnant again and gave birth to a healthy fourth child. Velasco brought multiple claims against Dr. Noe, including for medical negligence. The trial court granted Dr. Noe summary judgment on all claims. A divided court of appeals reversed as to the medical-negligence claim, concluding that Velasco raised a genuine issue of material fact regarding her mental-anguish damages, as well as the elements of duty and breach.

The Supreme Court reversed and reinstated the trial court's judgment. The Court first held that Velasco's allegations stated a valid claim for medical negligence. But the Court explained that Texas law does not regard a healthy child as an injury requiring compensation. Thus, when medical negligence causes the birth of a healthy child, the types of recoverable damages are limited. The Court rejected recovery of noneconomic damages arising from pregnancy and childbirth, such as mental anguish and pain and suffering, reasoning that those types of damages are inherent in every birth and therefore are inseparable from the child's very existence. The Court also held that the economic costs of raising the child are not recoverable as a matter of law. But the Court held that a parent may recover economic damages, such as medical expenses, proximately caused by the negligence and incurred during the pregnancy, delivery, and postpartum period. The Court emphasized that these types of damages do not treat the pregnancy itself or the child's life as a compensable injury. In this case, because Velasco failed to present evidence of recoverable damages, the trial court correctly granted summary judgment.

2. Expert Reports

a) *Bush v. Columbia Med. Ctr.*, ___ S.W.3d ___, 2025 WL 1478330 (Tex. May 23, 2025) [23-0460]

This case concerns the sufficiency of an expert report supporting a health care liability claim against a hospital.

Jared Bush sued Columbia Medical Center and others for medical negligence after his wife, Ireille Williams-Bush, died from an undiagnosed pulmonary embolism. Williams-Bush had presented to the hospital's emergency department with chest pain, shortness of breath, and fainting, but she was never screened for pulmonary embolism. She died a few days after her discharge.

Bush served the hospital with an expert report as required by the TMLA. The expert opined that the hospital failed to have policies that would have

required certain tests be run based on Williams-Bush's symptoms, without which her doctors lacked sufficient information to rule out a pulmonary embolism. The hospital asserted that the report was deficient and moved to dismiss. The trial court denied the hospital's motion, but the court of appeals reversed. It held that the expert's opinions on causation were conclusory because the report failed to explain how the hospital's policies could have overridden the doctors' treatment decisions without engaging in prohibited corporate practice of medicine.

The Supreme Court reversed. It held that the expert report adequately explained how and why the hospital's alleged breach—its failure to adopt certain testing policies for patients presenting with particular symptoms—was a cause of the doctors' failure to identify Williams-Bush's condition at a time when it could have been treated. The Court also rejected the court of appeals' conclusion that the report was deficient because it did not affirmatively refute a potential defense: that implementing the policies would run afoul of the prohibition on the corporate practice of medicine. The Court held that, at this preliminary stage, the expert's report need only provide a fair summary of the expert's opinions regarding the essential elements of a plaintiff's claim.

Justice Bland filed a dissenting opinion. She would have held that the report was conclusory as to causation because it failed to identify any conduct by a hospital employee, as opposed to the non-employee treating doctors, that caused the injury.

b) *Walker v. Baptist St. Anthony's Hosp.*, 703 S.W.3d 339 (Tex. Dec. 13, 2024) (per curiam) [23-0010]

This case concerns the sufficiency of expert reports under the Texas Medical Liability Act.

Kristen and Daniel Walker's son was born at Baptist St. Anthony's Hospital under Dr. Castillo's care. Immediately after birth, the baby suffered a medical emergency, thought to be a stroke, that required resuscitation. The Walkers sued the Hospital and Dr. Castillo for medical negligence and submitted expert reports by an obstetrician, a neonatologist, and a nurse in support of their claim.

The reports seek to show that certain actions and omissions by the Hospital and Dr. Castillo during the delivery fell below the standard of care and that had the Hospital and Dr. Castillo met the standard of care, the baby's injuries could have been avoided. The Hospital and Dr. Castillo objected to the reports and filed a motion to dismiss the Walkers' claims under the Act. The trial court denied the motion, finding that the reports provide a fair summary of the experts' views regarding the standard of care, breach, and causation. The court of appeals reversed reasoning that the reports include conclusory language and that they fail to sufficiently explain the cause of the baby's brain injury.

The Supreme Court reversed and remanded to the trial court for further proceedings. The Court held that the trial court did not abuse its discretion by finding that the reports reflect a good-faith effort to provide a fair summary of the experts' conclusions.

Considered together, the first two reports explain how the Hospital's and Dr. Castillo's actions fell below the standard of care and how those breaches caused the baby's neurologic injury. Because the first two expert reports adequately address causation, the Court did not address the third report.

Justice Bland filed a concurring opinion that addresses the defendants' challenges to the experts' qualifications and to the proper standard of care.

3. Health Care Liability Claims

a) *Leibman v. Waldroup*, ___ S.W.3d ___, 2025 WL 1610583 (Tex. June 6, 2025) [23-0317]

In this negligence suit for injuries sustained in a dog attack, the issue is whether the TMLA requires an expert report for the plaintiffs' claim against a doctor who wrote letters stating that the dog owner's service animals helped with her medical disorder. Dr. Leibman, a gynecologist, provided his patient with letters stating that the symptoms of her generalized anxiety disorder were alleviated by her service dog, Kingston, so that the patient could avoid eviction. The patient put a "Service Animal" vest on Kingston and brought him to a restaurant, where he attacked a toddler. The toddler's parents sued, among others, the patient and Dr. Leibman. Dr. Leibman filed a motion to dismiss for failure to file an expert report, arguing that the claim against him was a health care liability claim. The trial court denied the motion, and the court of appeals affirmed.

The Supreme Court affirmed. In an opinion by Justice Busby, the Court concluded that the plaintiffs had standing to sue Dr. Leibman and the claims were not health care liability claims. The Court emphasized that the plaintiffs did not challenge Dr. Leibman's diagnosis of the patient or his determination that Kingston—who was certified as a service animal by a private company—assisted with his patient's anxiety symptoms. Instead, the plaintiffs faulted Dr. Leibman for failing to independently ascertain Kingston's temperament before he represented that the dog was a service animal. The Court held this claim did not concern a departure from accepted standards of medical care and thus was not subject to dismissal for failure to timely serve an expert report under the Act.

Justice Huddle filed a dissenting opinion. She would have held that the plaintiffs' claim was presumed to be a health care liability claim because it involved facts implicating a physician's conduct while rendering medical care to his patient. The plaintiffs failed to overcome that presumption because the operative facts underlying the plaintiffs' claim were inseparably intertwined with the physician's medical care, and plaintiffs cannot artfully plead their claim to avoid the Act's application.

T. MUNICIPAL LAW

1. Zoning

a) *PDT Holdings, Inc. v. City of Dallas*, 712 S.W.3d 597 (Tex. May 2, 2025) [23-0842]

The issue in this case is whether the trial court abused its discretion in estopping the City of Dallas from enforcing a height-related ordinance

against the builder of a noncompliant structure.

After city officials advised PDT that the only height restriction applicable to its property limited a structure to 36 feet, PDT submitted a plan seeking to construct a nearly 36-foot structure. The City approved the plan and issued a permit, after which PDT began construction. While construction was ongoing, a city inspector determined that a portion of the structure exceeded 36 feet and issued a stop-work order. Once PDT resubmitted an amended construction plan, which the City approved, construction resumed. Several months later, when the structure was nearly complete, the City issued another stop-work order, citing a violation of a different height ordinance restricting the structure's height to 26 feet—10 feet less than the height shown on the approved plans and issued permits. PDT applied for a variance, but it was denied.

PDT then sued, seeking to estop the City from enforcing its height-related ordinance. The trial court ruled for PDT following a bench trial, but the court of appeals reversed. The court held that justice did not require equitable estoppel against the City.

The Supreme Court reinstated the trial court's judgment. The Court concluded that sufficient evidence supported the trial court's findings on each challenged element of equitable estoppel. Noting that estoppel against a city is only appropriate "in exceptional cases where the circumstances clearly demand its application to prevent manifest injustice," the Court concluded that justice required estoppel because the City had made an affirmative misrepresentation, and other circumstances were similar to prior cases where estoppel applied against the government. Next, the Court concluded that applying estoppel would not "interfere" with the City's performance of a "governmental function" because it could still enforce the restriction in other cases.

U. NEGLIGENCE

1. Anti-Fracturing Rule

a) *Pitts v. Rivas*, 709 S.W.3d 517 (Tex. Feb. 21, 2025) [23-0427]

In this case the Court adopts the anti-fracturing rule for professional malpractice.

Accountants Brandon and Linda Pitts provided accounting services to Rudolph Rivas, a home builder. Rivas sued the Accountants, claiming they negligently prepared financial statements, resulting in overpayment of taxes and a loss of credit that damaged Rivas's business. Rivas's claims included negligence, fraud, and breach of fiduciary duty. The Accountants sought summary judgment, relying on the statute of limitations, the anti-fracturing rule, and other arguments. The district court granted summary judgment on all claims. The court of appeals reversed on the fraud and breach of fiduciary duty claims. The Supreme Court reversed the court of appeals' in part and rendered a take-nothing judgment for the Accountants on all claims.

The Court noted the anti-fracturing rule's development in the courts of appeals. Under this rule, if the crux or gravamen of the claim concerns the quality of the defendant's professional services, the claim is treated as one for

professional negligence even if the petition attempts to assert additional claims. The Court found merit to the rule and concluded that it barred Rivas's fraud claim. The gravamen of that claim was that defendants made accounting errors that harmed Rivas's business—a straightforward accounting malpractice claim.

The Court further held that the breach of fiduciary claim failed because no fiduciary duty existed. Rivas claimed an informal fiduciary duty arose because Rivas and Pitts sometimes had dinner together, their sons had been roommates, Rivas had built Pitts a house at a discount, and Rivas had developed a high degree of trust in Pitts. These allegations did not give rise to a fiduciary duty, which rarely arises in a business relationship. Subjective belief that a business associate is a fiduciary is never sufficient. The parties' engagement letters further suggested the lack of a special relationship of trust and confidence, instead contemplating an arms-length relationship.

Justice Huddle filed a concurring opinion that would bar fiduciary duty claims premised only on informal relationships, and instead limit such claims to those where the defendant assumed a role that Texas law recognizes as fiduciary in nature.

2. Causation

a) *Tenaris Bay City Inc. v. Ellisor*, ___ S.W.3d ___, 2025 WL 1478487 (Tex. May 23, 2025) [23-0808]

This case concerns whether the plaintiffs established the actual causation element of their negligence claims.

Plaintiffs were thirty homeowners in Matagorda County. Their homes flooded during Hurricane Harvey. They sued Tenaris, a pipe manufacturer who operated a fabrication plant in Bay City. Tenaris built its facility on land previously used as a sod farm. To prevent flooding, Tenaris hired Fluor Enterprises to design and build a drainage system on Tenaris's property. The system included detention ponds and a berm to minimize flooding of other properties.

Plaintiffs' expert, an engineer, testified that the design of the drainage system was flawed. Plaintiffs also offered evidence that the drainage system was not built to design specifications and had not been properly maintained. The jury found for plaintiffs on theories of negligence, negligence per se, and negligent nuisance. The trial court rendered a money judgment for plaintiffs. The court of appeals affirmed.

The Supreme Court reversed and rendered judgment for Tenaris. The Court held that there was legally insufficient evidence for but-for causation for all of plaintiffs' negligency theories. Plaintiffs' expert conceded that he had not determined whether the Tenaris facility had caused plaintiffs' individual homes to flood. He testified that he could have made this determination by conducting a multi-step analysis that traced runoff from Tenaris's property to each plaintiff's property, but that he had not done so. The Court further held that expert testimony was required to prove causation in this case, and that there was no applicable exception to the ordinary requirement under Texas law that the plaintiff

prove but-for causation in a negligence case.

b) *Werner Enters., Inc. v. Blake*, ___ S.W.3d ___, 2025 WL 1774169 (Tex. June 27, 2025) [23-0493]

This case concerns whether plaintiffs established the substantial-factor element of their negligence claims.

, Blake and her three children were in a pickup driven in icy conditions by Trey Salinas, traveling eastbound on I-20. Trainee driver Ali was driving westbound in an 18-wheeler owned by Werner Enterprises. Salinas lost control and crossed the median, into the path of the 18-wheeler. One Blake child was killed, and the other family members were injured.

The Blakes sued Werner and Ali for negligence. They alleged Werner was negligent in training and supervising Ali and in sending Ali, an inexperienced trainee driver, into winter weather without access to important weather updates. Expert testimony asserted Ali was driving too fast given the icy conditions, or should not have been driving at all. The jury found both defendants negligent and assigned 70% of responsibility to Werner acting through employees other than Ali, 14% to Ali, and 16% to Salinas. The trial court rendered judgment against both defendants. The court of appeals affirmed.

The Supreme Court reversed and rendered judgment. It held that, to establish negligence, the proximate cause element requires proof of both but-for causation and substantial-factor causation. Evidence of substantial-factor causation was legally insufficient. The sole substantial factor explaining why the accident happened was Salinas losing control of his pickup and crossing in front of the 18-wheeler. Ali's negligence if any was too attenuated to constitute a substantial factor. There were no viable liability theories against Werner that were independent of Ali's responsibility for the accident, so Werner and Ali were entitled to rendition of judgment.

The defendants asked the Court to adopt the "Admission Rule," under which a defendant who admits that an employee was acting in the course and scope of employment need not also defend against other derivative theories of negligence. The Court held it need not consider this argument. Justice Young agreed, but in a concurrence noted his inclination to adopt the Admission Rule in a future case.

Justice Bland dissented in part. She concluded the jury charge was erroneous, and the jury was misled into placing disproportionate responsibility on Ali and Werner. But there was evidence that Ali bore some responsibility for the Blakes' injuries. The dissent would have reversed and remanded for a new trial.

3. Duty

a) *Massage Heights Franchising, LLC v. Hagman*, 712 S.W.3d 615 (Tex. May 2, 2025) (per curiam) [23-0996]

The issue in this case is whether a franchisor can be liable for injuries caused by a franchisee's employee.

Petitioner Massage Heights, a franchisor, entered into a Franchise Agreement with MH Alden Bridge,

designating MH Alden Bridge as an independent contractor with sole responsibility for employment decisions. MH Alden Bridge hired Mario Rubio, a licensed massage therapist, despite his criminal background. Rubio sexually assaulted respondent Danette Hagman, a client at MH Alden Bridge. Hagman sued Massage Heights, MH Alden Bridge, and other parties, alleging negligence, negligent undertaking, and gross negligence. The jury found all defendants negligent, attributed 15% responsibility to Massage Heights, and awarded Hagman both actual and exemplary damages. The court of appeals reversed the exemplary damages award but upheld the trial court's finding that Massage Heights was negligent for not providing a list of disqualifying criminal offenses to its franchisees, which allowed MH Alden Bridge to hire Rubio.

The Supreme Court reversed. It concluded that Massage Heights did not owe Hagman a duty of care because Massage Heights lacked control over Rubio's hiring. Nothing in the Franchise Agreement gave Massage Heights contractual control, and Massage Heights' actions failed to amount to actual control over hiring. The Court also held that Massage Heights was not liable for Hagman's injuries because it franchised with MH Alden Bridge, as the proximate cause of Hagman's injuries was MH Alden Bridge's hiring of Rubio, not the franchising relationship. Finally, the Court held that Hagman lacked legally sufficient evidence to support the jury's finding that Massage Heights negligently performed an undertaking that proximately caused Hagman's injury.

b) *Seward v. Santander*, ___ S.W.3d ___, 2025 WL 1350133 (Tex. May 9, 2025) [23-0704]

In this wrongful-death, survival, and personal-injury action, the central issues are (1) whether an off-duty police officer was acting within the scope of his governmental employment and (2) whether the Court should adopt a common-law rule restricting the duties owed to responding public-safety officers.

Officer Seward was working as a contract security guard at Home Depot. Seward frisked the a shoplifting suspect, called in a warrant check, received a positive hit, and requested backup. Two officers responded and monitored the suspect while Seward confirmed the warrant. During that time, the suspect drew a concealed gun and shot the officers, killing one and injuring the other.

The officers sued Seward and Home Depot for negligence. Finding that Seward's conduct was within the scope of his police-officer employment, the trial court dismissed the suit against him under the Tort Claims Act. The court then granted summary judgment in Home Depot's favor because, among other grounds, there was no evidence it breached any duties owed to the responding officers.

A divided court of appeals disagreed. The court concluded that dismissal and summary judgment were improper because a jury could find that Seward was assisting his private employer and not acting as a police officer and that Home Depot had violated at least a duty to warn the officers that the suspect had not been adequately

searched.

The Supreme Court reversed and reinstated the trial court's judgment. The Court held: (1) Seward was acting within the scope of his public employment because he was responding to a reasonable suspicion that a person in his presence was committing theft; (2) public policy supports adopting the public-safety officer's rule, which restricts the duties owed to officers who are injured by the alleged negligence that necessitated their response; and (3) there was no evidence Home Depot violated any remaining duties, including a duty to warn the responding officers of hidden, dangerous conditions.

Justice Busby concurred, inviting parties in future cases to raise the issue of when a private employer may be vicariously liable for torts committed by an off-duty police officer whose actions are also within the scope of his public employment.

4. Premises Liability

a) *Pay & Save, Inc. v. Canales*, 691 S.W.3d 499 (Tex. June 14, 2024) (per curiam) [22-0953]

The issue is whether a wooden pallet used to transport and display watermelons is an unreasonably dangerous condition.

Grocery stores use wooden pallets to transport and display whole watermelons. While shopping at a Pay and Save store, Roel Canales' steel-toed boot became stuck in a pallet's open side. When Canales tried to walk away, he tripped, fell, and broke his elbow. Canales sued the store for premises liability and gross negligence. After a jury trial, the trial court awarded Canales over $6 million.

The court of appeals reversed. The court concluded that the evidence is legally, but not factually, sufficient to support a finding of premises liability, and it remanded for a new trial on that claim. The court rendered judgment for Pay and Save on gross negligence because Canales had not presented clear and convincing evidence that the pallet created an extreme degree of risk. Both parties filed petitions for review.

Without hearing oral argument, the Court reversed and rendered judgment for Pay and Save on premises liability. The Court held that the wooden pallet was not unreasonably dangerous as a matter of law. To raise a fact issue on whether a common condition is unreasonably dangerous, a plaintiff must show more than a mere possibility of harm; there must be sufficient evidence of prior accidents, injuries, complaints, reports, regulatory noncompliance, or other circumstances that transformed the condition into one measurably more likely to cause injury. There was a complete absence of such evidence here.

The Court also affirmed the court of appeals' judgment on gross negligence because the absence of legally sufficient evidence for premises liability also disposed of the gross-negligence claim.

b) *Weekley Homes, LLC v. Paniagua*, 691 S.W.3d 911 (Tex. June 21, 2024) (per curiam) [23-0032]

The issue in this case is whether Chapter 95 of the Civil Practice and Remedies Code applies to claims by contractors who were injured on a

driveway of the townhome on which they were hired to work.

Weekley Homes, LLC hired independent contractors to work on a townhome construction project. While the workers were moving scaffolding across the townhome's wet driveway, electricity from a temporary electrical pole or lightning killed one worker and injured another. Weekley filed a combined traditional and no-evidence summary-judgment motion arguing that Chapter 95 applies and precludes liability. The trial court granted Weekley's motion, but the court of appeals reversed, holding that Chapter 95 does not apply because the summary-judgment evidence does not conclusively establish that the driveway is a dangerous condition of the townhome on which the contractors were hired to work.

The Supreme Court reversed in a per curiam opinion and held that Chapter 95 applies to the workers' claims. The Court held that Weekley conclusively established that the electrified driveway is a condition of the townhome because the workers alleged that the electrified driveway was a dangerous condition that they were required to traverse to perform their work, and the summary-judgment evidence established that the driveway, by reason of its proximity to the townhome, created a probability of harm to those working on the townhome.

5. Public Utilities

a) *In re Oncor Elec. Delivery Co.*, ___ S.W.3d ___, 2025 WL 1774438 (Tex. June 27, 2025) [24-0424]

The issue in this case is whether the trial court should have dismissed the plaintiffs' intentional nuisance and gross negligence claims against transmission and distribution utilities for alleged misconduct related to an extreme winter storm.

In 2021, Winter Storm Uri hit Texas, causing massive electricity demand. To preserve the grid, the Electric Reliability Council of Texas ordered the Utilities to cut electricity to some customers. As a result, there were widespread power outages.

Thousands of customers filed hundreds of lawsuits against participants in the Texas electricity market, including the Utilities. The cases were transferred to a multidistrict litigation court, which designated several bellwether cases for initial motions. The Utilities moved to dismiss under Rule 91a. The trial court dismissed some claims but refused to dismiss the negligence, gross negligence, and nuisance claims. The court of appeals granted partial mandamus relief, ordering dismissal of the negligence and strict-liability nuisance claims but allowing the gross negligence and intentional nuisance claims to proceed. The Utilities petitioned the Supreme Court for mandamus relief, arguing the remaining claims must be dismissed.

The Supreme Court conditionally granted relief. It held that to be liable for intentional nuisance, a defendant must have "created" or affirmatively "maintained" a nuisance. Because the Utilities were not a source of the nuisance—here, freezing temperatures—the intentional nuisance claims had no basis in law.

The Court also held that the plaintiffs did not adequately plead the

"conscious indifference" element of gross negligence. The plaintiffs failed to plead facts showing that the Utilities' acts or omissions in their initial response to ERCOT's orders to cut power were consciously indifferent. As to acts and omissions before and after those initial decisions, the plaintiffs did not adequately plead that the Utilities could have acted differently despite legal requirements restricting them.

Accordingly, the Court ordered the trial court to dismiss the nuisance claims with prejudice and allow the plaintiffs an opportunity to replead the gross negligence claims.

6. Vicarious Liability

a) *Renaissance Med. Found. v. Lugo*, ___ S.W.3d ___, 2025 WL 1478694 (Tex. May 23, 2025) [23-0607]

The issue in this case is whether a nonprofit health organization certified under Section 162.001 of the Occupations Code may be held vicariously liable for the negligence of its employee–physician.

Renaissance Medical Foundation, a certified nonprofit health organization, entered into a contract for employment with Dr. Michael Burke, a neurosurgeon. At a hospital owned and operated by Renaissance, Dr. Burke performed brain surgery on I.B., Rebecca Lugo's then-minor daughter. The procedure left I.B. with permanent neurological damage.

Lugo sued Dr. Burke and Renaissance, alleging negligence by Dr. Burke and that Renaissance was vicariously liable as his employer. Renaissance moved for summary judgment, arguing it could not—and did not—exercise the requisite amount of control over Dr. Burke's medical practice because doing so would violate Texas law. The trial court denied the motion, concluding the employment agreement granted Renaissance sufficient control over Dr. Burke to trigger vicarious liability even though he retained the right to exercise independent medical judgment. Renaissance filed a permissive interlocutory appeal, arguing the unique statutory scheme governing nonprofit health organizations deprives it of any right to control its employed physicians, thus precluding vicarious liability. The court of appeals affirmed, holding Renaissance had a right to control Dr. Burke sufficient to trigger vicarious liability based on traditional common-law factors.

The Supreme Court also affirmed. In an opinion by Justice Busby, the Court held that nonprofit health organizations retain a narrow right to control their employee–physicians that may support vicarious liability in certain cases. Nonprofit health organizations are charged with adopting and enforcing policies related to medical care that ensure its employee–physicians retain independent medical judgment. Because Renaissance failed to conclusively prove it could not exercise control over Dr. Burke without violating his independent medical judgment, summary judgment was correctly denied.

Justice Bland concurred, contending direct liability claims connected to organizational policies should not be viable when physician negligence causes the injury. And, in her view, the summary judgment burden should shift once a qualifying

organization invokes the statute and shows the pleadings allege an injury attributable to physician negligence.

V. OIL AND GAS

1. Assignments

a) *Occidental Permian, Ltd. v. Citation 2002 Inv. LLC*, 689 S.W.3d 899 (Tex. May 17, 2024) [23-0037]

The issue in this case is whether an assignment of mineral interests that conveys leasehold estates is limited by depth notations in an exhibit describing property found within the leases.

In 1987, Shell Western E&P, Inc. assigned to Citation "all" of its oil-and-gas property interests described in an incorporated exhibit. The exhibit contains columns listing (1) an overarching leasehold mineral estate, (2) tracts within that lease (some with depth specifications), and (3) third-party interests that encumber those leases. In 1997, Shell purported to transfer to Occidental's predecessor some of the same oil-and-gas interests contained in the 1987 Assignment. Litigation ensued.

Occidental contends that Shell in 1987 had reserved to itself portions of the described leases beyond the depth notations and that the reserved interests were conveyed to Occidental in 1997. As a result, Occidental and Citation dispute ownership of the "deep rights" to the property. The trial court granted summary judgment for Occidental, concluding that the 1987 assignment was a limited-depth grant that did not convey Shell's deep rights to Citation. The court of appeals reversed, holding that the assignment of "all right and title" to the leases is not limited by the exhibit's information about those leases, leaving Citation and its transferee as the owners of the interests in their entirety.

The Supreme Court affirmed the court of appeals' judgment. The Court first observed that the exhibit presents ambiguities because the property interests listed in it overlap, and the exhibit contains no language directing the proper method for reading its tables. The Court then turned to the assignment's three granting clauses. The first and third clauses grant all of Shell's rights and interests in the "leasehold estates" or "leases" described in the exhibit. The second clause, which grants Shell's rights in "contracts or agreements," contains language acknowledging that those contracts may be depth limited. This differentiation between the grant of leases and the grant of contract rights and burdens solidifies a reading that the exhibit column listing Shell's leases is not narrowed by the columns referring to contracts or agreements that contain depth limitations. The Court thus held that the 1987 assignment unambiguously transferred Shell's entire leasehold interests without reservation.

2. Deed Construction

a) *Myers-Woodward, LLC v. Underground Servs. Markham, LLC*, ___ S.W.3d ___, 2025 WL 1415892 (Tex. May 16, 2025) [22-0878]

The parties dispute who has the right to use underground salt caverns.

Myers owned the surface estate to the acreage in issue. Original and correction deeds granted the owner of

the mineral estate ownership of oil, gas and other minerals. Myers retained a 1/8th royalty. By deed USM acquired a portion of the mineral estate as to salt.

USM began producing salt and claimed ownership of the underground cavern space created by its mining. The parties' disagreements as to ownership of the caverns and the royalty due led to this suit. The district court ruled that USM owned the caverns but could use the caverns for salt production only, and that Myers was owed a royalty of 1/8th of the market value of the salt. The court of appeals held that the district court had properly calculated the royalty, but that Myers owned the empty underground spaces.

The Supreme Court held that USM owned the salt under the tract, but that subsurface voids encased in salt and created by the production of salt belonged to Myers. USM, as the owner of the dominant mineral estate, had a qualified right to use the salt caverns, limited to uses that are reasonably necessary to recover USM's minerals. But USM could not use the caverns for storage of hydrocarbons or off-site minerals.

The Court then held that the deeds entitled Meyers to in-kind possession of 1/8th of the salt produced or 1/8th of the net proceeds from the actual sale of the salt produced. The Court therefore affirmed the court of appeals as to ownership of the space within the salt caverns, reversed as to the amount of the royalty owed to Myers, and remanded the case to the district court for further proceedings.

3. Leases

a) *Cactus Water Servs., LLC v. COG Operating, LLC*, ___ S.W.3d ___, 2025 WL 1774172 (Tex. June 27, 2025) [23-0676]

This case involves a dispute about ownership of "produced water" from oil-and-gas operations. The issue is whether this liquid-waste byproduct was included in the hydrocarbon conveyance to the mineral lessee or whether the surface estate retained ownership because subsurface water was not expressly severed from the surface estate.

COG conducts hydraulic fracturing operations under mineral leases with two surface owners. Fracking results in a hazardous byproduct known as produced water. Oil-and-gas operations cannot continue without expeditious and proper disposal of produced water. As the well operator, COG is legally responsible for proper handling and disposal of this substance.

Years after executing the mineral leases with COG, the surface owners executed Produced Water Lease Agreements with Cactus. These leases purported to convey to Cactus the produced water from oil-and-gas operations on the land. COG sued for a declaration that it owned exclusive rights to the produced water from its operations under the mineral leases. Cactus counterclaimed, asserting a right of ownership under the produced-water leases. On cross-motions for summary judgment, the trial court declared that COG owned the produced water that was part of COG's hydrocarbon production stream. The court of appeals affirmed.

The Supreme Court affirmed, holding that a mineral conveyance using typical language to convey oil and gas rights, though not expressly addressing produced water, includes that substance as part of the conveyance. Absent an express reservation or exception, the surface estate does not retain ownership of constituent water incidentally and necessarily produced with hydrocarbons. As there was no such exception or reservation, COG had the right to possession, custody, control, and disposition of the constituent water in the liquid waste from its hydrocarbon production.

In a concurring opinion, Justice Busby observed that the default rule may be altered by a conveyance's terms and that other questions remain open but were neither presented nor determined.

4. Lease Termination

a) *Cromwell v. Anadarko E&P Onshore, LLC*, ___ S.W.3d ___, 2025 WL 1478494 (Tex. May 23, 2025) [23-0927]

This case involves the interpretation of two oil-and-gas leases' habendum clauses.

Cromwell and Anadarko are oil-and-gas co-tenants, both owning fractional shares of the working interest on the same acreage in Loving County. The habendum clauses of Cromwell's leases maintained his interests for "as long thereafter as" oil, gas or other minerals are produced from the land. Cromwell submitted his leases to Anadarko, the operating tenant, and requested to participate in its production, but Anadarko never responded. After one well reached payout, Anadarko sent Cromwell monthly "Joint Interest Invoices" that allocated production revenues and expenses to Cromwell. Years after the expiration of the leases' primary terms, Anadarko informed Cromwell that it believed his leases terminated at the end of their primary terms because he failed to enter a joint operating agreement.

Cromwell sued Anadarko for declaratory relief, trespass to try title, and other causes of action. Both sides moved for summary judgment. After concluding the leases had terminated, the trial court granted Anadarko's motion and denied Cromwell's. The court of appeals affirmed, holding that Cromwell's leases terminated because he did not cause the production of oil or gas on the land.

The Supreme Court reversed. It held that the plain language of the two habendum clauses did not require Cromwell to personally produce to maintain his interests. Because at all relevant times production in commercial paying quantities occurred on the land, Cromwell's leases had not terminated. The Court remanded the case to the trial court to address the parties' remaining arguments.

b) *Scout Energy Mgmt., LLC v. Taylor Props.*, 704 S.W.3d 544 (Tex. Dec. 31, 2024) (per curiam) [23-1014]

This case concerns whether the due date for payment under an oil-and-gas lease's savings clause is affected by a notation on an earlier check receipt.

Scout was the lessee for two oil-and-gas leases on land owned by Taylor Properties. To maintain the leases

during nonproduction, a "shut-in royalty" savings clause provided that the lessee could pay "$50.00 per well per year, and upon such payment it will be considered that gas is being produced." Scout's predecessor made a payment in September 2017, then made another payment one month later. When Scout made a payment in December 2018, Taylor claimed it was too late and sought a declaration that the leases had terminated. Specifically, Taylor argued that the leases terminated in October 2018, one year after the second payment, while Scout argued that the second payment secured a full additional year.

The trial court concluded that the savings clause is ambiguous, but it agreed that Scout's interpretation reflects the parties' intent that each payment secure a full year of constructive production, and it therefore rendered judgment for Scout. The court of appeals concluded that the savings clause unambiguously supports Scout's interpretation, but it nonetheless reversed, holding that a notation on the check receipt in October 2017 established a new starting date for the one-year period of constructive production.

The Supreme Court reversed and reinstated the trial court's judgment. The Court agreed with the court of appeals that the savings clause is unambiguous, and that the only reasonable interpretation is that each payment provides a full year of constructive production. The Court then held that the check-receipt notation is too vague to be considered a contract expressing the parties' intent to deviate from the savings clause.

5. Pooling

a) *Ammonite Oil & Gas Corp. v. R.R. Comm'n of Tex.*, 698 S.W.3d 198 (June 28, 2024) [21-1035]

This case arises from the Railroad Commission's rejection of forced-pooling applications under the Mineral Interest Pooling Act.

Ammonite leases the State-owned minerals under a tract of the Frio River. EOG leases the minerals on the land next to the river on both sides. The leases lie in a field in which minerals can only be extracted through horizontal drilling. Because the river is narrow and winding, a horizontal well cannot be drilled entirely within the boundaries of Ammonite's riverbed lease.

While EOG was drilling its wells, Ammonite proposed that the parties pool their minerals together. EOG rejected the offers because its wells would not reach the riverbed; thus, Ammonite was proposing to share in EOG's production without contributing to it.

Ammonite filed MIPA applications in the Commission. By then, EOG's wells were completed, and it was undisputed they were not draining the riverbed. The Commission "dismissed" the applications because it concluded that Ammonite's voluntary-pooling offers were not "fair and reasonable." The Commission alternatively "denied" the applications because Ammonite failed to prove that forced pooling is necessary to "prevent waste." The lower courts affirmed the Commission's final order.

The Supreme Court also affirmed but for different reasons. In an

opinion by Chief Justice Hecht, the Court repudiated the intermediate court's reasoning that the Commission's dismissal is justified by Ammonite's offering a "risk penalty" of only 10%. The Court pointed out that Ammonite had agreed to a higher penalty if prescribed by the Commission, and there is no statutory requirement that a voluntary-pooling offer include a risk-penalty term.

The Court held that both of the Commission's dispositions are reasonable on the record. The Court reasoned that Ammonite's offers were based solely on EOG's wells as permitted and did not suggest extending them, EOG's wells do not drain the riverbed, and Ammonite did not present any evidence to the Commission on the feasibility of reworking them. The Court explained that even if Ammonite's minerals are stranded, forced pooling could not, at the time of the hearing, have *prevented* waste because the wells were already completed.

Justice Young dissented. He opined that Ammonite's offers were fair and reasonable as a matter of law and, because Ammonite's minerals are stranded, that forced pooling might be necessary to prevent waste. He would have reversed and remanded either to the court of appeals or to the Commission for further proceedings.

b) *ConocoPhillips Co. v. Hahn*, 704 S.W.3d 515 (Tex. Dec. 31, 2024) [23-0024]

At issue in this case is the proper calculation of Kenneth Hahn's royalty interest in a tract of land in DeWitt County.

In 2002, Hahn conveyed the tract to William and Lucille Gips but reserved a 1/8 non-participating royalty interest. The Gipses later leased their executive interest to a subsidiary of ConocoPhillips in exchange for a 1/4 royalty. The lease also allowed ConocoPhillips to pool the acreage. At ConocoPhillips's request, Hahn signed a document ratifying the lease in all its terms. Hahn also signed a separate stipulation of interest with the Gipses, in which they agreed that Hahn had intended to reserve a 1/8 "of royalty" in his 2002 conveyance to the Gipses. ConocoPhillips then pooled the tract into one of its existing production units.

In 2015, Hahn sued ConocoPhillips and the Gipses, alleging he had reserved a fixed rather than floating royalty interest. The trial court disagreed and granted summary judgment for the Gipses. The court of appeals reversed, holding that Hahn had reserved a 1/8 fixed royalty in the 2002 conveyance.

On remand, Hahn added a claim for statutory payment of royalties, and the parties filed cross-motions for summary judgment regarding whether Hahn's ratification of the lease made his non-participating royalty interest subject to the landowner's royalty. The trial court granted summary judgment for the defendants, but the court of appeals reversed, holding that Hahn was only bound to the lease's pooling provisions and that this Court's intervening decision in *Concho Resources v. Ellison* was inapplicable.

The Supreme Court affirmed in part and reversed in part. The Court upheld the court of appeals' determination that Hahn's ratification of the lease did not transform his royalty interest from fixed to floating. But the

Court rejected Hahn's argument that the stipulation of interest failed as a conveyance because it lacked a sufficient property description, and it held that the court of appeals' failure to give effect to the stipulation was contrary to *Concho Resources*. The Court therefore reversed in part and rendered judgment that ConocoPhillips correctly calculated Hahn's share of proceeds from the production on the pooled unit.

6. Royalty Payments

a) *Carl v. Hilcorp Energy Co.*, 689 S.W.3d 894 (Tex. May 17, 2024) [24-0036]

In this case, the Court addressed certified questions from the Fifth Circuit.

The plaintiffs Carl and White filed a class action on behalf of holders of royalty interests in leases operated by defendant Hilcorp. The leases state that Hilcorp must pay as royalties "on gas . . . produced from said land and sold or used off the premises . . . the market value at the well of one-eighth of the gas so sold or used." Hilcorp also "shall have free use of . . . gas . . . for all operations hereunder." The parties dispute whether Hilcorp owes royalties on gas used off-lease for post-production activities. The district court ruled in favor of Hilcorp on a motion to dismiss.

On appeal, the Fifth Circuit sought guidance from the Texas Supreme Court as to the effect of *BlueStone Natural Resources, II, LLC v. Randle*, 620 S.W.3d 380, 386 (Tex. 2021), on the issues presented. *Randle* discussed a free-use clause, but the Fifth Circuit noted a lack of Texas authority analyzing *Randle* when construing value-at-the-well leases. It certified two questions to the Texas Supreme Court:

(1) After *Randle*, can a market-value-at-the well lease containing an off-lease-use-of-gas clause and free-on-lease-use clause be interpreted to allow for the deduction of gas used off lease in the post-production process?

(2) If such gas can be deducted, does the deduction influence the value per unit of gas, the units of gas on which royalties must be paid, or both?

The Court answered the first question yes. It reasoned that under longstanding caselaw, gas used for post-production activities should be treated like other post-production costs where the royalty is based on the market value at the well. *Randle* involved a gross-proceeds royalty and its discussion of a free-use clause had no bearing on the outcome of this dispute.

As to the second question, the Court noted that the parties did not fully engage on this issue, but the Court's rough mathematical calculations indicated that either of the accounting methods referenced in the second question would yield the same royalty payment. The Court did not state a preference for any particular method of royalty accounting.

W. PROBATE: WILLS, TRUSTS, ESTATES, AND GUARDIANSHIPS

1. Executors

a) *Suday v. Suday*, ___ S.W.3d ___, 2025 WL 1774459 (Tex. June 27, 2025) (per curiam) [24-1009]

At issue in this case is whether an executor may represent the estate pro se if she is the sole beneficiary.

Maryvel Suday is the sole beneficiary and independent executor of her mother's estate. She engaged in substantial litigation seeking to challenge her parents' divorce decree and property distribution. While her appeal was pending in the court of appeals, Maryvel informed her attorney that she no longer desired his services, and he withdrew. The court of appeals notified Maryvel that she could not represent her mother's estate pro se and extended her briefing deadline to allow her time to secure new counsel. Maryvel did not obtain counsel for the estate, so the court of appeals dismissed the appeal for want of prosecution.

The Supreme Court reversed. It assumed without deciding the correctness of the general rule, adopted by several Texas courts of appeals, that an estate's executor may not represent the estate pro se. Even so, the Court explained, the rule would not apply in the narrow circumstance here, in which the executor is also the sole beneficiary. The logic underlying the general prohibition is that an executor serves in a representative capacity, thereby requiring her to represent the rights of third parties. But when there are no other parties with an interest in the estate, the executor represents only her own rights. In this situation, the right to self-representation outweighs any competing concerns.

Accordingly, the Court reversed the court of appeals' judgment and remanded the case to the court of appeals to address the remaining issues on the merits.

1. Transfer of Trust Property

a) *In re Tr. A & Tr. C*, 690 S.W.3d 80 (Tex. May 10, 2024) [22-0674]

This case raises issues of subject-matter jurisdiction and remedies arising from a co-trustee's transfer of stock from the family trust to herself and then to others.

Glenna Gaddy, a co-trustee of a family trust, transferred stock from the family trust to her personal trust without the participation or consent of the other co-trustee, her brother Mark Fenenbock. Glenna then sold the stock to her two sons. Mark sued Glenna.

The probate court declared the stock transfer void and ordered that the stock "be restored" to the family trust. Glenna appealed. The court of appeals vacated and remanded, holding sua sponte that the probate court lacked jurisdiction to declare the stock transfer void because Glenna's sons, the owners of the stock, were "jurisdictionally indispensable" parties.

The Supreme Court reversed both the court of appeals' judgment and the probate court's order. The court of appeals relied on Texas Rule of Civil Procedure 39 to support its jurisdictional holding, but the Supreme Court pointed to its caselaw teaching that parties' failure to join a person will rarely deprive the court of jurisdiction. The Court concluded that this is not such a rare case, and while the absence of Glenna's sons may have limited the relief the probate court could grant, it did not deprive the court of jurisdiction to resolve the case before it.

The Court then rejected Glenna's contention that she did not commit a breach of trust as a matter of

law. But it agreed the probate court had erred by imposing a constructive trust requiring Glenna to restore the stock shares to the family trust when she no longer owns or controls the shares. The Court remanded to the probate court for further proceedings with the instruction that if Glenna's sons are not made parties on remand, then any relief must come from Glenna or her trust or through the ultimate distribution of the family trust's remaining assets.

2. Will Contests

a) *In re Estate of Brown*, 697 S.W.3d 647 (Tex. Aug. 30, 2024) (per curiam) [23-0258]

The issue is whether unsworn testimony from an officer of the court is competent evidence to establish the cause of nonproduction of an original will under Section 256.156 of the Estates Code.

Beverly June Eriks and the Humane Society of the United States each filed an uncontested application to probate a copy of decedent Brown's will, which named the Society her sole beneficiary. Although the trial court found that a reasonably diligent search for the original will had occurred, it nonetheless concluded that the Society failed to establish the cause of nonproduction and that Brown died intestate. The court of appeals affirmed, holding that unsworn testimony from Catherine Wylie—an attorney and the guardian of Brown's personal and financial estate—could not be considered evidence of the cause of nonproduction.

The Supreme Court reversed. The Court held that, as an officer of the court, Wylie's testimony is properly considered evidence because her statements were made on the record, without objection from opposing counsel, and where there was no doubt her statements were based on her personal knowledge. The Court further held that, in addition to other testimony, Wylie's testimony regarding her thorough search of Brown's home and safe deposit box established the cause of nonproduction as a matter of law. The Court remanded to the court of appeals to address other issues.

X. PROCEDURE—APPELLATE

1. Finality of Judgments

a) *In re C.K.M.*, 709 S.W.3d 613 (Tex. Mar. 14, 2025) (per curiam) [24-0267]

This case concerns whether a trial court's order dismissing a parental-termination suit was a "final" order.

In 2022, the Department of Family and Protective Services filed a petition for temporary orders requiring Mother and Father to participate in state-provided services and later filed a separate petition to terminate their parental rights and obtain conservatorship of the Child. Mother filed a motion to consolidate the suits. Mother and Father separately filed original answers, counter-petitions, and motions for sanctions in both suits. In response to the filings, the Department filed a motion to nonsuit all of its claims.

The trial court orally granted the motion to consolidate and signed the Department's proposed dismissal order, entitled "Order on Motion to Terminate Temporary Order for Required Participation in Services Pursuant to Texas Family Code § 264.203(t)." The order included language directing the

court clerk to "remove this cause from the Court's docket and send notice to all parties that this cause is hereby dismissed." The court signed an order granting sanctions over a month later.

The Department appealed the Sanctions Order; the court of appeals dismissed the appeal and vacated the order as void, reasoning that the Dismissal Order was a final order triggering the running of the trial court's plenary power, which expired prior to the trial court's Sanctions Order.

The Supreme Court reversed the court of appeals and remanded the case to the trial court for further proceedings. The Court held that the Dismissal Order failed to state with unmistakable clarity that it was a final judgment. Because the Sanctions Order also did not include the necessary requirements for finality, the trial court had not entered a final judgment in the case.

b) *In re Lakeside Resort JV, LLC*, 689 S.W.3d 916 (Tex. May 10, 2024) (per curiam) [22-1100]

The issue in this mandamus proceeding is whether a purportedly "Final Default Judgment" is final for purposes of appeal despite expressly describing itself as "not appealable."

Mendez was a guest at Margaritaville Resort Lake Conroe, which Lakeside Resort JV owns but does not manage. Mendez alleged that she sustained severe bodily injuries after stepping in a hole. She sued Lakeside, seeking monetary relief of up to $1 million. Lakeside failed to timely answer; it alleged that its registered agent for service failed to send it a physical copy of service and misdirected an electronic copy. Mendez subsequently moved for a default judgment. The draft judgment prepared by Mendez's counsel was labeled "Final Default Judgment" and contained the following language: "This Judgment finally disposes of all claims and all parties, and *is not appealable*. The Court orders execution to issue for this Judgment." (Emphasis added.) The trial court signed the order. After the trial court's plenary jurisdiction had expired and the time for a restricted appeal had run, Mendez sent Lakeside a letter demanding payment.

Lakeside quickly filed a motion to rescind the abstract of judgment and a combined motion to set aside the default judgment and for a new trial, arguing that the "Final Default Judgment" was not truly final. The trial court denied Lakeside's motions, thinking that the judgment was final and that its plenary power had expired. The court of appeals denied mandamus relief, describing the judgment as erroneously stating that it was "not appealable" but holding that the judgment was clearly and unequivocally final on its face.

In a per curiam opinion, the Supreme Court conditionally granted Lakeside's petition for writ of mandamus. The Court held that the judgment's assertion of non-appealability does not unequivocally express an intent to finally dispose of the case, but in fact affirmatively undermines or contradicts any such intent. The Court then held that default judgments that affirmatively undermine finality are not final regardless of whether the trial court's order or judgment resolves all claims by all parties, so finality may not be established by turning to the

record to make that showing. Accordingly, the Court ordered the trial court to vacate its orders denying Lakeside's motions and allowing execution.

c) *In re Urban 8 LLC*, 689 S.W.3d 926 (Tex. May 10, 2024) (per curiam) [22-1175]

This case concerns the effect of a trial court order declaring a default judgment issued months prior to be a final judgment.

Susan Barclay sued Urban 8 for negligence. After Urban 8 failed to answer, the trial court issued an order titled "Final Order of Default" in November 2021. The order awarded Barclay all the damages she requested except for exemplary damages. Months later, Urban 8 filed a "Motion to Set Aside Interlocutory Judgment and Motion for New Trial," which the trial court denied in August 2022. That order expressly stated that the November 2021 order was the court's final judgment and that it fully and finally disposed of all parties and claims and was appealable.

Urban 8 filed both a petition for writ of mandamus challenging the November 2021 order and a notice of appeal as to the August 2022 order. The court of appeals abated Urban 8's appeal pending resolution of its petition for writ of mandamus, which it then denied.

The Supreme Court also denied mandamus relief, holding that Urban 8 had an adequate remedy by appeal. The Court cautioned that a judgment cannot be backdated or retroactively made final, as doing so could deprive a party of an adequate remedy by appeal. But the Court did not read the August 2022 order to have that effect. The August 2022 order modified the November 2021 order by providing that it fully and finally disposed of all parties and claims and was appealable. The modification caused the timeline for appeal to run from the date of the August 2022 order. As a result, the court of appeals has jurisdiction over Urban 8's pending appeal.

2. Interlocutory Appeal Jurisdiction

a) *Bienati v. Cloister Holdings, LLC*, 691 S.W.3d 493 (Tex. June 7, 2024) (per curiam) [23-0223]

The issue in this case is whether delay of a trial pending the appellate review of a temporary injunction deprives the court of appeals of jurisdiction to hear the appeal.

Cloister Holdings is part-owner of Holy Kombucha, Inc., a beverage company. Following a dispute about the company's management and finances, Cloister sued several members of Holy Kombucha's board of directors. The trial court granted Cloister's request for a temporary injunction, enjoining the board members from making certain amendments to the company's shareholders' agreement, and the board members appealed. While the appeal was pending, the trial court abated the underlying case, postponing trial to await the court of appeals' ruling on the temporary injunction.

The court of appeals then dismissed the appeal. It held that the trial court's delay of trial was an effort to obtain an advisory opinion from the court of appeals. It also held that such a delay violated Texas Rule of Civil

Procedure 683, which provides that the appeal of a temporary injunction "shall constitute no cause for delay of the trial." The enjoined board members petitioned for review.

The Supreme Court reversed. In a per curiam opinion, it held that although parties ordinarily should proceed to trial pending an appeal from a temporary injunction, failure to do so does not deprive the court of appeals of jurisdiction. The Court explained that an interim appellate decision resolves a current controversy and governs the parties until final judgment; therefore, any decision is not advisory, even if it decides a question of law that is also presented on the merits of the dispute. The Court also held that Rule 683 is not a basis for dismissing the appeal. Parties have a statutory right to an interlocutory appeal from a temporary injunction, and the rule does not provide that the remedy for the failure to proceed to trial is dismissal.

b) *Harley Channelview Props., LLC v. Harley Marine Gulf, LLC*, 690 S.W.3d 32 (Tex. May 10, 2024) [23-0078]

The issue in this case is whether an interlocutory order requiring a party to convey real property within thirty days as part of a partial summary judgment ruling is an appealable temporary injunction.

Harley Marine Gulf leases a maritime facility from Harley Channelview Properties. When Harley Marine attempted to exercise a contractual option to purchase the facility, Channelview refused on grounds that any option right had terminated. Harley Marine sued for breach of the option contract and sought specific performance.

The trial court granted Harley Marine's partial summary judgment motion, and it ordered Channelview to convey the property to Harley Marine within thirty days. Channelview appealed, but the court of appeals dismissed the appeal for want of jurisdiction, holding that the trial court's order granted permanent relief on the merits and thus was not an appealable temporary injunction.

The Supreme Court reversed. It held that an order to immediately convey real property based on an interim ruling is a temporary injunction from which an interlocutory appeal may be taken. An order functions as a temporary injunction when it operates during the pendency of the suit and requires a party to perform according to the relief demanded. The absence of the protective hallmarks of a temporary injunction, like a trial date or a bond, may invalidate the injunction, but it does not change the character and function of the order.

3. Jurisdiction

a) *Baumgardner v. Brazos River Auth.*, ___ S.W.3d ___, 2025 WL ___ (Tex. June 27, 2025) (per curiam) [24-9101]

The issue in this motion to transfer is whether appeals by or against a river authority fall within the exclusive intermediate appellate jurisdiction of the Fifteenth Court of Appeals.

A district court in McLennan County granted a permanent injunction in favor of Brazos River Authority against Sandom Baumgardner. On appeal, the Tenth Court of Appeals

determined that the appeal was within the exclusive intermediate appellate jurisdiction of the newly created Fifteenth Court of Appeals, and the appeal was thereafter transferred to the Fifteenth Court.

Brazos River Authority moved to re-transfer the appeal to the Tenth Court. The Fifteenth Court recommended that the case be re-transferred, while the Tenth Court recommended that the case remain at the Fifteenth Court. The transfer motion, along with the recommendations of the Tenth and Fifteenth Courts, were submitted to the Supreme Court for consideration.

The Supreme Court granted the motion to re-transfer the appeal to the Tenth Court. The Court held that, for purposes of Section 22.220(d)(1) of the Texas Government Code, river authorities are not agencies "in the executive branch of the state government," and therefore matters by or against them do not fall within the exclusive intermediate appellate jurisdiction of the Fifteenth Court. The Court explained that constitutional and statutory provisions governing river authorities are separate from those generally governing agencies within the executive branch, and the Court has generally described river authorities as political subdivisions in other contexts. The Court also recognized that Brazos River Authority's geographically limited jurisdiction and potential taxing powers favor treating the Authority as a political subdivision, rather than an agency in the executive branch of the state government, for purposes of the jurisdictional statute.

b) *In re S.V.*, 697 S.W.3d 659 (Tex. Aug. 30, 2024) (per curiam) [23-0686]

The issue in this case is whether the petitioner timely filed his notice of appeal.

Venkatraman, a pro se litigant, missed the deadline to file a notice of appeal but timely sought an extension under Texas Rule of Appellate Procedure 26.3. His explanation for missing the deadline was that he mistakenly believed a notice of appeal was not required until after the trial court ruled on his post-judgment motions. The court of appeals denied the Rule 26.3 motion and dismissed the case.

The Supreme Court reversed and remanded the case to the court of appeals for further proceedings. The Court pointed out that a movant must offer a reasonable explanation for needing an extension. Then the appellate court's focus should be on a lack of deliberate or intentional failure to comply with the deadline. Here, Venkatraman operated under a genuine misunderstanding of the deadlines. There was no argument or evidence that he intentionally disregarded the rules or sought an advantage by waiting for the trial court to decide his post-judgment motions. In these circumstances, the court of appeals erred in denying his Rule 26.3 motion and dismissing the case for want of jurisdiction.

c) *Kelley v. Homminga* and *Devon Energy Prod. Co. v. Oliver*, 706 S.W.3d 829 (Tex. Mar. 14, 2025) (per curiam) [25-9013, 25-9014]

These administrative matters raise the question whether a party can

appeal to the Fifteenth Court of Appeals even though the case is not within the court's exclusive intermediate appellate jurisdiction.

In both cases, the defendants noticed their appeals to the Fifteenth Court while conceding that the appeals are not within the Fifteenth Court's exclusive jurisdiction. Under Texas Rule of Appellate Procedure 27a, the plaintiffs in each case moved to transfer the appeal to the regional court of appeals that hears appeals from the relevant county. The Fifteenth Court issued letter rulings that the motions should be denied, reasoning that Government Code Sections 22.201(p) and 22.220(a) give the court general appellate jurisdiction over civil cases statewide and that there is no express statutory bar to noticing an appeal there.

The Supreme Court granted both transfer motions. In a per curiam opinion, the Court analyzed the Government Code as amended in 2023 by the act creating the Fifteenth Court. The Court held that a fair reading of the act is that the Legislature intended the Fifteenth Court to hear (1) appeals and writs within its exclusive jurisdiction and (2) appeals transferred into the court by the Supreme Court to equalize the courts of appeals' dockets. Because the appeals fall into neither category, they were improperly taken to the Fifteenth Court.

4. Mootness

a) *Paxton v. Comm'n for Law. Discipline*, 707 S.W.3d 115 (Tex. Feb. 14, 2025) [24-0452]

After the Supreme Court held that the Attorney General's first assistant could not be subjected to collateral professional discipline based on alleged misstatements in initial pleadings filed on behalf of the State of Texas, *see Webster v. Comm'n for Law. Discipline*, 704 S.W.3d 478 (Tex. 2024), the Commission for Lawyer Discipline nonsuited its nearly identical lawsuit against Attorney General Ken Paxton. The commission then moved to dismiss the petition as moot. The Attorney General conceded that the case was moot but argued that the Supreme Court should vacate both the court of appeals' judgment and its opinion.

The Supreme Court, in a per curiam opinion, agreed. In addition to vacating the court of appeals' judgment, the Court exercised its discretion and concluded that the public interest would be served by vacating the court of appeals' opinion.

5. Preservation of Error

a) *Borusan Mannesmann Pipe US, Inc. v. Hunting Energy Servs., LLC*, ___ S.W.3d ___, 2025 WL 1774173 (Tex. June 27, 2025) (per curiam) [24-0183]

This case concerns the standards for appellate forfeiture.

The underlying dispute between Borusan and Hunting is about which of them must indemnify the other for defective pipes sold to a third party. The trial court rendered a declaratory judgment in favor of Hunting. Borusan appealed, but the court of appeals held that Borusan inadequately briefed and thus forfeited its indemnity issue, which the court therefore refused to consider. Borusan filed a petition for review, arguing that it did not forfeit its indemnity issue.

The Supreme Court reversed. Citing its recent decision in *Bertucci v. Watkins*, 709 S.W.3d 534 (Tex. 2025), it explained that courts should reach the merits of an appeal and avoid summarily disposing of issues based on procedural defects whenever possible. Borusan's brief did not cite statutes or cases, but it spent five pages asserting its theory of the case and provided record citations to documents, testimony, and the trial court's findings of fact and conclusions of law. Parties need not cite statutes or cases if they are not essential or relevant to the legal position they advance. Borusan's argument was adequate to preserve its indemnity issue. Whether the argument was sufficiently thorough or persuasive for it to prevail presents a wholly different question on which the Court expressed no view. Accordingly, the Court reversed the court of appeals' judgment and remanded the case to that court for consideration of Borusan's issue on the merits.

b) *In re Est. of Phillips*, 700 S.W.3d 428 (Tex. Nov. 1, 2024) (per curiam) [24-0366]

The issue in this case is whether a plaintiff waives a claim by omitting it from an amended petition when the omission is required to comply with the trial court's prior order.

Billy Phillips devised his estate, including a fourteen-acre tract of land, to his daughters Sheila Smith and Billie Hudson. After Smith, as independent executor, sought to sell the tract, Hudson intervened in the probate proceeding, asserting claims to partition the property in kind and other claims for relief. The trial court granted Smith's special exceptions, struck Hudson's partition claims, and ordered her to file an amended petition omitting those claims. Hudson complied, though her amended pleading expressly reserved the right to replead the stricken claims if the trial court's order was reversed on appeal. The trial court later signed an order authorizing Smith to sell the property. A divided court of appeals affirmed, holding that Hudson abandoned the partition claims by omitting them from her amended petition, which superseded her prior petitions.

The Supreme Court reversed. The Court acknowledged the general rule that any claim not carried forward in an amended petition is deemed dismissed but pointed to caselaw recognizing possible exceptions to this rule. One is that when a plaintiff files an amended petition omitting a claim that the trial court previously ruled against, but the plaintiff indicates an intent not to abandon the claim, the plaintiff does not waive her ability to complain of that ruling on appeal. This exception applies to Hudson's amended petition and the court of appeals erred by viewing Hudson's adherence to the trial court's order as manifestation of an intent to abandon the stricken claims. Because Hudson opposed Smith's special exceptions and obtained an adverse ruling from the trial court, no further step was required to preserve her complaint for appellate review. The Court remanded to the court of appeals for it to address the merits of Hudson's complaint.

6. Supersedeas Bonds

a) *In re Kay*, ___ S.W.3d ___, 2025 WL 1668350 (Tex. June 13, 2025) (per curiam) [24-0149]

This case addresses whether a trial court has discretion to allow a judgment debtor with a net worth over $10 million to post alternative security. Yosowitz sued Kay for breach of their divorce agreement and fiduciary duties, and Yosowitz obtained a $54 million judgment. Seeking to suspend the judgment, Kay filed an affidavit of net worth and two cashier's checks totaling half of his asserted net worth. At the net worth hearing, the parties principally contested the value of Kay's shares in his privately held startup, Entera Holdings. Accepting the valuation testimony of Yosowitz's experts over that of Kay's expert, the trial court found that Kay's shares were worth $182 million and set $25 million as the required bond amount.

Kay challenged the bond order by motion in the court of appeals, which upheld the trial court's order. Kay then sought mandamus relief in the Supreme Court.

The Court conditionally granted mandamus relief. The Court did not disturb the trial court's finding regarding the value of Kay's Entera shares. But the Court reversed the court of appeals' determination that Texas Rule of Appellate Procedure 24.2(e) deprives trial courts of the discretion to allow alternate security for judgment debtors with a net worth over $10 million. Instead, Rule 24.1(a) continues to contemplate supersedeas as ordered by the court. Thus, trial courts are not limited to the alternative security that Rule 24.2(e) requires in certain cases; they retain discretion to allow alternative security under Rule 24.1(a)(4) for judgment debtors with net worths of $10 million or more. Accordingly, the Supreme Court directed the court of appeals to determine in the first instance whether the trial court abused its discretion in refusing Kay's offer to tender his Entera stock certificate as alternate security.

7. Temporary Orders

a) *In re State*, 711 S.W.3d 641 (Tex. June 14, 2024) [24-0325]

In this mandamus proceeding arising from a guaranteed-income program, the Court addressed the standard for deciding a motion for temporary relief.

Under Harris County's Uplift Harris program, residents who meet eligibility requirements can apply to receive monthly payments of $500 for 18 months. The State sued to block the program, claiming that it violates Article III, Section 52(a) of the Texas Constitution—one of the Gift Clauses. The trial court denied the State's request for a temporary injunction. On interlocutory appeal, the court of appeals denied the State's request for an order staying Uplift Harris payments under Texas Rule of Appellate Procedure 29.3. The State filed a mandamus petition in the Supreme Court challenging the court of appeals' Rule 29.3 ruling and separately filed a motion for temporary relief under Texas Rule of Appellate Procedure 52.10.

The Court addressed the request for temporary relief under 52.10. It first observed that while "preserving

the status quo" remains a valid consideration in a request for temporary relief, identifying the status quo is not always a straightforward undertaking. Rule 29.3's analogous standard of an order "necessary to preserve the parties' rights" pending appeal is more helpful. The Court identified two factors important to deciding the Rule 52.10 motion pending before it. The first is the merits; an appellate court asked to issue temporary relief should make a preliminary inquiry into the likely merits of the parties' legal positions. The second is the injury that either party or the public would suffer if relief is granted or denied.

Applying those factors here, the Court concluded that the State's motion for temporary relief should be granted. The State has raised serious doubt about the constitutionality of Uplift Harris. The Court's Gift Clause precedents require that the governmental entity issuing the funds retain public control over them. The record here indicates that Uplift Harris advertised a "no strings attached" stipend, and so it appears there will be no public control of the funds after they are disbursed. Turning to the balance of harms, the Court pointed to precedent recognizing that ultra vires conduct by local officials automatically results in harm to the State, and it observed that once the funds are disbursed to individuals, they cannot feasibly be recouped.

The Court ordered Harris County to refrain from distributing funds under the program until further order of the Court and directed the court of appeals to proceed to decide the temporary-injunction appeal pending before it. The State's mandamus petition remains pending before the Court.

8. Vexatious Litigants

a) *Serafine v. Crump*, 691 S.W.3d 917 (Tex. June 21, 2024) (per curiam) [23-0272]

In this case, pro se petitioner Serafine challenges the determination that she is a vexatious litigant.

The court of appeals affirmed the trial court's order deeming Serafine a vexatious litigant by counting each of the following as separate "litigations": (1) Serafine's partially unsuccessful appeal to a Texas court of appeals of a final trial court judgment in a civil action; (2) her unsuccessful petition for review of that court of appeals judgment and motion for rehearing in the Supreme Court of Texas; (3) her unsuccessful petition for writ of mandamus in the court of appeals; (4) a civil action she filed in federal district court that was dismissed for lack of jurisdiction; (5) her unsuccessful appeal of that dismissal to the Fifth Circuit; and (6) her unsuccessful petition for writ of mandamus in the Fifth Circuit. Serafine now challenges the court of appeals' method of counting "litigations" under Section 11.054(1)(A) of the Civil Practice and Remedies Code, which requires a showing that the plaintiff has in the past seven years "maintained at least five litigations as a pro se litigant other than in a small claims court that have been . . . finally determined adversely to the plaintiff."

The Supreme Court reversed and remanded the case to the trial court for further proceedings. It held Serafine is not a vexatious litigant because an appeal and a petition for

review from a judgment or order in a civil action are part of the same civil action and therefore count as a single "litigation." Accordingly, Serafine maintained at most only four litigations as a pro se litigant that were determined adversely to her.

9. Waiver

a) *Bertucci v. Watkins*, 709 S.W.3d 534 (Tex. March 14, 2025) [23-0329]

This case concerns issues of briefing waiver, fiduciary duties between partners, and defenses to summary judgment.

Bertucci and Watkins developed low-income-housing projects. They created a series of limited partnerships with themselves as limited partners. In 2014, Bertucci claimed to discover that Watkins misappropriated funds. Bertucci sued individually and derivatively on behalf of the companies. The parties filed cross-motions for summary judgment, and the trial court granted summary judgment for Watkins on all claims.

The court of appeals held that Bertucci failed to adequately brief issues regarding the derivative claims and thus affirmed the judgment in Watkins's favor on those claims. It reversed the judgment on Bertucci's individual breach-of-fiduciary-duty claims, concluding that fact issues existed as to those claims and on Watkins's defenses of limitations, waiver, and ratification. Both parties petitioned for review.

The Supreme Court affirmed in part and reversed in part. It held that Bertucci sufficiently asserted arguments in his appellate briefing on behalf of the companies so as to avoid waiver. It next held that summary judgment was proper on Bertucci's claim that Watkins owed fiduciary duties to Bertucci, individually. The court of appeals reversed on this issue on a ground that Bertucci raised for the first time in that court. Because the ground was not raised in the trial court, it could not form the basis for summary judgment. Finally, the Court held that fact issues precluded summary judgment in Watkins's favor based on limitations and that the court of appeals did not err by declining to address an expert's report or by holding that the Dead Man's Rule barred certain testimony.

The Court reinstated summary judgment on the breach-of-fiduciary-duty claims Bertucci asserted in his individual capacity and remanded the case to the court of appeals to address the derivative claims.

Y. PROCEDURE—PRETRIAL

1. Discovery

a) *In re Elhindi*, 704 S.W.3d 827 (Tex. Dec. 31, 2024) (per curiam) [23-1040]

At issue in this case is whether the trial court should have delayed production of a video allegedly containing child sexual abuse material to permit law enforcement review.

Magdoline Elhindi sued Hamilton Rucker for invasion of privacy, alleging the filming and distribution of an illicit video made without her consent. The trial court entered a temporary injunction prohibiting the parties from disclosing intimate material of one another. During discovery, Rucker requested videos in Elhindi's possession that depicted him. Elhindi

objected to the production of one video, which she alleged contained child sexual abuse material. She sought leave from the trial court's injunction to provide the video to the FBI for its review before producing the video to Rucker. The trial court issued an order allowing Elhindi to send the video to the FBI only after producing it to Rucker. The court of appeals denied Elhindi's request for mandamus relief.

The Supreme Court conditionally granted relief. The Court reasoned that the risk of harm to the alleged minor by further transmission before law enforcement review outweighed any delay in the discovery timeline. The Court directed the trial court to modify its order to permit Elhindi to provide the video to the FBI and receive a determination that it does not contain child sexual abuse material before compelling its production in discovery.

b) *In re Euless Pizza*, 702 S.W.3d 543 (Tex. Dec. 6, 2024) (per curiam) [23-0830]

At issue is the trial court's denial of relators' request to withdraw and amend responses to requests for admission.

Two delivery drivers for i Fratelli Pizza began racing each other in a low-speed zone. One crashed into plaintiffs' vehicle, injuring them. The driver was arrested and indicted for felony racing causing serious bodily injury. Plaintiffs sued the driver and three corporate defendants, including Euless Pizza, LP.

In discovery, plaintiffs asked each corporate defendant to admit that at the time of the crash, the driver was acting within the scope of his employment "with i Fratelli Pizza" and "with You." Each defendant admitted to the first request, while only Euless Pizza admitted to the second. Defendants later sought leave to withdraw and amend their admissions to reflect that each denied both requests. The trial court denied the motion, and the court of appeals denied defendants' request for mandamus relief.

The Supreme Court granted defendants' request for mandamus relief in a per curium opinion. The Court reiterated the established test for withdrawing admissions—good cause and lack of undue prejudice to the opposing party—and held that the test is met here. Defendants represented that their initial responses were based on a misunderstanding about the pizzeria's corporate structure and confusion arising from the wording of the RFAs. Defendants further contended that new information revealed in the police investigation supported a defense that the driver's criminal conduct was outside the scope of his employment. Defendants' explanation established good cause, the Court said, because their initial responses were based on inaccurate or incomplete information, and there is no evidence defendants acted in bad faith. The Court reasoned that the no-undue-prejudice prong was also met because granting defendants' motion would not have delayed trial or hampered plaintiffs' preparation, while denial of the motion compromised the merits by eliminating defendants' scope-of-employment defense. The Court emphasized that RFAs must not be used to trick a party into admitting that it has no claim or defense. Additionally, the Court clarified that the

test for changing an admission is not a high bar and that a trial court's "broad discretion" when faced with such a request is not unlimited.

c) *In re Off. of Att'y Gen.*, 702 S.W.3d 360 (Tex. Nov. 22, 2024) (per curiam) [24-0073]

The issue in this mandamus proceeding is whether the trial court abused its discretion by compelling depositions of fact witnesses in a case where the defendant amended its answer and no longer contests liability.

Four former employees sued the Office of the Attorney General under the Whistleblower Act. They sought to depose the Attorney General and three senior OAG employees. OAG amended its answer, stating that it no longer disputes the lawsuit as to any issue and consents to the entry of judgment against it. The trial court issued an order compelling the depositions. OAG sought mandamus relief.

In a per curiam opinion, the Supreme Court conditionally granted relief. It concluded that OAG's unambiguous statements in its amended answer unquestionably alter the analysis to determine whether the deposition requests show a reasonable expectation of obtaining information that would aid in the dispute's resolution and whether the burden or expense of the depositions outweigh their likely benefit. The Court held that the trial court abused its discretion by failing to consider how the narrowing of the disputed fact issues to include only damages affect the need, likely benefit, and burden or expense of the requested depositions. The Court rejected the plaintiffs' additional arguments that the depositions are needed to advance the purposes of the Whistleblower Act and to obtain effective relief through legislative approval of the judgment. The Court concluded that neither argument justifies altering the rules' limits on discovery obligations in a lawsuit.

d) *In re Peters*, 699 S.W.3d 307 (Tex. Oct. 4, 2024) (per curiam) [23-0611]

This case involves the application of the Fifth Amendment privilege against self-incrimination to discovery requests.

After drinking, Taylor Peters caused a multi-car crash that injured the plaintiffs. Peters was admitted to a hospital, where he told the responding police officer that he had visited two bars whose names he had forgotten, drank three beers, and remembered feeling "buzzed." The officer noted that Peters appeared confused and disoriented. A breathalyzer test revealed that Peters had a blood-alcohol concentration above the legal limit. He was arrested and charged with intoxication assault with a motor vehicle.

After suing Peters for negligence, the plaintiffs served interrogatories inquiring where Peters had been before the crash. They sought the names of the bars that served Peters alcohol in order to initiate a timely dram shop action. Peters invoked the Fifth Amendment and refused to provide the information. The trial court granted the plaintiffs' motion to compel. The court of appeals denied Peters' mandamus petition.

The Supreme Court conditionally granted mandamus relief. The constitutional privilege against self-

incrimination applies in civil litigation and can bar discovery, no matter how critical the need for that discovery is. Here, Peters' discovery responses could be used against him in the criminal case by leading to evidence that Peters drank more than the three beers that he claimed. The Court rejected the plaintiffs' argument that Peters waived the privilege by disclosing to the police that he had visited two bars, drank three beers, and felt buzzed. The plaintiffs did not show a voluntary, knowing, and intelligent waiver of the privilege in the record; indeed, the officer's notes about Peters' condition cut against a voluntary waiver.

e) *In re State Farm Mut. Auto. Ins. Co.*, 712 S.W.3d 100 (Tex. Apr. 25, 2025) [23-0755]

At issue in this original proceeding is whether, in the first part of a bifurcated proceeding to recover underinsured motorist benefits, an insured is entitled to conduct discovery on extracontractual claims and to depose the insurer's corporate representative.

After an automobile accident, Mara Lindsey sought to recover UIM policy benefits and alleged that her insurer State Farm failed to attempt a good-faith settlement of her UIM claim in violation of the Insurance Code. The trial court bifurcated the proceedings and ordered Lindsey's declaratory-judgment claims on her entitlement to UIM benefits to be tried before her extracontractual claims. State Farm moved to abate the extracontractual claims during the first part of the proceeding and to quash Lindsey's deposition notice of its corporate representative on proportionality grounds. The trial court denied the motions and the court of appeals denied mandamus relief.

The Supreme Court conditionally granted mandamus relief. The Court held that (1) in this distinctive context, an insurer is entitled to have extracontractual claims abated while the insured establishes her entitlement to UIM benefits, and (2) the deposition notice of a corporate representative must be quashed when a UIM insurer with no personal knowledge about the underlying car-crash issues has produced all nonprivileged claim documents and substantiated its proportionality complaints with evidence.

Justice Sullivan concurred, raising concerns about the Court's precedent on what it means for an insured to be "legally entitled to recover" UIM benefits.

2. Forum Non Conveniens

a) *In re Greyhound Lines, Inc.*, ___ S.W.3d ___, 2025 WL 1478491 (Tex. May 23, 2025) (per curiam) [23-1035]

The issue in this case is whether the trial court should have dismissed the suit based on statutory forum non conveniens.

Maria Granados was traveling by bus from her home in Alabama to Salvatierra, Mexico. On her trip's last leg, which was entirely in Mexico, the bus crashed and Maria died. Maria's son had purchased her ticket from Greyhound, a company headquartered in Dallas. But Estrella Blanca, a Mexican bus company, owned and operated the bus that crashed. Members of the Granados family sued Greyhound, Estrella Blanca, and the bus driver,

bringing claims that included breach of contract, fraudulent misrepresentation, and negligence. Greyhound—the only defendant who has appeared—filed a motion to dismiss based on forum non conveniens. The trial court denied the motion, and the court of appeals denied mandamus relief.

The Supreme Court granted conditional mandamus relief and ordered the trial court to dismiss the case. The Court held that each forum non conveniens factor favored dismissal. The Mexican forum is available and provides an adequate remedy. Greyhound stipulated that it would submit to the jurisdiction of Mexican courts and waive limitations in Mexico. The bulk of the evidence and witnesses relevant to the case are in Mexico, and Mexican law will apply to most of the claims. Finally, the Court held that Greyhound did not judicially admit to a proper forum in Dallas or waive its forum non conveniens argument by filing a cross-claim against Estrella Blanca for contractual indemnification for this litigation.

3. Multidistrict Litigation

a) *In re Jane Doe Cases*, 704 S.W.3d 538 (Tex. Dec. 31, 2024) [23-0202]

The issue in this case is whether the MDL panel erred by refusing to remand a "tag along" case.

In the underlying case, Jane Doe alleges that she was a victim of sex trafficking as a minor, and the perpetrator befriended her on Facebook to convince her to meet in person. Thereafter, she was sexually assaulted at a hotel owned by Texas Pearl. In 2018, Doe sued Facebook and Texas Pearl, alleging they both facilitated her trafficking. In 2019, the MDL panel formed an MDL with seven other cases involving sex-trafficking allegations, and it assigned an MDL pretrial court. None of the other cases involve the same parties or events alleged in the Facebook case. In 2022, Texas Pearl filed a Notice of Transfer of Tag-Along Case to move the underlying case into the MDL, asserting that Doe's claims relate to the MDL cases because all involve sex-trafficking allegations against hotels.

The MDL pretrial court denied Facebook's motion to remand, and the MDL panel denied Facebook's motion for rehearing. Facebook sought mandamus relief in the Supreme Court, arguing that its case shares no common fact question with the MDL, and further that the inclusion of the case in the MDL will not improve convenience or efficiency.

The Supreme Court granted relief, holding that that the Facebook case lacks a fact question in common with the MDL cases, as required to form an MDL. Without a common connection through the same plaintiffs, defendants, or events, general allegations of criminal activity by different perpetrators do not create the required common fact question to include a case within an MDL for pretrial docket management. The Court directed the MDL panel to remand the tag along case to its original trial court.

4. Responsible Third-Party Designation

a) *In re E. Tex. Med. Ctr. Athens*, 712 S.W.3d 88 (Tex. Apr. 25, 2025) [23-1039]

This case concerns whether an employer that opted not to subscribe to the Texas workers' compensation program may designate responsible third parties when its employee sues it for negligence.

East Texas Medical Center Athens employed Sharon Dunn as an emergency-room nurse. Dunn alleges she was injured by an EMT who was not employed by ETMC Athens during one of her shifts. She originally sued the EMT and his employer, but they were dismissed from the case. Dunn then added claims against ETMC Athens, which moved to designate the EMT and his employer as responsible third parties. After the trial court granted the motion, Dunn moved to strike the designations, arguing that the proportionate-responsibility statute, which prohibits third-party designations in "action[s] to collect workers' compensation benefits under" the Workers' Compensation Act, does not apply because her suit is an action to collect "benefits."

The trial court granted the motion. The court of appeals denied ETMC Athens's petition for mandamus relief, and ETMC Athens petitioned for mandamus relief in the Supreme Court.

The Court conditionally granted mandamus relief and held that an employee's negligence suit against her nonsubscribing employer is not one to "collect workers' compensation benefits" under the Act. Thus, the proportionate responsibility statute applies to such an action. The Court further held that the Act itself does not prohibit responsible third-party designations and that there was sufficient evidence in the record to create a fact issue regarding the third parties' responsibility in this case. Therefore, the trial court's striking of ETMC Athens's designations was an abuse of discretion with no adequate appellate remedy, warranting mandamus relief.

5. Sanctions

a) *In re Newkirk Logistics, Inc.*, ___ S.W.3d ___, 2025 WL 1415884 (Tex. May 16, 2025) (per curiam) [24-0255]

The issue in this case is whether the trial court abused its discretion by imposing death-penalty sanctions against a party for alleged discovery abuses.

Rayah Lemons and Nicholas Begaye were injured when their vehicle was struck by a tractor-trailer operated by Mario Cottman, an employee of Newkirk Logistics. Plaintiffs sued Cottman, Newkirk, DHL eCommerce, and Hogan Truck Leasing, asserting various ordinary and gross negligence claims. During discovery, Plaintiffs sought contracts between Newkirk and DHL eCommerce. Newkirk stated that it found no responsive documents after diligent searches. Later, DHL eCommerce produced two contracts that were signed by it and Newkirk. Plaintiffs then moved for sanctions against Newkirk, arguing that Newkirk intentionally concealed and failed to produce the contracts. The trial court struck Newkirk's pleadings as a sanction for discovery abuse. The court of appeals

denied Newkirk mandamus relief.

The Supreme Court conditionally granted mandamus relief. The Court held that the trial court abused its discretion in imposing death-penalty sanctions against Newkirk. Although Newkirk signed the contracts years earlier, there was insufficient evidence that Newkirk intentionally concealed or failed to produce the contracts. The Court also rejected the trial court's other justifications for the death-penalty sanctions, finding insufficient evidence that Newkirk had possession of or intentionally withheld other requested documents. As a result, the sanctions lacked a direct relationship to the alleged conduct, and the sanctions were excessive because the record lacked evidence of flagrant or extreme bad faith. Further, the trial court did not consider lesser sanctions before striking Newkirk's pleadings. Accordingly, the Court directed the trial court to vacate its order striking Newkirk's pleadings.

6. Sufficient Pleadings

a) *Herrera v. Mata*, 702 S.W.3d 538 (Tex. Dec. 6, 2024) (per curiam) [23-0457]

At issue in this case is whether the plaintiffs pleaded sufficient facts to allege an ultra vires claim against irrigation district officials under the Tax Code.

In 2019, Hidalgo County Irrigation District No. 1 sought to collect charges accrued in the 1980s and 1990s from a group of homeowners. The homeowners sued the district, claiming that the charges are taxes and that the district's refusal to remove them from the tax rolls violates the Tax Code's limitations period. In the alternative, the homeowners claim that the charges are Water Code assessments that the district has no authority to levy. The district filed a plea to the jurisdiction, arguing that the charges are assessments with no applicable limitations period; thus, governmental immunity bars suits seeking to stop their collection. The trial court granted the plea.

The court of appeals affirmed in part. It held that the Tax Code does not apply as a matter of law, so district officials did not act ultra vires by refusing to remove the charges from the tax rolls.

The Supreme Court reversed. It held that the homeowners pleaded sufficient facts to demonstrate the trial court's jurisdiction for their Tax Code claim by alleging that the charges are taxes assessed well after the limitations period. It also held that the homeowners' alternative pleading treating the charges as assessments does not affirmatively negate their pleadings that the charges are taxes. The Court remanded the case to the trial court for further proceedings.

7. Summary Judgment

a) *Lozada v. Posada*, ___ S.W.3d ___, 2025 WL 1717009 (Tex. June 20, 2025) (per curiam) [23-1015]

The issue in this case is whether the court of appeals erred in reversing the trial court's grants of no-evidence motions for summary judgment.

Cesar Posada sued Osvanis Lozada and Lozada's employer, TELS, Inc., following a collision between two tractor trailers. He brought negligence and negligence per se claims against

Lozada and sought to hold TELS vicariously liable. After Lozada and TELS filed no-evidence motions for summary judgment, Posada submitted evidence that Lozada was traveling under the speed limit when a tire on his tractor trailer suddenly and unexpectedly lost air, causing him to lose control and jackknife before Posada crashed into him. The trial court granted the motions, but in a divided decision, the court of appeals reversed. It held that from the evidence Posada submitted, a reasonable jury could conclude that Lozada breached his duty of care and that Lozada's negligence was a proximate cause of Posada's injuries. Because Posada's claims against Lozada survived, the court of appeals concluded that Posada's vicarious-liability claim against TELS survived as well.

The Supreme Court reversed. On a limited summary-judgment record consisting solely of Lozada's deposition testimony and two photographs of the accident scene, the Court concluded that Posada failed to produce more than a scintilla of evidence that Lozada breached his duty of care. Accidents happen when something has gone wrong, but not all accidents are evidence of negligence. Here, no evidence suggested that Lozada acted negligently in trying to control the tractor trailer in response to a rapid, unforeseen tire failure. Because summary judgment for Lozada was appropriate, summary judgment for TELS was appropriate as well. Thus, the Supreme Court reinstated the trial court's judgment, dismissing Posada's claims against Lozada and TELS with prejudice.

b) *Keenan v. Robin*, 709 S.W.3d 595 (Tex. Dec. 31, 2024) (per curiam) [23-0833]

This dispute between adjacent landowners involves claims of trespass and malicious prosecution.

A plat for a subdivision was approved by Randall County and filed in 2006. The plat shows forty-five lots separated by several named streets that, according to the Owner's Acknowledgment, are "dedicated to the public forever." Although the rest of the subdivision was never fully developed, the Keenans bought one of the lots in 2009. The Ranch Respondents eventually purchased all remaining lots at a bankruptcy auction, began using the land to run cattle, and erected a gate across one of the streets that the Keenans had been using to access their lot. Michael Keenan broke or removed the Ranch's gate and portions of its fence on two occasions, which resulted in his arrest and indictment on two counts of criminal mischief of a livestock fence.

The Keenans filed the underlying lawsuit against the Ranch Respondents, alleging claims for trespass and malicious prosecution and requesting declaratory and injunctive relief in addition to damages. At summary judgment, the parties disputed whether (1) the plat had dedicated the streets to the public or created a private easement, (2) the Ranch had "procured" Michael Keenan's prosecution, and (3) the Ranch Respondents were the owners of the cattle that had been crossing the Keenans' lot without their permission. The trial court granted summary judgment for the Ranch Respondents and entered a take-nothing judgment on all the Keenans' claims. The court of appeals reversed the entry of a take-

nothing judgment on the claims for declaratory and injunctive relief but otherwise affirmed the trial court's judgment.

The Supreme Court reversed in part and affirmed in part. The Court disagreed with the court of appeals' conclusion that the Keenans offered no evidence of trespass, pointing to Michael Keenan's declaration stating that he saw cattle and manure on his lot and that one of the respondents admitted ownership of the cattle. The Court further held that the Ranch does not own the dedicated public streets within the subdivision as a matter of law and that, therefore, the court of appeals erred by remanding the claim for declaratory relief to resolve factual disputes. Finally, the Court affirmed the court of appeals' judgment upholding the trial court's take-nothing judgment on the malicious prosecution claim. The Court remanded to the trial court for further proceedings.

c) *State v. $3,774.28*, ___ S.W.3d ___, 2025 WL 1415887 (Tex. May 16, 2025) [24-0258]

At issue in this case is whether, in deciding a no-evidence motion for summary judgment, the trial court should have considered an affidavit that was on file with the court but not attached to the nonmovant's response to the no-evidence motion.

The State initiated civil-forfeiture proceedings for bank accounts related to an opioid-trafficking operation. The claimants filed a no-evidence motion for summary judgment on the State's claim that the accounts were used or intended to be used in the commission of a felony, making the accounts contraband. The State's response to the motion referenced and summarized an affidavit from the investigating law enforcement officer. The affidavit was attached to the State's original notice of forfeiture proceedings but was not attached to its response to the no-evidence motion.

The trial court granted summary judgment for the claimants, refusing to consider the affidavit because it was not attached to the State's response. The court of appeals affirmed, concluding that the rules require attachment.

The Supreme Court reversed. It held that Texas Rule of Civil Procedure 166a(i) does not require attachment of previously filed evidence. Rather, the more crucial inquiry is whether the nonmovant's response points out the evidence it alleges raises a fact issue. But "mere reference" to previously filed evidence is insufficient; the nonmovant must discuss the evidence with some specificity. The State's discussion of the affidavit in its response adequately directed the trial court's attention to the alleged fact issues, and the trial court abused its discretion in refusing to consider the affidavit. Without commenting on the merits of the claimants' no-evidence motion, the Court remanded the case to the trial court to reconsider the motion in light of the Court's opinion.

d) *Verhalen v. Akhtar*, 699 S.W.3d 303 (Tex. Oct. 4, 2024) (per curiam) [23-0885]

The issue is whether the trial court abused its discretion by denying a motion to file a summary judgment

response tendered one day late.

Georgia Verhalen and her mother sued Evan Johnston and Adriana Akhtar for negligence. The defendants filed motions for summary judgment, resulting in an October 5, 2022, deadline for the Verhalens' responses. The Verhalens did not file their responses until 11:48 p.m. on October 6. They also filed a verified motion for leave to file the responses late. The motion and affidavit explained that the deadline was improperly entered in the calendaring software used by the plaintiffs' counsel and that counsel filed the responses immediately upon discovering the oversight. The trial court denied the motion for leave, insisting on strict compliance with the response deadline prescribed by the rules of civil procedure. The trial court then granted the defendants' motions for summary judgment and awarded take-nothing judgments to both. The Verhalens appealed the denial of their motion for leave, but the court of appeals affirmed.

The Supreme Court reversed and remanded to the trial court for further proceedings. The Court held that the trial court abused its discretion by denying the motion for leave because the Verhalens established good cause for the delay in filing. The Court emphasized counsel's uncontroverted factual assertions about her discovery of the calendaring error and her prompt action in response.

8. Venue

a) *Rush Truck Ctrs. of Tex., L.P. v. Sayre*, ___ S.W.3d ___, 2025 WL 1599527 (Tex. June 6, 2025) [24-0040]

This case raises venue and jurisdiction issues in an interlocutory appeal from a venue ruling.

Six-year-old Emory Sayre died after a school bus accident. Her parents sued the manufacturer, Rush Truck, in Dallas County for product liability. Rush Truck moved to transfer venue to either Parker County, where the accident occurred, or Comal County, Rush Truck's headquarters. The trial court denied the motion. The court of appeals affirmed, holding that a substantial part of the events or omissions giving rise to the Sayres' product liability claim arose in Dallas County. The court of appeals noted evidence that the bus was ordered, delivered, inspected, titled, billed, and paid for out of Rush Truck's Dallas County office.

The Supreme Court vacated the judgment of the court of appeals and remanded the case for further proceedings in the district court. The Court held that Section 15.003(b) of the Civil Practice and Remedies Code did not allow for interlocutory appeal in this case involving multiple plaintiffs. Section 15.003(b) provides a limited exception to the general prohibition against interlocutory appeals. It permits interlocutory appeal of a venue determination involving multiple plaintiffs only in cases where a plaintiff's independent claim to venue is at issue. Because the plaintiffs asserted identical claims, based on identical facts, with identical venue grounds, the court of appeals lacked jurisdiction over the interlocutory appeal.

Z. PROCEDURE—TRIAL AND POST-TRIAL

1. Defective Trial Notice

a) *Wade v. Valdetaro*, 696 S.W.3d 673 (Tex. Aug. 30, 2024) (per curiam) [23-0443]

The Supreme Court reversed a $21.6 million judgment rendered after a one-hour bench trial at which the pro se defendant appeared but presented no evidence.

The defendant was unprepared to mount a defense because notice of the trial setting was sent to an incorrect address. The Court held that a party who has appeared in a civil case has a constitutional right to notice of a trial, which by rule must ordinarily be at least 45 days before a first setting. Having sufficiently informed the trial court about the service defect, the defendant was entitled to a new trial. The defendant's failure to request a continuance did not constitute a voluntary, knowing, and intelligent waiver of the due process right to reasonable notice.

2. Incurable Jury Argument

a) *Alonzo v. John*, 689 S.W.3d 911 (Tex. May 10, 2024) (per curiam) [22-0521]

The issue in this personal-injury suit is whether an accusation of race and gender prejudice directed at opposing counsel was incurably harmful.

Roberto Alonzo was driving a tractor-trailer when he rear-ended Christine John and Christopher Lewis. John and Lewis sued Alonzo and his employer, New Prime, Inc. John requested $10–12 million in non-economic damages, but the defense asked the jury to award her $250,000. In closing, plaintiffs' counsel argued that "we certainly don't want this $250,000" and then remarked: "Because it's a woman, she should get less money? Because she's African American, she should get less money?" The defense moved for a mistrial, but the motion was overruled. The jury awarded John $12 million for physical pain and mental anguish, and the trial court rendered judgment on the verdict. The court of appeals affirmed.

The Supreme Court reversed and remanded to the trial court, holding that defense counsel was entitled to suggest a smaller damages amount than John sought without an uninvited accusation of race and gender bias. The resulting harm was incurable by withdrawal or instruction because the argument struck at the heart of the jury trial system and was designed to turn the jury against opposing counsel and their clients.

3. Jury Instructions and Questions

a) *Horton v. Kan. City S. Ry. Co.*, 692 S.W.3d 112 (Tex. June 28, 2024) [21-0769]

This case raises questions of federal preemption, evidentiary sufficiency, and charge error.

Ladonna Sue Rigsby was killed by a Kansas City Southern Railroad Company train while she was driving across a railroad crossing. Her children (Horton) sued the Railroad, alleging two theories of liability: (1) the Railroad failed to correct a raised hump at the crossing; and (2) it failed to maintain a yield sign at the crossing. Both theories were submitted to the jury in one liability question. The jury found both the Railroad and Rigsby

negligent, and the trial court awarded Horton damages for the Railroad's negligence.

The court of appeals reversed, holding that the federal Interstate Commerce Commission Termination Act preempted Horton's humped-crossing theory and that the submission of both theories in a single liability question was harmful error. The court remanded for a new trial on the yield-sign theory alone.

The Supreme Court granted both sides' petitions for review. In a June 2023 opinion, the Court affirmed the court of appeals' judgment, but on different grounds. It held that federal law does not preempt the humped-crossing claim, but no evidence supports the jury's finding that the absence of a yield sign proximately caused the accident. The Court then concluded that the trial court's use of a broad-form question to submit the negligence claim was harmful error.

Both parties filed motions for rehearing. The Court denied the Railroad's motion and granted Horton's, which challenged the holding that the submission of the broad-form question was harmful error. The Court withdrew its original opinion. In a new opinion by Justice Boyd, the Court maintained its holdings that the humped-crossing claim is not preempted and that no evidence supports the yield-sign theory. But in the new opinion, the Court concluded that the submission of the broad-form question was not harmful error.

The Court held that *Casteel*'s presumed-harm rule does not apply when a theory or allegation is "invalid" because it lacks legally sufficient evidentiary support, as was the case here. The Court then reviewed the entire record and concluded that the broad-form question did not probably cause the rendition of an improper judgment. It therefore reversed the court of appeals' judgment and reinstated the trial court's judgment in Horton's favor.

Justice Busby filed a concurring opinion, urging the Supreme Court of the United States to reconsider its holding in *Hines v. Davidowitz*, 312 U.S. 52, 68 (1941), on the basis that implied-obstacle preemption is inconsistent with the federal Constitution.

Justice Young, joined by Justice Blacklock, dissented to the Court's judgment. He would apply *Casteel* whenever there is the risk that the jury relied on any theory that turns out be legally invalid.

b) *Oscar Renda Contracting v. Bruce*, 689 S.W.3d 305 (Tex. May 3, 2024) [22-0889]

This case raises procedural questions arising from an award of exemplary damages in a verdict signed by only ten jurors.

As part of a flood-mitigation project undertaken by the City of El Paso, Renda Contracting installed a pipeline from Interstate 10 to the Rio Grande river. Nearby homeowners sued Renda Contracting, alleging that vibration and soil shifting from the construction caused damage to their homes. The jury found gross negligence and awarded $825,000 in exemplary damages, but the verdict certificate and subsequent jury poll indicated that only ten of twelve jurors agreed with the verdict. The jury charge, which was

not objected to, failed to instruct the jury that it must be unanimous in awarding exemplary damages, as required by Section 41.003(e) of the Civil Practice and Remedies Code.

When the homeowners moved for entry of a judgment that included exemplary damages, Renda Contracting objected on the basis that the verdict was not unanimous. The trial court sustained the objection and entered judgment on the jury's verdict without an exemplary damages award.

A split court of appeals reversed. The majority held that unanimity as to exemplary damages could be implied despite the verdict certificate's demonstrating a divided verdict because the disagreement could be on an answer to a different question. The majority further held that Renda Contracting had the burden to prove that the verdict was not unanimous and that it had waived any error in awarding exemplary damages by failing to object to the jury charge. The dissenting justice would have held that the homeowners had the burden to secure a unanimous verdict.

The Supreme Court reinstated the trial court's judgment. The Court explained that Section 41.003 places the burden of proof on a claimant seeking exemplary damages to secure a unanimous verdict and states that this burden may not be shifted. Thus, it was the homeowners' burden to secure a unanimous verdict and to seek confirmation as to unanimity for the amount of exemplary damages after the jury returned a divided verdict. The Court also held that Renda Contracting's objection to the judgment, which the trial court had sustained, was sufficient to preserve the issue for appeal.

4. New Trial Orders

a) *In re Space Expl. Techs. Corp.*, ___ S.W.3d ___, 2025 WL 1774175 (Tex. June 27, 2025) (per curiam) [24-0290]

In this original proceeding, the issue is whether the trial court abused its discretion in overturning a jury verdict and granting a new trial.

While commuting to work at a SpaceX site, Lauren Krueger rear-ended a vehicle, pushing it into a pickup. The pickup passengers contacted their employer, who in turn reached out to his lawyer. That lawyer referred them to various doctors for treatment. The passengers then sued Krueger for negligence and SpaceX for vicarious liability. At trial, the parties disputed the existence and extent of the injuries, and testimony described how the employer's lawyer referred the plaintiffs to doctors. Closing arguments featured vigorous advocacy, with SpaceX's counsel describing the lawsuit as a "lawyer-driven plan" and "shakedown."

The jury found that Krueger's negligence caused the accident and she was acting outside the scope of her SpaceX employment. After rendering judgment on the verdict, the trial court granted plaintiffs' motion for a new trial. The court ultimately provided three reasons in its new-trial order: (1) defense counsel's closing included incurable argument, (2) testimony about the lawyer's doctor referrals was improperly admitted, and (3) the awarded damages were manifestly low. SpaceX and Krueger petitioned for mandamus relief, which the court of

appeals denied.

The Supreme Court conditionally granted mandamus relief, holding that none of the cited reasons supported a new trial. First, a new trial is inappropriate for improper argument when the error was curable, but the complaint was waived. Here, the jury argument was not incurable and even if improper, the plaintiffs failed to request a curative instruction or obtain a ruling on the objection. Second, evidence that the lawyer chose the doctors was admitted without objection, thus waiving any error. Finally, the new-trial order did not explain how or why the awarded damages were manifestly low. But the mandamus record lacked plaintiffs' medical exhibits to establish that the trial court had no valid basis to reach that conclusion. The Court therefore required the trial court to redraft its order to explain its reasoning as to this ground. Because this reason does not address the jury's finding that Krueger was acting outside the scope of her employment, the Court explained that the redrafted order must be limited to the claims against Krueger, and the trial court must render a take-nothing judgment in SpaceX's favor.

5. Post-Judgment Filing Deadlines

a) *Red Bluff, LLC v. Tarpley*, ___ S.W.3d ___, 2025 WL 1350004 (Tex. May 9, 2025) (per curiam) [24-0005]

This case concerns whether a defendant is entitled to an extension of the post-judgment motion filing deadline under Rule of Civil Procedure 306a because it did not acquire "actual knowledge" of a final judgment against it.

In 2022, a jury awarded Nicole Tarpley a judgment on her claims against Red Bluff, her employer. The court clerk sent notice of the signed judgment to Red Bluff's counsel via email on February 8. Red Bluff's counsel averred, however, that he did not see the email until March 14, when Tarpley's counsel demanded payment on the judgment. Red Bluff filed a Rule 306a motion to reset post-judgment deadlines, requesting that the thirty-day deadline run from the date it obtained actual knowledge of the judgment. The trial court denied the motion, determining Red Bluff was not entitled to a deadline extension because its counsel acquired actual knowledge of the judgment upon receipt of the February 8 email. The court of appeals agreed and affirmed.

The Supreme Court reversed, determining that Red Bluff satisfied Rule 306a's requirements. The Rule extends the deadline for filing post-judgment motions if a party has neither received the notice required by the Rule nor acquired actual knowledge of the judgment. First, because the version of Rule 306a in effect at the time required notice to be sent via first class mail, Red Bluff did not receive the requisite notice. Second, because actual knowledge requires subjective awareness of a fact, Red Bluff's counsel's receipt of the February 8 email did not demonstrate his actual knowledge of the judgment because he did not see the email on that date. Red Bluff was therefore entitled to have its post-judgment deadlines reset to run from March 14, when it obtained actual

knowledge of the judgment. The Supreme Court remanded to the trial court to consider Red Bluff's post-judgment motions.

AA. PRODUCTS LIABILITY

1. Design Defects

a) *Am. Honda Motor Co. v. Milburn*, 696 S.W.3d 612 (Tex. June 28, 2024) [21-1097]

The main issue presented is whether Texas Civil Practice and Remedies Code Section 82.008's rebuttable presumption of nonliability shields Honda from liability on a design-defect claim.

Honda designed a ceiling-mounted, detachable-anchor seatbelt system for the third-row middle seat of the 2011 Honda Odyssey. The detachable system allowed the seat to fold flat for additional cargo space. The Federal Motor Vehicle Safety Standards promulgated by the National Highway Traffic Safety Administration authorize the detachable system used in the Odyssey.

In November 2015, an Uber driver picked up Milburn and her friends in a 2011 Odyssey. Milburn sat in the third-row middle seat and buckled her seatbelt, but because the anchor was detached at the time, her lap remained unbelted. An accident caused the van to overturn, and Milburn suffered severe cervical injuries. Milburn sued several defendants and settled with all except Honda. Milburn alleged that the seatbelt system was defectively designed and confusing, creating an unreasonable risk of misuse. The jury found that Honda negligently designed the system, Honda was entitled to the Section 82.008 presumption of nonliability, and Milburn rebutted the presumption. The trial court rendered judgment for Milburn, and the court of appeals affirmed.

The Supreme Court reversed and rendered judgment for Honda. In an opinion by Justice Lehrmann, the Court first held that the statutory presumption applies because the system's design complied with mandatory federal safety standards governing the product risk that allegedly caused the harm. Next, the Court addressed the basis for rebutting the presumption, which requires a showing that the applicable standards are inadequate to protect the public from unreasonable risks of injury. The Court concluded that absent a comprehensive review of the various factors and tradeoffs the federal agency considered in adopting the standard, which was not provided here, the standard generally may not be deemed "inadequate" to prevent an unreasonable risk of harm to the public as a whole.

Justice Blacklock concurred, emphasizing that a factfinder cannot validly judge a safety standard's adequacy absent testimony about how the regulatory process works and the many competing considerations it entails.

Justice Devine dissented, opining that legally sufficient evidence supports the jury's findings of defective design and safety-standard inadequacy.

2. Statute of Repose

a) *Ford Motor Co. v. Parks*, 691 S.W.3d 475 (June 7, 2024) [23-0048]

This case addresses a defendant's burden of proof to obtain summary judgment under the statute of repose for a products-liability action. The

statute requires a claimant to sue the manufacturer or seller "before the end of 15 years after the date of the sale of the product by the defendant."

Samuel Gama was injured when his 2001 Ford Explorer Sport rolled over on a highway. On May 17, 2016, Gama's wife, Jennifer Parks, brought products-liability claims against Ford. The trial court granted Ford's motion for summary judgment based on the statute of repose, but the court of appeals reversed. Ford's uncontroverted evidence established that Ford released and shipped the Explorer to a dealer in May 2000, more than 15 years before Parks' May 2016 suit. But the court of appeals accepted Parks' argument that Ford was required to conclusively prove the exact date that the dealer paid for the Explorer in full, and the court held Ford had not done so.

The Supreme Court reversed and rendered judgment for Ford. The Court explained that the premise underlying the court of appeals' analysis—that money must change hands before a sale is completed—is contrary to law. Chapter 2 of the Uniform Commercial Code sets a default rule that a sale is complete when the seller performs by physically delivering the goods, even if the buyer has not made full payment. This timing rule is consistent with blackletter contract law and the Court's caselaw, both of which recognize that a promise to pay is sufficient consideration for a sale. The court of appeals therefore erred by imposing on Ford the burden of proving the date that the dealership paid Ford for the Explorer. The Court emphasized that the way a buyer finances a purchase is irrelevant to whether a sale occurred.

The Court also clarified that a defendant need not prove an exact sales date to be entitled to judgment under the statute of repose. One purpose of a statute of repose is to relieve defendants of the burden of defending claims where evidence may be lost or destroyed due to the passage of time. It is enough for a defendant to prove that the sale, whatever the date, must have occurred outside the statutory period.

BB. REAL PROPERTY

1. Bona Fide Purchaser

a) *425 Soledad v. CRVI Riverwalk*, 709 S.W.3d 551 (Tex. Dec. 31, 2024) [23-0344]

At issue in this case is whether an easement is enforceable against a property purchaser who claims bona fide purchaser protections.

425 Soledad executed a parking agreement that secured parking availability to its office building occupants in a garage connected by tunnel access. The parties agreed that the parking covenant would run with the land but did not record the interest. The garage later was sold, with the new owner's debt secured by mortgage liens. CRVI Crowne acquired part of this debt. When the new garage owner neared default, CRVI Crowne placed the property into a receivership, and its affiliate, CRVI Riverwalk, purchased the garage from the receiver. CRVI Riverwalk later rejected an office building occupant's request for parking under the agreement, arguing that it is a bona fide purchaser who took without notice.

The trial court held that the parking agreement is an enforceable easement appurtenant that transferred with the property. The court of

appeals agreed that the agreement is an easement but held it unenforceable because CRVI Crowne purchased its note without notice of the easement, and it "sheltered" CRVI Riverwalk as a subsequent purchaser under its bona fide mortgagee status.

The Supreme Court reversed. The Court agreed with both courts that the parking agreement is an easement. However, the Court concluded that the trial court correctly enforced the easement against CRVI Riverwalk because both it and CRVI Crowne had inquiry notice sufficient to remove any bona fide purchaser protection. Because the Court resolved the case on the notice element, it did not address whether a property purchaser can rely on an earlier lender's bona fide status to claim shelter.

2. Condemnation

a) *REME, L.L.C., v. State*, 709 S.W.3d 608 (Tex. Feb. 21, 2025) (per curiam) [23-0707]

At issue in this case is whether the deadline to object to a condemnation award begins to run from the filing of the award with the court clerk or not until presentment to the trial court judge.

The State brought a condemnation action to acquire about one-tenth of an acre from REME, L.L.C. The trial court appointed commissioners, who awarded damages for the taking. The State filed the award with the court clerk as part of an order requesting that costs be assessed. Three days later, the judge signed the order. The State objected to the findings outside the statutory time for raising an objection to the award, if calculated from the date it filed the award with the clerk. The State argued that its objections were filed within the deadline, if calculated from the date of judicial signature. The trial court held the State's objection untimely and rendered judgment. The State appealed, and agreeing with the State, the court of appeals held that Property Code Section 21.018(a), which requires that the award be filed "with the court," means receipt by the judge.

The Supreme Court reversed the court of appeals' judgment and reinstated the judgment of the trial court. The Court held that the State's objection was untimely because the requirement that an award be filed "with the court" includes receipt by the trial court clerk.

3. Implied Reciprocal Negative Easements

a) *River Plantation Cmty. Improvement Ass'n v. River Plantation Props. LLC*, 698 S.W.3d 226 (Tex. June 14, 2024) [22-0733]

The issue in this case is whether real property in a residential subdivision is burdened by an implied reciprocal negative easement requiring it to be maintained as a golf course.

River Plantation subdivision contains hundreds of homes and a golf course. The subdivision's restrictive covenants provide that certain "golf course lots" are burdened by restrictions that, among other things, require structures to be set back from the golf course. The developer included graphic depictions of the golf course in some of the plat maps that it filed for the subdivision, which was often

marketed as a golf course community. Forty years later, the subsequent owner of the golf course, RP Properties, sought to sell the property to a new owner who intended to stop maintaining it as a golf course.

The subdivision's HOA sued RP Properties to establish the existence of an implied reciprocal negative easement burdening the golf course, requiring that it be used as a golf course in perpetuity. RP Properties sold a portion of the property to Preisler, who was added as a defendant. The trial court granted the defendants' motions for summary judgment, declaring that the golf course property is not burdened by the claimed easement. The court of appeals affirmed.

The Supreme Court affirmed, holding that the implied reciprocal negative easement doctrine does not apply. This kind of easement is an exception to the general requirement that restraints on an owner's use of its land must be express. It applies when an owner subdivides its property into lots and sells a substantial number of those lots with restrictive covenants designed to further a common development scheme, such as a residential-use restriction. In that instance, the lots retained by the owner or sold without the express restriction to a grantee with notice of the restrictions in the other deeds will be subject to the same restrictions. Here, the HOA did not claim that the golf course property should be impliedly burdened by similar restrictions to the other lots in the subdivision; rather, it claimed that the property should be burdened by an entirely different restriction. The Court declined to consider whether a broader, unpleaded servitude-by-estoppel theory could be applied or would entitle the HOA to relief.

4. Landlord Tenant

a) *Westwood Motorcars, LLC v. Virtuolotry, LLC*, 689 S.W.3d 879 (Tex. May 17, 2024) [22-0846]

The issue in this case is what effect, if any, an agreed judgment awarding possession to a landlord in an eviction suit has on a related suit in district court by a tenant for damages.

Virtuolotry leased property to Westwood, an automobile dealer. When Westwood sought an extension under the lease, Virtuolotry rejected the attempt and asserted that Westwood had defaulted. Westwood sued in district court for a declaration of its right to extend the lease. When the current lease term expired, Virtuolotry initiated and prevailed in an eviction suit in justice court. Westwood appealed the eviction-suit judgment to county court, but the parties ultimately entered an agreed judgment awarding Virtuolotry possession of the premises. Westwood then added claims for breach of contract and constructive eviction to its district-court suit. After a jury trial, the district court awarded Westwood over $1 million in damages. But the court of appeals reversed and rendered a take-nothing judgment because Westwood had agreed to the eviction-suit judgment awarding possession to Virtuolotry.

The Supreme Court reversed. The Court first explained that eviction suits provide summary proceedings for which the sole issue adjudicated is immediate possession. Accordingly,

agreeing to an eviction-suit judgment does not concede an ultimate right to possession or abandon separate claims for damages, even if those claims also implicate the right to possession. The Court also rejected Virtuolotry's argument that Westwood's agreement to the judgment conclusively established that it voluntarily abandoned the premises, extinguishing any claims for damages. The Court explained that a key dispute at trial was whether Westwood left voluntarily, and it concluded that legally sufficient evidence supported a finding that neither Westwood's departure nor its agreement to entry of the eviction-suit judgment was voluntary. The Court remanded the case to the court of appeals to consider several unaddressed issues.

5. Nuisance

a) *Huynh v. Blanchard*, 694 S.W.3d 648 (Tex. June 7, 2024) [21-0676]

The issue in this case is the availability and appropriate scope of permanent injunctive relief to redress a temporary nuisance.

The Huynhs set up and operated two farms for raising chickens on the same property, upwind of residential properties. Because the Huynhs' submissions to state regulators misrepresented the scale and geographic isolation of their proposed operations, the Huynhs avoided triggering more stringent regulatory requirements. The farms routinely housed twice the number of chickens that the TCEQ has deemed likely to create a persistent nuisance. Shortly after the farms began receiving chickens, the TCEQ started to receive complaints about offensive odors from nearby residents. The TCEQ investigated, issued multiple notices of violation to the farms, and required the farms to implement odor-control plans. Nonetheless, the farms continued to operate in largely the same manner and generate a similar volume of complaints.

Some of the farms' neighbors sued for nuisance. A jury found that the farms caused nuisance-level odors of such a character that any anticipated future injury could not be estimated with reasonable certainty. The trial court rendered an agreed take-nothing judgment on damages and granted the neighbors a permanent injunction that required a complete shutdown of the two farms. The court of appeals affirmed the trial court's judgment.

The Supreme Court reversed in part and remanded for the trial court to modify the scope of injunctive relief. In an opinion by Justice Busby, the Court held that the jury's finding did not preclude the trial court from concluding the farms posed an imminent harm. The Court also held that monetary damages would not afford complete relief for the nuisance, the recurring nature of which would necessitate multiple suits, and was therefore an inadequate remedy. Finally, the Court held that the trial court abused its discretion in determining the scope of injunctive relief because the shutdown of the two farms imposed broader relief than was necessary to abate nuisance-level odors.

Justice Huddle filed an opinion concurring in the judgment. While the concurrence also would have held that the record supported the trial court's finding of imminent harm and

inadequate remedy at law, it asserted that the Court did not give proper deference to the jury's factual finding of a temporary nuisance and gave insufficient consideration to the Legislature's and TCEQ's regulatory authority in instructing the trial court to craft an injunction as narrowly as possible.

6. Restrictive Covenants

a) *EIS Dev. II, LLC v. Buena Vista Area Ass'n*, ___ S.W.3d ___, 2025 WL 1668344 (Tex. June 13, 2025) [23-0365]

At issue in this case is the application of a deed restriction prohibiting more than two residences from being built on any five-acre tract.

EIS purchased adjoining parcels of land totaling about 100 acres near Waxahachie. EIS proposed a residential development of 73 single-family lots, each less than five acres. After the Ellis County Commissioners' Court approved the plat, some adjoining landowners formed the Association and sued for a declaration that building one house on each lot would violate the restriction and requested an injunction limiting construction.

EIS responded with several defenses and counterclaimed to have the restriction declared unenforceable. The trial court rejected EIS's defenses and counterclaim, ruled that development would violate the deed restriction, and enjoined development of more than 40 residences. The court of appeals affirmed.

The Supreme Court reversed. In an opinion by Justice Busby, the Court held that the proper construction of the restriction permits tracts of fewer than five acres and allows for one residence to be built on each sub-five-acre tract. Nothing in the text of the restriction suggests that it should be read as a minimum-tract-size restriction. The Court went on to hold that: neither the Association nor the adjoining-landowner parties to the suit had waived or abandoned their right to enforce the restrictions; the trial court erred in refusing to allow the jury to consider changes that occurred after the restriction was created but before EIS purchased the parcels; and the remaining counterclaim did not require joinder of nonparty adjoining landowners or the State.

Justice Lehrmann dissented in part. She would have held that the restriction limited EIS to building no more than 40 main residences on the 100 acres.

CC. RES JUDICATA

1. Claim Preclusion

a) *Steelhead Midstream Partners, LLC v. CL III Funding Holding Co.*, 709 S.W.3d 605 (Tex. Dec. 31, 2024) (per curiam) [22-1026]

In this case, the Court held that a judgment in a lien-foreclosure suit does not bar a later suit on a related contract claim.

Predecessors to Steelhead and CL III had a joint-operating agreement to develop leases. The JOA obliged Steelhead and CL III to share the costs of constructing a pipeline. Orr placed a lien on the pipeline for unpaid construction costs. CL III settled with Orr and was assigned the lien in a bankruptcy proceeding. CL III then sued Steelhead in Montague County to foreclose on Steelhead's pipeline interest.

Steelhead counterclaimed, alleging as a contract claim that under the JOA it had paid its share of construction costs. CL III filed a plea to the jurisdiction arguing the contract claim was barred because it was subject to the jurisdiction of the bankruptcy court. The trial court granted the plea and rendered judgment granting CL III the right to foreclose on the pipeline. Steelhead paid CL III over $400,000 to avoid foreclosure.

Steelhead brought a separate suit in Travis County, alleging CL III breached the JOA by failing to pay its share of the pipeline costs. The trial court rendered judgment for Steelhead. The court of appeals reversed, reasoning that the Travis County suit is an impermissible collateral attack on the Montague County judgment.

The Supreme Court reversed. It held that the Travis County suit is not barred because the contract claim was not decided in the Montague County foreclosure suit. The foreclosure suit decided the status of a lien originating from a construction debt owed to a third party. That suit did not decide whether one party to the JOA owed a contractual debt to the other. Steelhead in fact persuaded the Montague County court that it lacked jurisdiction to decide the contract claim. In these circumstances, neither res judicata nor judicial estoppel bars the Travis County suit.

2. Judicial Estoppel

a) *Fleming v. Wilson*, 694 S.W.3d 186 (Tex. May 17, 2024) [22-0166]

The issue in this case is whether judicial estoppel bars a defendant from invoking defensive collateral estoppel because of inconsistent representations made in prior litigation.

George Fleming and his law firm represented thousands of plaintiffs in securing a products-liability settlement. Many of Fleming's clients then sued him for improperly deducting costs from their settlements. Some of those former clients sought to bring a class action in federal court, but Fleming persuaded the district court to deny class certification by arguing that issues of fact and law among class members meant that aggregate litigation was improper.

Later, in state court, Fleming prevailed in a bellwether trial involving ten plaintiffs. He then moved for summary judgment, contending that his trial win collaterally estopped the remaining plaintiffs from litigating the same issues. The trial court agreed and dismissed the remaining plaintiffs' claims with prejudice. The court of appeals reversed, holding that Fleming failed to establish that the remaining plaintiffs were in privity with the bellwether plaintiffs such that they were bound by the verdict.

The Supreme Court affirmed. It held that judicial estoppel bars Fleming from arguing that the plaintiffs' claims are identical. When a party successfully convinces a court of a position in one proceeding and wins relief on the basis of that representation, judicial estoppel bars that party from asserting a contradictory position in a later proceeding. Because Fleming secured denial of class certification on the ground that the plaintiffs' claims are not identical, he is estopped from arguing that their claims *are* identical, which is

essential to his effort to bind all plaintiffs to the bellwether trial's result.

DD. TAXES

1. Property Tax

a) *Bexar Appraisal Dist. v. Johnson*, 691 S.W.3d 844 (Tex. June 7, 2024) [22-0485]

The primary issue in this case is whether a residence homestead tax exemption for disabled veterans can be claimed by two disabled veterans who are married but live separately.

Yvondia and Gregory Johnson are both 100% disabled U.S. military veterans. Mr. Johnson applied for and received a residence homestead exemption under the Tax Code for the couple's jointly owned home in San Antonio. After the couple bought another home in Converse, they separated. Yvondia moved into the Converse home, and she applied for the same exemption for that home. Bexar Appraisal District refused her application. After her protest was denied, Yvondia sued. The trial court granted summary judgment for the appraisal district. The court of appeals reversed, holding that the Tax Code did not preclude Yvondia from receiving the exemption even though her husband received the same exemption on a different home.

The Supreme Court affirmed. In an opinion by Justice Huddle, the Court held that the statute's plain text entitles Yvondia to the claimed exemption. The Court rejected the appraisal district's argument that the word "homestead" has a historical meaning imposing a one-per-family limit on the residence homestead exemption. It concluded that the disabled-veteran exemption does not incorporate the one-per-family limit found elsewhere; the Legislature deliberately placed the disabled-veteran exemption outside the reach of statutory limitations on other residence homestead exemptions.

Justice Young filed a dissenting opinion. He would have held that a one-per-couple limit inheres in the historical meaning of "homestead" and that nothing in the Constitution or the Tax Code displaces that meaning. He also would have held that allowing Yvondia to receive the exemption is contrary to the rule that tax exemptions can only be sustained if authorized with unmistakable clarity and that any doubt about the scope of the text requires rejecting a claimed exemption.

2. Sales Tax

a) *GEO Grp. v. Hegar*, 709 S.W.3d 585 (Tex. Mar. 14, 2025) [23-0149]

The primary issue in this case is whether private, for-profit business entities that detain federal and state inmates qualify as tax-exempt "agents" or "instrumentalities" of the government under the Tax Code and the Comptroller's rules.

GEO owned and operated detention facilities in Texas, housing federal and state inmates pursuant to contracts with federal, state, and county governments. When GEO failed to pay tax on purchases necessary to operate those facilities, the Comptroller assessed a sales-and-use tax deficiency against GEO. Following administrative proceedings challenging the deficiency, GEO paid the stipulated $3,937,103.71 tax due and filed suit for a taxpayer refund.

The trial court concluded that

GEO failed to demonstrate "by clear and convincing evidence" that it qualified as a government "agent" or "instrumentality" entitled to a tax exemption as required. GEO appealed, arguing that the court erred by applying a heightened standard of review. The court of appeals affirmed.

The Supreme Court affirmed. Although the Court noted that the Tax Code's mandated trial de novo requires a preponderance of the evidence standard of proof instead of the heightened clear and convincing standard, application of the lesser standard did not alter the outcome of the case. The Court held that entities entitled to tax exemption as government "agents" or "instrumentalities" are of a specific, narrow character: only entities that the government has unequivocally declared an "agent" or "instrumentality" or those that could reasonably be viewed as an arm of the government are included. The Court held that GEO's mere performance of a governmental function like inmate detention was not sufficient.

3. Tax Protests

a) *J-W Power Co. v. Sterling Cnty. Appraisal Dist*. and *J-W Power Co. v. Irion Cnty. Appraisal Dist.*, 691 S.W.3d 466 (Tex. June 7, 2024) [22-0974, 22-0975]

The issue is whether an unsuccessful ad valorem tax protest under Section 41.41 of the Tax Code precludes a subsequent motion to correct the appraisal role under Section 25.25(c) with respect to the same property.

J-W Power Company leases natural gas compressors to neighboring counties. The compressors at issue here were maintained in Ector County and leased to customers in Sterling and Irion Counties. Between 2013 and 2016, the Sterling and Irion County Appraisal Districts appraised J-W Power's leased compressors as conventional business-personal property. This was despite the fact that the Legislature amended the Tax Code in 2011 so that leased heavy equipment like J-W Power's compressors would be taxed in the county where it is stored by the dealer when not in use.

J-W Power filed protests in Sterling and Irion Counties under Section 41.41 of the Tax Code, arguing that its compressors should be taxed elsewhere. The protests were denied. J-W Power did not seek judicial review. After the Supreme Court clarified in 2018 that leased heavy equipment should be taxed in the county of origin, J-W Power filed motions under Section 25.25 to correct the appraisal rolls for the relevant years. After the appraisal review boards again denied J-W Power's motions, J-W Power sought judicial review.

The trial court granted summary judgment for the districts. The court of appeals affirmed, holding that the denial of J-W Power's Section 41.41 protests precluded subsequent motions to correct because of the doctrine of res judicata.

The Supreme Court reversed, holding that Section 25.25(l), which allows a Section 25.25(c) motion to be filed "regardless of whether" the property owner protested under Chapter 41, eliminates any preclusive effect a prior protest may have had. The Court

remanded the case to the court of appeals for further proceedings.

b) *Oncor Elec. Delivery Co. NTU, LLC v. Wilbarger Cnty. Appraisal Dist.* and *Mills Cent. Appraisal Dist. v. Oncor Elec. Delivery Co.*, 691 S.W.3d 890 (Tex. June 21, 2024) [23-0138, 23-0145]

The issue in these cases is whether questions regarding the validity and scope of a statutory agreement under Section 1.111(e) of the Tax Code implicate the trial court's subject-matter jurisdiction over a suit for judicial review under Section 42.01 of the Code.

In 2019, Oncor's predecessor-in-interest, Sharyland, protested the value of its transmission lines in various appraisal districts, including in Wilbarger and Mills counties. Sharyland ultimately settled its protests by executing agreements with the chief appraiser of each district. The agreements with the appraisal districts for Wilbarger and Mills counties each stated a total value for Sharyland's transmission lines within that district. After acquiring the transmission lines, Oncor sought to correct the two districts' appraisal rolls, filing motions to correct under Section 25.25 of the Tax Code with the appraisal review board for each district. Oncor's motions asserted that the valuations listed on each district's appraisal rolls were based on a "clerical error" that occurred when Sharyland's agent sent incorrect mileage data to the districts' agent. The Wilbarger appraisal review board denied Oncor's motions and the Mills appraisal review board dismissed the motions for lack of jurisdiction.

Oncor sought review of those decisions in district court in each county, suing both the relevant appraisal district and review board, asserting the same claims, and seeking substantially identical relief in both cases. The relevant taxing authorities filed pleas to the jurisdiction, which were granted in the Mills case and denied in the Wilbarger case. The Wilbarger appraisal district and Oncor each filed an interlocutory appeal of the decision against them.

The courts of appeals reached conflicting decisions. In the Mills case, the court of appeals reversed in part and remanded for further proceedings, holding that the doctrine of mutual mistake, if applicable, would prevent the settlement agreement from becoming final. In the Wilbarger case, the court of appeals reversed the trial court's order and rendered judgment granting the Wilbarger taxing authorities' plea. Oncor and the Mills taxing authorities petitioned the Supreme Court for review. The Supreme Court granted both petitions and consolidated the cases for oral argument.

The Supreme Court held that a Section 1.111(e) agreement poses nonjurisdictional limits on the scope of appellate review under Chapter 42 of the Tax Code. Accordingly, the Court affirmed the court of appeals' judgment in the Mills case, reversed the court of appeals' judgment in the Wilbarger case, and remanded both causes to their respective trial courts for further proceedings.

c) *Tex. Disposal Sys. Landfill, Inc. v. Travis Cent. Appraisal Dist.*, 694 S.W.3d 752 (Tex. June 21, 2024) [22-0620]

The issue in this case is whether statutory limits on an appraisal district's ability to challenge an appraisal review board's decision confine the trial court's subject matter jurisdiction.

Texas Disposal Systems Landfill operates a landfill in Travis County. In 2019, Travis County Central Appraisal District appraised the market value of the landfill, and the Landfill protested the amount under a Tax Code provision requiring equal and uniform taxation. The Landfill won its challenge, and the appraisal review board significantly reduced the appraised value of the landfill. The District appealed to the trial court and claimed that the appraisal review board's appraised value was unequal and below market value. The Landfill filed a plea to the jurisdiction, arguing that it raised only an equal-and-uniform challenge, not one based on market value. The trial court granted the Landfill's plea. The court of appeals reversed, holding that review of an appraisal review board's decision is not confined to the grounds the taxpayer asserted before the board.

In an opinion by Justice Bland, the Supreme Court affirmed. The Tax Code limits the trial court's review to the challenge the appraisal review board heard. That limitation, however, is procedural, not jurisdictional. The Court observed that the Tax Code allows the parties to agree to proceed before the trial court despite a failure to exhaust administrative remedies. This signals that the parameters of an appeal are not jurisdictional because parties cannot confer jurisdiction by agreement. Additionally, the Tax Code employs limits like those in other statutes the Court has held to be procedural, not jurisdictional. The Court also noted that the fair market value of the property is relevant to an equal and uniform challenge, but if the fair market value deviates from the equal and uniform appraised value, a taxpayer is entitled to the lower of the two amounts.

Justice Boyd filed a dissenting opinion. The dissent would have held that any limitation the Tax Code imposes on the scope of the District's appeal is jurisdictional, and the statute does not limit the trial court's jurisdiction to the specific protest grounds relied on by the taxpayer.

EE. TEXAS ALCOHOLIC BEVERAGE CODE

1. Dram Shop Act

a) *Raoger Corp. v. Myers*, 711 S.W.3d 206 (Tex. Apr. 11, 2025) [23-0662]

At issue is the sufficiency of a Dram Shop Act claimant's summary judgment evidence.

Barrie Myers sued Cadot Restaurant under the Dram Shop Act for injuries he sustained in a 2018 automobile accident. The driver who hit him, Nasar Khan, had consumed alcohol at Cadot with a friend approximately two hours prior to the accident. The Act provides for dram shop liability if it was "apparent" that an individual to whom the dram shop provided alcohol "was obviously intoxicated to the extent that he presented a clear danger," and the individual proximately caused injury to a claimant. Although there

was no evidence that Khan appeared intoxicated at Cadot, Myers relied on other evidence such as Khan's appearance just after the accident and his blood alcohol level, which was well above the legal limit when it was taken three hours later.

The trial court granted summary judgment for Cadot, and the court of appeals reversed. The Supreme Court granted the petition for review and reinstated the trial court's summary judgment, holding that the record lacked competent evidence to establish Khan's "apparent" and "obvious" intoxication at Cadot. While the evidence may have indicated that Khan consumed a large amount of alcohol and became intoxicated at some point before the accident, it merely permitted speculation as to how Khan *appeared* at Cadot. The Court also held that the trial court did not abuse its discretion in denying Myers's motion to continue the summary-judgment hearing, because Khan did not establish the materiality and purpose of the additional discovery sought.

FF. TEXAS CITIZENS PARTICIPATION ACT

1. Applicability

a) *Ferchichi v. Whataburger Rests. LLC* and *Haven at Thorpe Lane, LLC v. Pate*, ___ S.W.3d ___, 2025 WL 1350005 (Tex. May 9, 2025) [23-0568, 23-0993]

These cases address the scope of the term "legal action" in the Texas Citizens Participation Act.

In *Ferchichi*, Ferchichi filed a discovery-related motion to compel and for sanctions after Whataburger allegedly failed to disclose an investigative video of Ferchichi prior to mediation. In *Haven*, Haven filed a discovery-related motion to compel and for sanctions, arguing that Pate, a nonparty Haven served with a subpoena duces tecum, failed to fully comply with the subpoena. Pursuant to the TCPA, Whataburger and Pate filed motions to dismiss these motions. Both trial courts denied the motions. Both courts of appeals reversed, holding that the TCPA applied to the sanctions motions. The courts concluded that because the motions sought additional relief in the form of monetary sanctions, they fell within the TCPA's definition of "legal action": "a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing that requests legal, declaratory, or equitable relief."

The Supreme Court reversed. Whataburger and Pate argued that the sanctions motions were legal actions to which the TCPA applied, relying on the catch-all provision in the Act's definition of "legal action." The Court applied the doctrine of *ejusdem generis* to limit that catch-all provision. It concluded that the judicial filings specifically listed in the definition serve the function of commencing or materially amending a proceeding on a substantive legal claim. So, the catch-all is limited to pleadings or filings that do the same. Further supporting that conclusion, the TCPA excludes from the definition of "legal action" "a procedural action taken or motion made in an action that does not amend or add a claim for legal, equitable, or declaratory relief." Ferchichi's and Haven's discovery-related motions to compel and for

sanctions did not commence or materially amend a proceeding on a substantive legal claim and thus are not "legal action[s]" under the TCPA. Accordingly, the TCPA is inapplicable, and the courts of appeals erred in holding that Whataburger's and Pate's TCPA motions should have been granted. The Court remanded the cases to the respective trial courts for further proceedings.

2. Dismissal Standard

a) *Walgreens v. McKenzie*, ___ S.W.3d ___, 2025 WL 1415886 (Tex. May 16, 2025) [23-0955]

The main issue in this case is whether an employer may take advantage of the TCPA's protections with respect to a claim that it negligently hired, trained, and supervised one of its employees.

McKenzie was shopping at Walgreens when one of its employees erroneously accused her of shoplifting at the store earlier in the day, which resulted in her detention by police. McKenzie sued Walgreens for, among other claims, negligent hiring, training, and supervision. Walgreens moved to dismiss under the TCPA, arguing that McKenzie's claims were based on the employee's alleged false report to police, making it a protected "communication made in connection with a matter of public concern." The trial court denied the motion and Walgreens appealed. A divided court of appeals affirmed in part and reversed in part, holding McKenzie's negligent hiring, training, and supervision claim was not subject to dismissal under the TCPA because it was not wholly based on or in response to the exercise of a protected right.

The Supreme Court reversed the portion of the court of appeals' judgment affirming the trial court's denial of Walgreen's motion to dismiss the claim, and it rendered judgment dismissing that claim. The Court held that the TCPA applies to any claim for negligent hiring, training, or supervision when at least one of the underlying tortious acts is based on or in response to the defendant's exercise of free speech, as it was here. The Court further held that McKenzie failed to establish a prima facie case of negligent hiring, training, or supervision, and therefore her claim must be dismissed.

3. Timeliness of Trial Court's Ruling

a) *First Sabrepoint Cap. Mgmt., L.P. v. Farmland Partners Inc.*, 712 S.W.3d 75 (Tex. Apr. 25, 2025) [23-0634]

This case concerns (1) a trial court's authority to grant a motion to dismiss under the Texas Citizens Participation Act after the motion has been denied by operation of law, and (2) whether the defendants conclusively established that collateral estoppel bars the claims.

Farmland Partners sued Sabrepoint for damages allegedly caused by the publication of an article critical of Farmland. Farmland originally sued in Colorado, but that court dismissed for lack of personal jurisdiction. Farmland then sued in Texas. Sabrepoint moved to dismiss the suit under the TCPA. It also moved for summary judgment, arguing that Farmland's claims were precluded because the Colorado

court determined that Sabrepoint was not involved with the article's publication. The trial court granted both motions.

The court of appeals held that the TCPA order was void because the trial court did not rule within thirty days of the hearing as required by statute. The court also reversed the summary judgment, concluding that Sabrepoint did not conclusively establish its collateral estoppel defense. Sabrepoint petitioned for review.

The Supreme Court reversed as to the TCPA order but affirmed as to the summary judgment. First, the Court held that the trial court retained plenary power to reconsider the merits of the TCPA motion after it was denied by operation of law. Because the court ruled within the time Sabrepoint could have appealed that denial, any error in granting the TCPA motion after the statutory deadline was harmless. Second, the Court held that Sabrepoint did not conclusively establish that the Colorado court's findings were identical to facts that would preclude Farmland from prevailing on its claims in Texas, so summary judgment based on collateral estoppel was improper. The Court remanded to the court of appeals to address Sabrepoint's TCPA motion on its merits.

GG. TEXAS MEDICAID FRAUD PREVENTION ACT

1. Unlawful Acts

a) *Malouf v. State*, 694 S.W.3d 712 (Tex. June 21, 2024) [22-1046]

The issue in this case is whether Section 36.002(8) of the Texas Medicaid Fraud Prevention Act imposes civil penalties when a provider indicates their license type but fails to indicate their identification number on a claim form.

Richard Malouf owned All Smiles Dental Center. Two of Malouf's former employees filed *qui tam* actions against him alleging that he and All Smiles committed violations of the Texas Medicaid Fraud Prevention Act. The State intervened in both actions, consolidating them and asserting a claim under Section 36.002(8) of the Human Resources Code.

The State filed a motion for partial summary judgment, alleging that All Smiles submitted 1,842 claims under Malouf's identification number even though a different dentist actually provided the billed-for services. Malouf filed a no-evidence summary judgment motion, arguing that a provider violates Section 36.002(8) only when he fails to indicate both the license type *and* the identification number of the provider who provided the service. Because the forms all correctly indicated the correct license type, Malouf argued he did not violate the Act. The trial court denied Malouf's motion and granted the State's, entering a final judgment that fined Malouf over $16,500,000 in civil penalties. The court of appeals affirmed the trial court's judgment apart from the amount awarded in attorney's fees.

The Supreme Court reversed and rendered judgment in Malouf's favor. In an opinion by Justice Boyd, the Court held that based on the statute's grammatical structure, context, and purpose, Section 36.002(8) only makes unlawful the failure to indicate both the license type and the identification

number of the provider who provided the service. The Court concluded that the State failed to demonstrate that Malouf committed unlawful acts under Section 36.002(8).

Justice Young filed a dissenting opinion. He would have held that Section 36.002(8) makes unlawful the failure to indicate either the type of license or the identification number.

HH. WORKERS' COMPENSATION

1. Exclusive Jurisdiction

a) *Univ. of Tex. Rio Grande Valley v. Oteka*, ___ S.W.3d ___, 2025 WL 1668315 (Tex. June 13, 2025) [23-0167]

In this personal-injury case, does the district court or the Division of Workers' Compensation decide whether an employee's injury was work-related for purposes of workers' compensation when the employer raises the issue by an exclusive-remedy affirmative defense?

A university professor was walking through a parking lot after attending a commencement ceremony when she was struck by a vehicle driven by a university police officer. The professor sued the university for negligence. The university responded with an affirmative defense that workers' compensation benefits are the exclusive remedy because the injury occurred during the course and scope of her employment. The university then filed a plea to the jurisdiction, arguing that the Division had exclusive jurisdiction to determine the course-and-scope issue raised by the affirmative defense. The trial court denied the plea, and the court of appeals affirmed.

The Supreme Court affirmed. The Court noted the presumption in favor of the district court's jurisdiction. The Court also observed that there is no procedural mechanism in the Workers' Compensation Act to obtain a course-and-scope finding from the Division unless the employee files a compensation claim. Relying on the presumption, its prior cases, and the Act's text and structure, the Court held that the Division does not have exclusive jurisdiction to determine whether an injury occurred in the course and scope of employment when (1) the employer raises the issue outside the compensability context and (2) the employee's requested relief does not depend on any entitlement to benefits.

III. GRANTED CASES

A. ADMINISTRATIVE LAW

1. Judicial Review

a) *Gonzalez v. Tex. Med. Bd.*, ___ S.W.3d ___, 2023 WL 7134982 (Tex. App.—Austin 2023), *pet. granted* (June 13, 2025) [24-0340]

The principal issue in this case is whether there is a statutory right to judicial review of a cease-and-desist order issued by the Texas Medical Board.

Reynaldo Gonzalez, Jr. holds a Medical Degree and a Juris Doctor, but he is only licensed to practice law. In 2020, Gonzalez ran for the U.S. House of Representatives and referred to himself as a "physician and attorney" in campaign materials. After receiving an anonymous complaint, TMB held a cease-and-desist hearing, which Gonzalez attended. TMB issued a cease-and-desist order prohibiting Gonzalez from holding himself out as a licensed

physician without designating the authority giving rise to his use of that title.

Gonzalez filed a suit for judicial review in district court, alleging the order was unlawful, unconstitutional, and not supported by the evidence. He sought various declarations related to these allegations. TMB filed a plea to the jurisdiction, arguing that the suit was untimely under the Administrative Procedure Act and that Gonzalez's declaratory judgment requests were redundant of his request for judicial review. The trial court granted TMB's plea.

The court of appeals affirmed in part and reversed in part. It concluded that Gonzalez's suit was untimely under the APA. But it reversed the trial court's dismissal of his facial constitutional challenge to a statute, concluding it was not redundant of his untimely suit.

Gonzalez filed a petition for review. He argues that the APA does not apply to TMB's cease-and-desist hearings, and TMB rules establish an independent right to judicial review. He also argues that the court of appeals should have remanded his "as-applied" constitutional challenge in addition to his facial constitutional challenge and that the court erroneously reached the merits on TMB's statutory authority. Finally, Gonzalez argues that the trial court improperly excluded certain testimony made by TMB's counsel during the cease-and-desist hearing. The Supreme Court granted the petition.

2. Jurisdiction

a) *Tex. Dep't of State Health Servs. v. Sky Mktg. Corp.*, 711 S.W.3d 227 (Tex. App.—Austin 2023), *pet. granted* (Apr. 4, 2025) [23-0887]

At issue in this case is whether the agency responsible for maintaining Texas's schedules of controlled substances properly modified certain definitions within those schedules and whether the plaintiffs have standing to enjoin the effect of those modifications.

Federal and Texas law recently allowed commercial production and sale of hemp. The federal Drug Enforcement Administration issued an interim final rule to implement certain regulations consistent with the change in federal law. The Commissioner of the Texas Department of State Health Services refused to adopt language in the DEA's rule on the basis that doing so would legalize certain psychoactive isomers of THC. The Commissioner also modified certain definitions in Texas's schedule of controlled substances relating to marihuana and THC, and DSHS later posted a statement on its website that any form of THC in consumable hemp products, save certain low concentrations of one isomer, constitutes a controlled substance.

Hemp sellers and consumers sued DSHS and the Commissioner, seeking declaratory and injunctive relief. They contend that DSHS and the Commissioner lacked authority to modify and publish the relevant definitions, which purport to prohibit the sale and consumption of legal products. DSHS and the Commissioner filed a plea to the jurisdiction, asserting that the plaintiffs lacked standing and that sovereign immunity barred their claims. The trial court denied the plea and

granted a temporary injunction prohibiting both the changes to the Texas schedules and the website posting. The court of appeals affirmed.

DSHS and the Commissioner petitioned for review, arguing that the plaintiffs lack standing because they suffered no injury and because DSHS cannot enforce criminal penalties. They also contend that the Commissioner's actions were statutorily authorized and that the trial court abused its discretion in granting the temporary injunction. The Supreme Court granted the petition.

3. Public Information Act

b) *Tex. Comm'n on Env't Quality v. Sierra Club*, 712 S.W.3d 630 (Tex. App.—Austin 2022), *pet. granted* (Apr. 4, 2025) [23-0244]

This case is about whether the Texas Commission on Environmental Quality met a deadline to request an Attorney General decision under the Public Information Act and whether the Commission must disclose the requested information regardless.

On July 1, 2019, Sierra Club requested information from the Commission pursuant to the Act. On July 2, the Commission emailed Sierra Club, asking whether it intended to seek confidential information. The same day, Sierra Club responded that it did. The Commission was closed on July 4 and 5 in observance of Independence Day. It ultimately provided some documents but withheld others, claiming they were confidential under the deliberative-process privilege. The Commission sought an Attorney General decision on that issue, as required by the Act. The Commission deposited its decision request in interagency mail on July 17, and the Attorney General received the request on July 18.

The Attorney General required the Commission to disclose the information because (1) the Commission requested an Attorney General decision after its ten "business day" deadline to do so had expired, and (2) there was no "compelling reason to withhold the information." The Commission sued for declaratory relief, and Sierra Club intervened. The trial court granted summary judgment requiring disclosure. The court of appeals affirmed.

The Commission petitioned the Supreme Court for review, arguing it met its deadline for either of two reasons: first, July 5 was not a "business day" because the Commission was closed; second, the Commission's July 2 email was a clarification or narrowing request and thus reset the ten-business-day clock. The Commission also argued that, even if it missed the deadline, the deliberative-process privilege is a "compelling reason" for nondisclosure. The Supreme Court granted the petition.

4. Texas Water Code

a) *Cockrell Inv. Partners, L.P. v. Middle Pecos Groundwater Conservation Dist.*, 676 S.W.3d 677 (Tex. App.—El Paso 2023), *pet. granted* (Apr. 4, 2025) [23-0593], *consolidated for oral argument with Cockrell Inv. Partners, L.P. v. Middle Pecos Groundwater Conservation Dist.*, 677 S.W.3d 727 (Tex. App.—El

Paso 2023), *pet. granted* (Apr. 4, 2025) [23-0742]

These petitions concern the statutory requirements for waiving a groundwater district's immunity under the Texas Water Code.

Petitioner Cockrell sought party status to challenge a neighboring landowner's administrative application for a groundwater-production permit. The District rejected Cockrell's request, and Cockrell requested a rehearing. Believing that the rehearing request was denied by operation of law under the District's Local Rules after forty-five days, Cockrell sought judicial review under the Water Code. The District (and other defendants) filed pleas to the jurisdiction, arguing Cockrell failed to exhaust its administrative remedies because it sought judicial review before its rehearing request expired by operation of law under the Water Code's ninety-day deadline. The trial court granted the pleas and dismissed Cockrell's case.

As the disputed permit's renewal date drew near, Cockrell again sought party status, this time to protest the renewal. Without addressing Cockrell's latest party-status request, the District renewed the neighbor's permit. Cockrell requested a rehearing, but as before, Cockrell believed the rehearing request was denied by operation of law when the District failed to issue a decision before the Local Rule's forty-five-day deadline. Cockrell sought judicial review, and the District (and other defendants) jointly filed a motion for summary judgment. The trial court granted the motion and dismissed Cockrell's case.

In both cases, Cockrell appealed, and the court of appeals affirmed, holding that Cockrell failed to satisfy the Water Code's administrative-exhaustion requirement, instead seeking judicial review before its rehearing request expired by operation of law under the Code's ninety-day deadline, and that Cockrell's claims for declaratory relief could not proceed without a valid waiver of immunity.

Cockrell petitioned for review in each case, arguing that the Water Code's statutory requirements for waiving the District's immunity do not apply to Cockrell because it is not "an applicant or a party to a contested hearing" under the Water Code and that Cockrell's claims for declaratory relief can proceed because the District and its officials acted ultra vires. The Supreme Court granted the petitions.

B. ATTORNEYS

5. Disqualification

a) *In re Zaidi*, ___ S.W.3d ___, 2024 WL 194353 (Tex. App.—Houston [14th Dist.] 2024) (per curiam), *argument granted on pet. for writ of mandamus* (Apr. 4, 2025) [24-0245]

At issue in this case is whether the trial court clearly abused its discretion in granting Shah's motion to disqualify Zaidi's counsel.

Shah sued Zaidi after a real-estate deal turned sour. Felicia O'Loughlin provided legal asstannce to Fred Wahrlich of the law firm Munsch Hardt. O'Loughlin then took a job at the law firm Hicks Thomas. Robin Harrison later joined Hicks Thomas and brought Zaidi with him as a client. For a few years, O'Loughlin assisted

Harrison with the *Shah v. Zaidi* matter. In February 2023, Shah's counsel notified Harrison that they believed O'Loughlin had worked with Wahrlich on this case while at Munsch Hardt. Shah then moved to disqualify Harrison and Hicks Thomas due to the firm's employment of O'Loughlin.

The trial court granted the motion, and the court of appeals denied mandamus relief. Zaidi petitioned the Supreme Court, arguing that the trial court clearly abused its discretion in granting the motion to disqualify despite *Phoenix Founders, Inc. v. Marshall*, 887 S.W.2d 831 (Tex. 1994), and its progeny. The Supreme Court set the case for argument.

C. CONSTITUTIONAL LAW

1. Gift Clauses

a) *Corsicana Indus. Found., Inc. v. City of Corsicana*, 685 S.W.3d 171 (Tex. App.—Waco 2024), *pet. granted* (May 30, 2025) [24-0102]

At issue is whether an economic development agreement violates the Texas Constitution's Gift Clause.

The City of Corsicana and Navarro County approached Gander Mountain about building a store in Corsicana. To help offset the cost of construction, the City and County offered to pledge a fixed portion of sales-tax revenue from the Gander Mountain store and nearby stores to Gander Mountain's future landlord, the Corsicana Industrial Foundation. In a series of agreements, Gander Mountain promised to lease the facility, the Foundation promised to procure a $10 million construction loan to build the facility, and the City and County formally pledged sales-tax revenue to the Foundation. Gander Mountain's rent was pegged to the quarterly loan payments, meaning that if sales-tax revenue exceeded the payment due on the loan, Gander Mountain would pay nothing in rent to the Foundation. JPMorgan Chase served as the Foundation's lender. Gander Mountain went bankrupt, and the City and County ceased transferring sales-tax revenue to the Foundation.

The City and County then sued Gander Mountain and the Foundation, seeking a declaration that the economic development agreement violated Article III, Section 52(a) of the Texas Constitution, which requires that grants of public money contain sufficient controls such that each grant achieves a public, rather than wholly private purpose. Chase intervened to defend the agreement's validity. The trial court declared the agreement void and unenforceable. The court of appeals affirmed, holding that the agreement lacked sufficient controls to ensure a public purpose was achieved by the use of taxpayer funds.

Chase petitioned the Supreme Court for review, arguing that the agreement is not subject to Section 52(a), and in any event, satisfies Section 52(a)'s requirements. The Court granted Chase's petition.

D. CONTRACTS

1. Contractual Indemnity

a) *S&B Eng'rs & Constructors, Ltd. v. Scallon Controls, Inc.*, ___ S.W.3d ___, 2024 WL 2340790 (Tex. App.—Beaumont 2024), *pet. granted* (June 13, 2025) [24-0525]

An issue in this case is whether a defendant can settle tort claims and then seek recovery under a contractual comparative-indemnity provision.

Loss of power at a refinery triggered the release of a fire-suppression chemical from a system installed by an independent contractor. Workers injured while fleeing sued both the refinery and the contractor. The defendants then sued a subcontractor for contribution and indemnity, asserting the contractor had instructed the subcontractor to program the system so that the chemical would *not* be released if the system lost power. The subcontractor contends that no such instruction was given. The defendants subsequently settled with the injured workers but not the subcontractor. When the refinery nonsuited its claims against the subcontractor, its insurer intervened as subrogee.

On cross-motions for summary judgment, the trial court rendered judgment for the subcontractor. The court of appeals affirmed, holding that (1) the insurer's claims were barred by the statute of limitations; (2) the contractor was not entitled to indemnification because it settled for its own negligence and the indemnification contract did not satisfy the express-negligence rule; and (3) the contractor failed to adequately brief any complaint about the adverse judgment on its breach-of-contract and breach-of-warranty claims.

In separate petitions for review, the contractor and insurer assert that the express-negligence rule is inapplicable because their indemnification claims are based on the subcontractor's negligence. The insurer further argues that the limitations period did not commence on its indemnification claim until the settlement was finalized, and the contractor additionally challenges the court of appeals' waiver holding. The Supreme Court granted the petitions for review.

2. Interpretation

a) *Equinor Energy LP v. Lindale Pipeline, LLC*, ___ S.W.3d ___, 2023 WL 8041045 (Tex. App.—Houston [1st Dist.] 2023), *pet. granted* (June 20, 2025) [24-0425]

At issue is whether an oil and gas operator breached its agreement with a water pipeline operator by buying water from other suppliers.

Brigham Oil & Gas was an operator on the Bakken Shale in North Dakota. To supply water for its hydrofracturing operations, Brigham signed an agreement with Lindale Pipeline LLC. Under the agreement, Brigham would construct a pipeline to supply water that Lindale would then operate. The agreement also stipulated that Lindale would serve as "the sole and exclusive water provider and pumper on the Pipeline." Brigham was later acquired by Equinor LP. Equinor began purchasing water at a lower cost from suppliers other than Lindale in 2014, utilizing a new technology referred to as

lay-flat hosing.

Lindale sued Equinor, claiming that Equinor's purchase of water from third parties breached the agreement's "sole and exclusive water provider" clause. The parties filed cross-motions for summary judgment. The trial court ruled that the agreement's exclusivity clause was ambiguous and submitted both its interpretation and the question of resulting damages to the jury. After hearing testimony from the Lindale and Equinor representatives who drafted the agreement, the jury found that Equinor had breached the agreement by purchasing water from third parties and that the breach damaged Lindale by $29 million. Because Lindale had also breached the agreement by failing to pay fees it owed to Equinor, the damages award was reduced to $26 million. Equinor appealed, arguing that the trial court erred by submitting the contract to the jury, that the agreement unambiguously did not make Lindale its exclusive water supplier, and that insufficient evidence supported the $26 million damages figure. The court of appeals affirmed.

Equinor petitioned the Supreme Court for review, arguing that the agreement unambiguously did not make Lindale its exclusive water supplier and that the damages award should be reversed for lack of evidence. The Court granted the petition for review.

E. EVIDENCE

1. Medical Expense Affidavits

a) *Ortiz v. Nelapatla*, 711 S.W.3d 1 (Tex. App.—Dallas 2023), *pet. granted* (Apr. 4, 2025) [23-0953]

This personal injury case concerns the admissibility of partially controverted affidavits offered to prove the reasonableness and necessity of medical expenses.

Ortiz and Nelapatla were involved in a car crash, and Ortiz sued Nelapatla for negligence. Prior to trial, Ortiz served medical-provider affidavits pursuant to Texas Civil Practice and Remedies Code Section 18.001. In response, Nelapatla timely served counteraffidavits challenging the reasonableness and necessity of a portion, but not all, of Ortiz's medical expenses. Nelapatla objected that the affidavits were inadmissible because he contravened them with counteraffidavits and because they were hearsay. The trial court sustained Nelapatla's objections. Ortiz moved to offer the counteraffidavits into evidence because she had designated the authors as experts. Nelapatla objected, and the court sustained the objection. Ortiz offered the affidavits twice more at trial, with Nelapatla objecting both times on the same grounds as before. The trial court sustained both objections.

The trial court granted Ortiz a money judgment for her past medical expenses. A divided court of appeals affirmed.

Ortiz filed a petition for review. Ortiz argues that the plain text of Section 18.001 supports the admission of the undisputed portions of the affidavits. Ortiz also argues that Section 18.001 does not restrict the use of counteraffidavits as evidence of the claimant's uncontested expenses because the affidavits are a party-opponent statement that can be used against the party who made them—namely,

Nelapatla. The Supreme Court granted the petition.

F. FAMILY LAW

1. Divorce Decrees

a) *Morrison v. Morrison*, 712 S.W.3d 113 (Tex. App.—Tyler 2023), *pet. granted* (Apr. 4, 2025) [24-0053]

The central issue in this case is whether a post-divorce enforcement order that applied an agreed divorce decree's damages provision impermissibly changed the substantive division of property after the trial court's plenary power had expired.

Debbie and Rodney Morrison finalized their divorce in an agreed divorce decree. The decree memorialized terms of their mediated settlement agreement, which included a negotiated damages provision. The provision provides that if a party violates the decree by failing to timely deliver property, it "shall result in the award of damages (including a redistribution of cash or other assets) and attorney's fees to the other party." When Rodney violated the divorce decree, Debbie sought enforcement. After finding that Rodney committed numerous violations of the decree, the trial court assessed damages and ordered a redistribution of property that resulted in Rodney's divestment of certain assets.

Rodney appealed, arguing that the enforcement order impermissibly altered the decree's property division after the trial court's plenary power expired. The court of appeals agreed, vacating the trial court's order and dismissing the case.

The Supreme Court granted Debbie's petition for review. She argues that the damages provision is enforceable because it was contractually agreed to by the parties in an agreed divorce decree.

2. Termination of Parental Rights

a) *D.V. v. Tex. Dep't of Fam. & Protective Servs.*, ___ S.W.3d ___, 2024 WL 3995381 (Tex. App.—Austin 2024), *pet. granted* (May 30, 2025) [24-0840]

The issue in this case is whether the Department of Family and Protective Services abandoned its request for termination of parental rights when the Department's caseworker and representative at trial unequivocally testifies that the Department is no longer seeking termination, but the written pleadings and other circumstances at trial indicate that the Department was still seeking termination.

In January 2021, the Department received reports of domestic violence in D.V.'s home, removed D.V.'s child from the home, and sued to terminate D.V.'s parental rights. At trial, the Department's representative testified that the Department was asking that Father be named as the child's permanent sole managing conservator and that D.V.'s rights be limited to parent non-conservator with no visitation or contact. Later, during cross-examination, the caseworker confirmed that the Department was no longer seeking termination of D.V.'s parental rights. The Department's lawyer never announced to the court that the Department was abandoning its termination request and did not give a closing statement. The trial court terminated D.V.'s

parental rights. The court of appeals affirmed, holding that the Department had not abandoned its pleading because the Department's lawyer never announced the Department was abandoning its termination request and because the actions of the participants at the hearing, including D.V. herself, indicated that they understood the Department was still seeking termination.

D.V. filed a petition for review, arguing that the Department abandoned its request to terminate her parental rights when its caseworker and representative at trial unequivocally testified that the Department was no longer seeking termination. The Court granted the petition.

b) *In re C.S., Jr.*, ___ S.W.3d ___, 2024 WL 5080505 (Tex. App.—Eastland 2024), *pet. granted* (June 20, 2025) [25-0008]

The principal issue in this case is whether the trial court properly extended its jurisdiction over a parental-rights-termination suit past the Family Code's automatic dismissal deadline.

The Department of Family and Protective Services intervened after Mother engaged in a physical altercation involving a firearm in the presence of her children. Mother and the children subsequently tested positive for marijuana, and the Department initiated a suit to terminate Mother's parental rights. Under the Family Code, a trial court automatically loses jurisdiction over a termination suit if it does not commence a trial on the merits or grant an extension within one year of the suit's filing. During a pretrial hearing before the dismissal deadline, the trial court reset the final trial to a date after the deadline for logistical reasons. After the one-year deadline passed, Mother filed a motion to dismiss the suit, arguing the trial court lost its jurisdiction by failing to grant an extension in accordance with the Family Code. The trial court denied the motion. The case proceeded to trial, and Mother's parental rights were terminated.

The court of appeals affirmed. It held that the trial court did not lose jurisdiction because it properly granted an extension prior to the dismissal deadline. The court of appeals further concluded that Mother waived her argument that the extension was deficient because she failed to object to the error at the earliest possible opportunity. It then affirmed the termination order, holding that the evidence was legally and factually sufficient to support termination.

Mother filed a petition for review. She argues that the trial court did not extend its jurisdiction because it did not grant an extension orally in the presence of a court reporter or in a sufficient writing prior to the dismissal deadline. She also argues that even if the trial court retained jurisdiction, its extension was deficient, and her objection to that deficiency—made after the dismissal deadline but prior to the final termination order—was timely. Finally, she argues that termination was not in the best interest of the children. The Supreme Court granted the petition.

c) *In re H.S.*, 710 S.W.3d 248 (Tex. App.—Fort Worth 2024), *pet. granted* (Apr. 4, 2025) [24-0307]

The issues in this case are whether there was legally sufficient evidence to support a parental termination order and whether the trial court abused its discretion by denying a motion to extend the mandatory dismissal date.

Mother and Father separately challenge an order terminating their parental rights to their three children. The Department of Family and Protective Services removed the children after discovering Father, who had previously assaulted Mother, returned home in violation of a safety plan Mother had signed. The jury heard evidence that Father had threatened suicide while the children were home and that both parents made some progress in completing their service plans, but neither plan was completed before the trial. Mother moved to extend the statutory dismissal date to allow her more time to complete her plan, but the trial court denied the motion.

After a jury trial, the trial court rendered judgment terminating both parents' rights to all three children. The court of appeals affirmed, concluding the evidence was legally and factually sufficient to support both endangerment grounds for termination and that termination was in the children's best interest.

Both parents petitioned for review. Mother challenges the trial court's denial of her motion to extend the dismissal date and argues that the evidence is legally insufficient to terminate her rights. Father argues the evidence is legally insufficient to support termination of his rights. The Supreme Court granted both petitions.

G. GOVERNMENTAL IMMUNITY

1. Independent Contractors

a) *Third Coast Servs., LLC v. Castaneda*, 679 S.W.3d 254 (Tex. App.—Houston [14th Dist.] 2023), *pet. granted* (Apr. 4, 2025) [23-0848]

At issue in this case is whether the statutory immunity afforded to a contractor who constructs a highway "for the Texas Department of Transportation" requires contractual privity between that contractor and the Department.

Pedro Castaneda was fatally struck by two large trucks when he attempted to drive across the intersection of State Highway 249 and Woodtrace Boulevard. At the time of the accident, the intersection was under construction pursuant to a contract between the Department of Transportation and Montgomery County. The Castaneda family sued the general contractor, SpawGlass, and the subcontractor hired to install traffic signals, Third Coast, alleging negligence and gross negligence.

SpawGlass and Third Coast each moved for traditional summary judgment, arguing they were entitled to statutory immunity because they were highway contractors for the Department. When the trial court denied the motions, SpawGlass and Third Coast each filed an interlocutory appeal. The court of appeals affirmed, holding that because the Government Code requires privity between the

Department and the contractor invoking immunity. SpawGlass and Third Coast were hired by the County and thus ineligible for statutory immunity.

SpawGlass and Third Coast each petitioned for review, arguing that the court of appeals impermissibly read a privity requirement into the statute that was not reflected by its plain language. The Supreme Court granted both petitions.

2. Recreational Use Statute

b) *City of San Antonio v. Realme*, ___ S.W.3d ___, 2024 WL 3954217 (Tex. App.—San Antonio 2024), *pet. granted* (June 13, 2025) [24-0864]

The issue in this case is whether participating in an organized 5K race constitutes "recreation" under the Recreational Use Statute.

On Thanksgiving Day 2017, Nadine Realme participated in a Turkey Trot 5K in downtown San Antonio. During the race, she attempted to pass slower participants by deviating from the sidewalk into a grassy area, where she tripped over a protruding metal object and fell into a utility pole, breaking her arm.

Realme sued the City for premises liability. The City moved for summary judgment under the Recreational Use Statute, arguing that because Realme was engaged in "recreation," the City could only be liable for gross negligence. The trial court denied the motion. The court of appeals affirmed, holding that participating in an organized 5K race did not constitute "recreation" under the Recreational Use Statute. The court concluded that organized, competitive footraces are "a celebration of organized human activity" rather than activities "associated with enjoying nature or the outdoors" under the Recreational Use Statute's catch-all provision.

The City petitioned the Supreme Court for review, arguing that outdoor running, regardless of its competitive nature, falls within the Recreational Use Statute's definition of recreation. The City contends the court of appeals erred by focusing on the competitive aspect of the 5k race rather than recognizing that running is inherently associated with enjoying the outdoors. The Supreme Court granted the petition.

3. Waiver

a) *JRJ Pusok Holdings, LLC v. State*, 693 S.W.3d 679 (Tex. App.—Houston [14th Dist.] 2023), *op. on reh'g*, 693 S.W.3d 860 (Tex. App.—Houston [14th Dist.] 2024), *pet. granted* (June 20, 2025) [24-0447]

The issue in this case is whether the State is immune from a suit to repurchase property acquired through eminent domain.

In 2013, the Texas Department of Transportation notified landowners of its intent to acquire a portion of their property for a highway improvement project. After negotiations failed, the State filed a petition for condemnation. The parties agreed to settle, and the landowners conveyed the property to the State in exchange for compensation. In 2016, the landowners sought to repurchase a portion of the property from TxDOT because the highway improvement project was rerouted.

TxDOT refused to sell the property back to the landowners.

The landowners assigned their claims to JRJ Pusok Holdings. JRJ Pusok sued the State for violating Chapter 21 of the Texas Property Code, which governs repurchase claims, and other causes of action. The State filed a plea to the jurisdiction, arguing that it was immune from suit. The trial court granted the State's plea and dismissed the case. The court of appeals reversed and remanded the trial court's dismissal of the repurchase claim, holding that Chapter 21 waives the State's immunity.

The State petitioned the Supreme Court for review. It argues that Chapter 21 does not waive the State's immunity from repurchase claims. It further argues that the repurchase claim falls outside the scope of Chapter 21 because JRJ Pusok brought suit in a Harris County Court at Law, the property was acquired by purchase rather than eminent domain, and the suit seeks to recover only a portion of the property. The Supreme Court granted the petition.

H. INSURANCE

1. Policies/Coverage

a) *Mankoff v. Privilege Underwriters Reciprocal Exch.*, 708 S.W.3d 706 (Tex. App.—Dallas 2024), *pet. granted* (Apr. 4, 2025) [24-0132]

The issue in this case is whether the term "windstorm," when undefined in a homeowner's insurance policy, includes a tornado.

After the Mankoffs' home was damaged by a tornado, they submitted a claim under their homeowner's policy. The insurer, PURE, paid most of the claim but withheld a portion under the policy's "Windstorm or Hail Deductible." The Mankoffs sued PURE for breach of contract and sought a declaration that a tornado is not a "windstorm" under the policy, so the deductible did not apply. On cross-motions for summary judgment, the trial court granted PURE's motion and rendered a take-nothing judgment against the Mankoffs.

A divided court of appeals reversed. The majority held that "windstorm" is ambiguous because it is susceptible to two reasonable meanings—one that includes a tornado, and one that does not. Concluding that the Mankoffs' interpretation was reasonable, it held that the trial court was required to construe the policy in their favor. The dissenting justice would have held that a tornado is unambiguously a "subtype" of windstorm.

PURE petitioned for review, arguing that the court of appeals erred in concluding the term "windstorm" was ambiguous because the only reasonable construction of "windstorm" includes a tornado. PURE also contends the court of appeals erred by relying on improper sources to determine a term's plain meaning. The Supreme Court granted the petition.

I. JURISDICTION

1. Mootness

a) *Webb Consol. Indep. Sch. Dist. v. Marshall*, 690 S.W.3d 698 (Tex. App.—San Antonio 2023), *pet. granted* (May 30, 2025) [24-0339]

This case presents two issues regarding school board members'

statutory rights to access district information and to obtain attorney's fees under the Texas Education Code.

In 2019 and 2020, Robert and Amy Marshall, serving as school board members for Webb Consolidated Independent School District, requested documents under Section 11.1512(c) of the Texas Education Code, which grants school board members an "inherent right" to access district information. The Marshalls alleged that the District withheld responsive documents and filed suit seeking injunctive relief in June 2020. The trial court granted a temporary injunction ordering production of certain documents in September 2020. By November 2022, both Marshalls' terms as school board members had expired. The District filed a plea to the jurisdiction and a traditional and no-evidence motion for summary judgment. The trial court denied both.

The court of appeals affirmed. It held that while the Marshalls were no longer school board members, and thus no longer entitled to information under Section 11.1512(c), the Marshalls' temporary injunction victory entitled them to prevailing party status, allowing their attorney's fees claim to breathe life into the otherwise moot case. The court also held that the Legislature created an exception to the general administrative exhaustion requirement for school board members seeking injunctive relief.

The District filed a petition for review, arguing that the Marshalls were not prevailing parties because the temporary injunction provided them no practical relief and did not materially alter the parties' legal relationship. The District also contends that the Marshalls were required to exhaust their administrative remedies before filing suit. The Supreme Court granted the petition.

2. Standing

a) *S. Tex. Indep. Sch. Dist. v. Busse*, 696 S.W.3d 773 (Tex. App.—Corpus Christi–Edinburg 2024), *pet. granted* (June 20, 2025) [24-0782]

This petition primarily concerns whether Lyford Consolidated Independent School District and Willacy County taxpayers have standing to challenge South Texas Independent School District's changed use of *ad valorem* tax revenue.

South Texas was originally chartered under Chapter 26 of the Texas Education Code, which allowed it to assess an *ad valorem* tax to further its statutory mission as a rehabilitation district for handicapped students. Chapter 26 was later amended to allow South Texas to enroll nondisabled students, and it became an open-enrollment "magnet school district." Several decades later, Lyford (which partially overlaps with South Texas) and individual Willacy County taxpayers sued South Texas, alleging that it was using tax revenue for an illegal purpose and seeking injunctive and declaratory relief. South Texas filed a plea to the jurisdiction, arguing, among other things, that neither Lyford nor the Willacy County taxpayers had standing. The trial court denied South Texas's plea to the jurisdiction.

South Texas filed an interlocutory appeal, and the court of appeals reversed. Concluding that Lyford's harm was too speculative, the court of

appeals held that Lyford lacked standing. It also held that the Willacy County taxpayers lacked taxpayer standing because allowing their suit would cause a significant disruption to government operations and disturb voters' settled expectations.

Lyford and the Willacy County taxpayers petitioned the Supreme Court for review. They argue, among other things, that Lyford has standing to sue because it is harmed by the resulting funding disparity caused by South Texas's allegedly unlawful tax, and that the Willacy County taxpayers have standing to sue under Texas's taxpayer standing doctrine. The Supreme Court granted the petition.

3. Subject Matter Jurisdiction

a) *Bauer v. Braxton Mins. III, LLC*, 689 S.W.3d 633 (Tex. App.—Fort Worth 2024), *pet. granted* (June 13, 2025) [24-0438]

This case involves a Texas court's subject-matter jurisdiction over claims relating to mineral interests in West Virginia.

Braxton Minerals III sued Bauer and Braxton Minerals II for deed reformation, breach of contract, declaratory judgment, fraud, and other causes of action. The trial court granted summary judgment for Braxton Minerals III. It ordered Bauer and Braxton Minerals II to specifically perform their obligations by conveying West Virginian mineral interests to Braxton Minerals III, enjoined Bauer and Braxton Minerals II from encumbering the mineral interests, and awarded Braxton Minerals III actual damages, fees, and costs. The court of appeals reversed and dismissed the case. The court held that because the gist or gravamen of Braxton Minerals III's claims concern the adjudication of title to real property outside of Texas, the Texas court lacked subject-matter jurisdiction.

Braxton Minerals III petitioned the Supreme Court for review. It argues that Texas courts may enforce the legal obligations of the parties, even if they relate to real property outside of Texas, and that the court has jurisdiction over the claims because they sound *in personam*, not *in rem*. It further argues that the Texas courts of appeals' rule for determining when courts have jurisdiction over claims relating to property outside of Texas is contrary to the Supreme Court's precedent. The Supreme Court granted the petition.

J. MEDICAL LIABILITY

1. Health Care Liability Claims

b) *In re Brenham Nursing & Rehab. Ctr.*, ___ S.W.3d ___, 2024 WL 924436 (Tex. App.—Houston [1st Dist.] 2024), *argument granted on pet. for writ of mandamus* (June 13, 2025) [24-0494]

In this case, the parties dispute the effect of missing a deadline to provide "specific facts" as required to raise a defense under the Pandemic Liability Protection Act and whether Brenham Nursing provided sufficient facts to assert that defense.

Harold Herrin was admitted to Brenham Nursing's nursing home facility, but contracted and died from COVID-19 while at the facility. Members of his family sued Brenham

Nursing. They alleged Brenham Nursing negligently caused Herrin to contract COVID-19. Brenham Nursing asserted a statutory defense to ordinary negligence liability, applicable in certain cases involving a pandemic disease. After a statutory deadline passed, the plaintiffs filed a motion to bar Brenham Nursing from relying on the defense, arguing Brenham Nursing failed to timely provide specific facts as the statute requires. Subsequently, Brenham Nursing twice amended its Answer to plead additional facts to support the defense.

The trial court granted the plaintiffs' motion, barring Brenham Nursing from raising the defense. The court of appeals denied mandamus relief without substantive opinion.

Brenham Nursing filed a petition for writ of mandamus in the Supreme Court, arguing that missing the statutory deadline should not bar the defense and that its Original Answer and Amended Answers provided the necessary "specific facts." The Supreme Court granted argument on the petition for writ of mandamus.

K. MUNICIPAL LAW

1. Zoning

a) *City of Dallas v. PDT Holdings, Inc.*, 703 S.W.3d 409 (Tex. App.—Dallas 2023), *pet. granted* (Dec. 20, 2024) [23-0842]

The petitioner challenges the court of appeals' reversal of a judgment in its favor that the City of Dallas is estopped from enforcing a zoning ordinance.

PDT submitted plans for the construction of a thirty-six-foot-high townhome to the City of Dallas. The City approved the plans and issued a building permit. The City did not identify that its Residential Proximity Slope ordinance, which requires structures to have a maximum height of twenty-six feet, applies to the townhome. PDT began construction. A few months later, the City issued a stop-work order for PDT's failure to comply with a different regulation. The order did not mention the slope ordinance. A few months after that, when the townhome was 90% complete, the City issued another stop-work order, this time for violation of the slope ordinance. PDT sought a variance from the Board of Adjustment, which was denied.

In the trial court, PDT alleged that it is entitled to relief under several theories, including equitable estoppel, laches, and waiver. After a bench trial, the trial court rendered judgment for PDT. The judgment, drafted by PDT, states only that the City is estopped from enforcing the slope ordinance against the townhome. The City did not request findings of fact and conclusions of law. The court of appeals reversed and rendered judgment that PDT is not entitled to relief on its claim for equitable estoppel.

PDT filed a petition for review. It argues that the court of appeals applied the wrong standard of review in its analysis, that the court should have considered its alternative theories before reversing the judgment, and that policy considerations support the application of equitable estoppel here. The Supreme Court granted the petition.

L. PROCEDURE—APPELLATE

1. Supersedeas Bonds

a) *In re Greystar Dev. & Constr., LP*, ___ S.W.3d ___, 2024 WL 1549466 (Tex. App.—Dallas 2024), *argument granted on pet. for writ of mandamus* (Apr. 4, 2025) [24-0293]

The issue in this mandamus proceeding is whether the $25 million cap on supersedeas bonds applies per judgment debtor or per judgment.

A crane at Greystar's construction site collapsed on an apartment building in Dallas during severe weather in 2019, killing Kiersten Smith and injuring several others. Smith's relatives brought a wrongful-death suit against Greystar and related entities. The trial court rendered a judgment awarding Smith's relatives more than $400 million in actual damages and prejudgment interest. Greystar and related entities perfected an appeal and filed a joint supersedeas bond of $25 million. Smith's relatives filed an emergency motion asking the trial court to declare the joint bond void because the $25 million statutory cap applies per judgment debtor.

The trial court found that the bond was invalid as to two of the three defendants. The court of appeals affirmed, holding that the trial court correctly concluded that the statute's $25 million cap applied per individual judgment debtor and that the trial court acted within its broad discretion in providing instructions as to how the defendants could supersede the judgment.

Greystar sought mandamus relief in the Supreme Court, arguing that the $25 million cap applies per judgment, not per judgment debtor. The Supreme Court set the mandamus petition for oral argument.

M. PROCEDURE—PRETRIAL

1. Certificates of Merit

a) *Studio E. Architecture & Interiors, Inc. v. Lehmberg*, 690 S.W.3d 725 (Tex. App.—San Antonio 2024) *pet. granted* (Apr. 4, 2025) [24-0286]

At issue in this case is whether a plaintiff may cure a defective petition under Chapter 150 of the Civil Practice and Remedies Code through amendment or whether the defect may only be cured by filing a new action.

Lehmberg sued Studio E. for claims related to Studio E.'s work on Lehmberg's home renovation project. Nearly two years later, Studio E. filed a motion to dismiss. It argued that it was entitled to dismissal under Chapter 150 because Lehmberg failed to file a "certificate of merit" with her original petition, which is statutorily required in lawsuits against certain licensed or registered professionals. Lehmberg argued in response that her claims fell outside the scope of the statute. The trial court denied the motion to dismiss.

Studio E. filed an interlocutory appeal, and the court of appeals reversed, concluding that the statute applied. However, it remanded to the trial court to determine whether the dismissal should be with or without prejudice. On remand, the trial court dismissed without prejudice. Lehmberg then filed an amended petition with the certificate of merit attached. By this point, the statute of limitations on Lehmberg's claims had expired. Studio E.

filed another motion to dismiss, arguing that Lehmberg could not cure the original, deficient petition through amendment. The trial court denied the motion to dismiss, and Studio E. brought a second appeal.

The court of appeals affirmed. It concluded that because the trial court dismissed the original petition without prejudice, Lehmberg could either amend or file a new action.

Studio E. filed a petition for review, arguing that Lehmberg could not cure her defective, dismissed petition through amendment. Rather, it argues, dismissed claims—even those dismissed without prejudice—may only be revived by filing a new action. The Supreme Court granted the petition.

2. Forum Non Conveniens

a) *In re Pinnergy Ltd.*, 693 S.W.3d 485 (Tex. App.—Houston [1st Dist.] 2023), *argument granted on pet. for writ of mandamus* (May 31, 2024) [23-0777]

The issue in this case is whether the trial court erred by denying the defendants' motion to dismiss for forum non conveniens.

A Union Pacific train collided with Pinnergy's 18-wheeler truck (driven by Ladonta Sweatt) in northwest Louisiana. Thomas Richards and Hunter Sinyard were conductors on Union Pacific's train. Pinnergy filed suit in Red River Parish, Louisiana, seeking damages from the Louisiana Department of Transportation and Union Pacific. Three months later, Richards filed suit in Harris County, Texas against Pinnergy, Union Pacific, and Sweatt. Sinyard intervened in the Harris County suit as a plaintiff.

The Harris County defendants filed a motion to dismiss that suit for forum non conveniens. They pointed out that the accident occurred 240 miles from the Harris County courthouse, but only 18 miles from the Louisiana courthouse, that the plaintiffs live closer to Red River Parish than to Harris County, and the existence of litigation in Louisiana arising from the same collision. The trial court denied the motion without explanation. The court of appeals denied the defendants' mandamus petition without substantive opinion.

The defendants filed a petition for writ of mandamus in the Supreme Court, arguing that all six statutory forum non conveniens factors have been met. The Court set the petition for oral argument.

3. Standing and Capacity

a) *In re UMTH Gen. Servs., L.P.*, ___ S.W.3d ___, 2023 WL 8291829 (Tex. App.—Dallas 2023), *argument granted on pet. for writ of mandamus* (Apr. 4, 2025) [24-0024]

This case concerns whether a trust's shareholder can assert claims directly against an advisor who contracted with the trust or whether such claims must be brought derivatively.

A real estate investment trust entered into an advisory agreement with UMTH that gave UMTH authority to manage corporate assets. Alleging corporate funds were improperly used to cover legal fees, NexPoint, one of the trust's shareholders, sued UMTH and its affiliates, asserting

various claims under the advisory agreement itself. UMTH filed a verified plea in abatement, a plea to the jurisdiction, and special exceptions, arguing that NexPoint's claims alleged collective harm to the trust and thus NexPoint lacked capacity and standing to bring a direct claim. The trial court denied the motions. UMTH filed a petition for writ of mandamus in the court of appeals, which was denied.

UMTH then petitioned the Supreme Court for mandamus relief. UMTH argues that the trial court abused its discretion in allowing NexPoint to bring its claims directly rather than derivatively, as it lacked a personal cause of action and a personal injury, and that NexPoint lacked derivative standing because it did not maintain continuous or contemporaneous ownership of trust shares. The Supreme Court set the case for oral argument.

N. PROCEDURE—TRIAL AND POST-TRIAL

1. Default Judgment

a) *Shamrock Enters., LLC v. Top Notch Movers, LLC*, ___ S.W.3d ___, 2024 WL 2857011 (Tex. App.—Corpus Christi–Edinburg 2024), *pet. granted* (Apr. 4, 2025) [24-0581]

This restricted appeal raises personal jurisdiction and substituted service-of-process issues in a dispute about payment under a contract for moving services.

In the aftermath of Hurricane Laura, Top Notch Movers, a Texas-based LLC, provided moving services in Louisiana and Alabama to Alabama-based Shamrock Enterprises. Top Notch sued Shamrock in Texas for nonpayment of services. Alleging Shamrock was required, but failed, to have a registered agent for service of process in Texas, Top Notch employed substituted service on the Texas Secretary of State. The Secretary of State forwarded service to Shamrock at the address Top Notch provided, but it was returned with the notation "Return to Sender, Vacant, Unable to Forward." Shamrock did not appear. The trial court rendered a default judgment against Shamrock.

Shamrock filed a restricted appeal. The court of appeals affirmed the default judgment finding no error apparent on the face of the record.

The Supreme Court granted Shamrock's petition for review, which argues that (1) personal jurisdiction is lacking; (2) the court of appeals erroneously concluded that Shamrock was amenable to substituted service because the pleadings and record are facially insufficient to show Shamrock was transacting business in the state; and (3) return of the forwarded service is prima facie proof that service was defective.

2. Jury Instructions and Questions

b) *Copper Creek Distribs., Inc. v. Valk*, ___ S.W.3d ___, 2024 WL 2513312 (Tex. App.—Dallas 2024), *pet. granted* (June 13, 2025) [24-0516]

This case concerns the propriety of a trial court's jury instruction on spoliation of evidence.

Ron Valk owns Platinum Construction. Don Triplett, a friend of

Ron's son, convinced Ron to use Copper Creek Distributors, Inc. as a vendor for Platinum's construction projects. Triplett did not disclose that he owned the business. Platinum hired Triplett to be the superintendent on two projects, where he was responsible for managing the workers on the job sites. Ron alleges that Triplett diverted Platinum's workers from the project sites to his own residential construction projects, leading to this lawsuit.

Prior to trial, Ron requested the trial court give the jury a spoliation instruction, arguing that CCDI and Triplett's husband, Doni Escoffie, destroyed pertinent email and accounting evidence. The court granted the request but instructed the jury only as to CCDI's spoliation. The jury found CCDI committed theft of services, intentionally interfered with the contract between Platinum and its contractors, and was unjustly enriched by using Platinum's services. The jury also found Escoffie responsible for the conduct of CCDI. The trial court rendered judgment in accordance with the jury's verdict.

Escoffie and CCDI appealed, and the court of appeals reversed, holding the trial court abused its discretion by giving the spoliation instruction because it failed to consider the availability of lesser sanctions and the instruction probably caused the rendition of an improper judgment.

Ron petitioned the Supreme Court for review, arguing that the instruction was proper, but even if was improper, it did not constitute harmful error. The Supreme Court granted the petition.

O. REAL PROPERTY

1. Nuisance

a) *JLMH Invs., LLC v. Fam. Dollar Stores of Tex., LLC*, ___ S.W.3d ___, 2024 WL 2971684 (Tex. App.—Fort Worth 2024), *pet. granted* (June 13, 2025) [24-0543]

At issue in this case is whether a real property owner may be granted injunctive relief to abate a nuisance even though the relevant statute of limitations has expired for each of its claims for monetary relief.

JLMH owns a plot of real property in Fort Worth. Sometime in 2014 or 2015, the adjacent property owner entered into a contract for the construction and operation of a Family Dollar Store. After the Store's construction was complete, the owners of JLMH noticed its property began to flood heavily each time it rained, leading to the accumulation of silt and trash around the property and the development of new cracks in the parking lot. JLMH sought aid from the City to no avail, and eventually brought claims for monetary and injunctive relief against Family Dollar (among others) for nuisance, trespass, negligent and intentional diversion of water, and violations of the Water Code. Family Dollar moved for summary judgment, arguing the statute of limitations barred each of JLMH's claims. The trial court granted the motion. The court of appeals affirmed in part and reversed in part, holding that although the statute of limitations barred JLMH from any monetary recovery, it maintained a standalone right to injunctive relief in order to abate the nuisance.

Family Dollar and its co-defendants filed a petition for review. They argue that JLMH is not eligible for injunctive relief because each of its underlying causes of action has been dismissed, and that in any event, the expiration of the statute of limitations bars all recovery. The Supreme Court granted the petition for review.

b) *K&K Inez Props., LLC v. Kolle*, ___ S.W.3d ___, 2023 WL 8941487 (Tex. App.—Corpus Christi–Edinburg 2023), *pet. granted* (Apr. 4, 2025) [24-0045]

This nuisance case concerns an exemplary-damages cap calculation and whether intentional and grossly negligent nuisance are mutually exclusive causes of action when based on the same property damage.

The Kolles own approximately 126 acres of land. David Kucera, Valerie Kucera, and K&K Inez Properties own a parcel adjacent to the Kolles' land and developed a portion of that property into a residential neighborhood. The Kolles then sued K&K and the Kuceras, alleging their development of the land caused the Kolles' property to flood. The Kuceras moved to add Victoria County, where the property was located, as a responsible third party.

The trial court granted leave to designate Victoria County, but subsequently struck the designation. The trial court rendered judgment on the jury's verdict in favor of the Kolles, holding that David, Valerie, and K&K negligently and intentionally caused nuisance, Valerie engaged in a conspiracy, and David and K&K committed gross negligence. The trial court awarded damages for diminution in market value and loss of use, as well as exemplary damages. The court of appeals reversed the trial court's award of loss-of-use damages but otherwise affirmed the trial court.

The Kuceras petitioned for review, arguing that Victoria County was improperly struck, that the lower courts improperly calculated the exemplary-damages award cap, and that the Kolles should not be allowed to recover exemplary damages for grossly negligent nuisance while also recovering compensatory damages for intentional nuisance. The Supreme Court granted the petition.

P. TAXES

1. Franchise Tax

c) *NuStar Energy, L.P. v. Hegar*, 683 S.W.3d 831 (Tex. App.—Austin 2023), *pet. granted* (June 13, 2025) [24-0037]

At issue in this case is the facial validity of Comptroller Rule 3.591(e)(29), which defines Texas receipts by a place-of-delivery test for the purpose of calculating franchise taxes.

NuStar Energy sells bunker fuel oil to foreign-owned ships. The fuel is loaded onto ships in Texas waters, but a variety of laws prevent the ships from using the fuel until they are in international waters and from returning to Texas waters with the fuel. The franchise tax calculation is based on, in part, what percentage of sales are classified as Texas receipts. The Comptroller treated NuStar's bunker-fuel-oil sales as Texas receipts because NuStar delivered the fuel in Texas waters.

NuStar paid the taxes, but requested a refund, based on a calculation that excluded these sales from its Texas receipts because the fuel is never used in Texas.

After an administrative proceeding, the Comptroller denied NuStar's requested refund, relying on the Rule's place-of-delivery test for determining Texas receipts. NuStar then sued the Comptroller, challenging the Rule as inconsistent with Section 171.103(a)(1) of the Tax Code, which provides that sales of tangible personal property are considered Texas receipts "if the property is delivered or shipped to a buyer in this state." The parties filed cross-motions for partial summary judgment on this issue, and the trial court determined that the Rule is valid. On permissive interlocutory appeal, the court of appeals affirmed, concluding that the statute unambiguously requires that the place of delivery controls even if the buyer is located out of state.

NuStar petitioned the Supreme Court for review. NuStar argues that the statutory phrase "in this state" modifies only "buyer," which dictates an ultimate-destination test. The Comptroller argues that the only reasonable interpretation of the statute is a place-of-delivery test: whether tangible personal property is delivered or shipped in Texas to a buyer. The Court granted NuStar's petition.

2. Tax Protests

a) *RJR Vapor Co., LLC v. Hegar*, 681 S.W.3d 867 (Tex. App—Austin 2023), *pet. granted* (May 30, 2025) [24-0052]

At issue in this case is whether a state tax on tobacco products, defined as products "made of tobacco or a tobacco substitute," applies to oral nicotine products.

RJR sells oral nicotine products under the brand name VELO. Relying on guidance from the Comptroller, RJR believed that its pouches and lozenges—which contain nicotine isolate derived from tobacco but not tobacco leaf—were not "tobacco products." After receiving new guidance from the Comptroller that its products were subject to the tobacco product tax, RJR began paying the tax under protest.

RJR sued to recover the payments it made under protest. It also sought a declaration that the statute's definition of "tobacco product" was unconstitutional. The trial court held that VELO's products are not "tobacco products" under the statute and that the statutory definition was unconstitutional. The court of appeals affirmed the holding that the tax did not apply to VELO products and vacated the portion of the trial court's opinion declaring the Tax Code's definition of "tobacco product" unconstitutional.

The Comptroller petitioned the Supreme Court for review, arguing that VELO products are "made of tobacco" because the nicotine isolate they contain is derived from the tobacco plant. The Supreme Court granted the petition.

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