



Case Summaries December 9, 2022

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OPINIONS

PROCEDURE—PRETRIAL

Discovery

In re Kuraray Am., Inc., ___ S.W.3d ___, 2022 WL ___ (Tex. Dec. 9, 2022) (per curiam) [[20-0268](#)]

The issue in this case is whether the trial court abused its discretion by ordering a party to produce up to four months of cell-phone data from its employees.

Multiple workers at a chemical plant sued the plant operator, Kuraray America, Inc., for injuries resulting from a chemical release and fire. Shortly after the incident, Kuraray collected the company-issued cell phones of several employees and copied the data. The plaintiffs moved to compel discovery of all information collected from those phones. The plaintiffs did not allege that cell-phone use by any Kuraray employee contributed to the chemical release, but they argued at a hearing that Kuraray employees could have been distracted by their cell phones and presented evidence that Kuraray had a history of problems with cell-phone use by employees. The trial court ordered Kuraray to produce the cell-phone data of three employees for four months before the chemical release and of two supervisors for six weeks before the release. Kuraray moved for reconsideration, asserting that the cell-phone data demonstrated that none of the five employees was using a cell phone at a time when the employees could have been distracted from responding to plant conditions. The trial court denied reconsideration. Kuraray sought mandamus relief, which the court of appeals denied. Kuraray then petitioned the Supreme Court for a writ of mandamus.

The Court conditionally granted Kuraray's petition. The Court held that, to obtain production of cell-phone data, the party seeking the data must first allege or provide some evidence of cell-phone use by the person whose data is sought at a time when cell-phone use could have contributed to the underlying incident. Once this burden is satisfied, the trial court may order production of cell-phone data but only for the time period in which cell-phone use could have contributed to the incident. If this initial production indicates that cell-phone use could have contributed to the incident, then the trial court may consider whether additional discovery regarding cell-phone use may be relevant. Here, the Court concluded there was no showing that any employee's cell-phone use could have contributed to the chemical release, so the trial court abused its discretion by ordering production of cell-phone data for a six-week or four-month period.