



## Case Summaries January 13, 2023

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### OPINIONS

#### GOVERNMENTAL IMMUNITY

##### Ultra Vires Claims

*Tex. Educ. Agency v. Hous. Indep. Sch. Dist.*, \_\_\_ S.W.3d \_\_\_, 2023 WL \_\_\_ (Tex. Jan. 13, 2023) [[21-0194](#)]

The issue in this case is whether a school district is entitled to prospective injunctive relief against the oversight actions of the Texas Education Agency Commissioner after the Legislature substantially amended the portions of the Education Code limiting the Commissioner's authority.

In 2016, the Commissioner appointed a conservator to Houston Independent School District to address repeated unacceptable academic accountability ratings received by a high school in the district. In 2019, a second high school received its fifth unacceptable rating in six years, and the Commissioner received a recommendation from a special accreditation investigation to appoint a board of managers to Houston ISD and lower the district's accreditation status.

Before the Commissioner could act, Houston ISD sought and received a temporary injunction barring the Commissioner from appointing a board of managers or taking any other action based on the results of the investigation. The Commissioner appealed and a divided court of appeals affirmed, based on its interpretation of the then-existing Education Code. While the Commissioner's petition to this Court was pending, the 87th Legislature substantially amended the relevant provisions of the Education Code.

The Supreme Court reversed. The Court held that the temporary injunction must be supportable under the amended statutes because Houston ISD only has the right to seek prospective compliance with the law. The Court interpreted the amendments to eliminate the grounds the court of appeals relied on to affirm the temporary injunction. Because Houston ISD failed to show that the Commissioner's planned actions would violate the amended law, the Court vacated the temporary order and remanded the case for the parties to reconsider their arguments in light of intervening changes to the law and facts.

## INSURANCE

### Private Right of Action

*Tex. Med. Res., LLP v. Molina Healthcare of Tex., Inc.*, \_\_\_ S.W.3d \_\_\_, 2023 WL \_\_\_ (Tex. Jan. 13, 2023) [[21-0291](#)]

The Texas Insurance Code requires an insurer to pay for emergency care provided to its insureds by an out-of-network provider at the provider’s “usual and customary rate.” The main issue in this case and a companion case brought on certified question from the U.S. Court of Appeals for the Fifth Circuit, No. 22-0138, *United Healthcare Insurance Co. v. ACS Primary Care Physicians Southwest, P.A.*, is whether the Code authorizes a private damages action by a physician against an insurer for violating this statutory requirement.

Out-of-network emergency-care doctors sued Molina, alleging that the insurer failed to pay the doctors’ usual-and-customary rates for treating thousands of Molina’s insureds. They pleaded a cause of action directly under the Code’s emergency-care provisions, a common-law quantum meruit claim, and a statutory claim for unfair settlement practices. The lower courts dismissed all of the doctors’ claims, and the Supreme Court affirmed.

The Court first held that the Code does not authorize a private cause of action for a violation of the usual-and-customary rate payment requirement. The Court reasoned that a private a cause of action is not clearly implied in the text of the emergency-care provisions and noted that the Legislature has given the Department of Insurance broad authority to enforce those provisions. The Court also rejected the doctors’ argument that recent statutory amendments that created a mandatory arbitration scheme for claims under the emergency-care provisions retroactively created a private cause of action for claims governed by the old, pre-arbitration law.

As to the doctors’ other claims, the Court held that the doctors cannot satisfy the second element of a quantum meruit claim—that they undertook to treat Molina’s insureds for the benefit of Molina—and also that the doctors’ unfair-settlement-practices claim is not viable. Finally, the Court addressed the parties’ and lower courts’ characterizations of Molina’s challenges to the doctors’ claims as issues of the doctors’ standing. The Court reiterated that statutory or common-law prerequisites to a plaintiff’s filing suit or recovering on a claim are not issues of standing but of merits.

## STATUTE OF LIMITATIONS

### Discovery Rule

*Marcus & Millichap Real Est. Inv. Servs. of Nev., Inc. v. Triex Tex. Holdings, LLC*, \_\_\_ S.W.3d \_\_\_, 2023 WL \_\_\_ (Tex. Jan. 13, 2023) (*per curiam*) [[21-0913](#)]

The issue in this case is the proper application of the discovery rule to a breach of fiduciary duty claim. In 2008, Triex bought a gas station in Lubbock and leased it back to its existing operator, Taylor Petroleum. Triex and the gas station’s owner both retained Marcus & Millichap to represent them in the transaction. In 2012, Taylor Petroleum defaulted on the lease. A little over three years later, Triex sued Taylor Petroleum and related parties. After deposing Taylor Petroleum’s corporate officers a year later, Triex suspected that Marcus & Millichap misrepresented the sale and lease transaction, and added it to the suit. Triex asserted claims for fraud, breach of fiduciary duty, and conspiracy, which allegedly occurred during the 2008 transaction. These claims were subject to a four-year limitations period. Triex pleaded the discovery rule to save its otherwise time-barred claims.

The trial court granted Marcus & Millichap's motion for summary judgment on limitations grounds. The court of appeals reversed. It concluded that the evidence conclusively established that Triex knew it was injured when Taylor Petroleum defaulted, but, applying the discovery rule, it held that there was a fact issue as to whether Triex knew or should have known in 2012 that Marcus & Millichap caused its injury. In reaching this holding, the court of appeals concluded that because there was a fiduciary relationship between Triex and Marcus & Millichap, Triex had no duty to make a diligent inquiry into its possible claims.

In a per curiam opinion, the Supreme Court reversed. It concluded that the discovery rule applied to Triex's claims, but, as prior cases explain, a fiduciary relationship does not eliminate a plaintiff's duty of reasonable diligence. It also noted that the discovery rule does not delay accrual until the plaintiff knows the exact identity of the wrongdoer. Accordingly, the Court held that despite the fiduciary relationship, Triex was required to exercise reasonable diligence, and had it done so, it should have timely discovered the facts giving rise to its claims against Marcus & Millichap. The Court reinstated the trial court's summary judgment.