SUPREME COURT OF TEXAS UPDATE
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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 September 1, 2023, through October 31, 2024. 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 amy.starnes@txcourts.gov.

II. DECIDED CASES

A. ADMINISTRATIVE LAW

1. 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.

2. Jurisdiction

a) *Morath v. Lampasas Indep. Sch. Dist.*, 686 S.W.3d 725 (Tex. Feb. 16, 2024) [22-0169]

The central issue in this case is whether the Commissioner of Education had jurisdiction over a detachment-and-annexation appeal.

A land development company petitioned two school boards to detach undeveloped property from one school district and annex it to the other. Under the relevant statutory provisions, if both boards agree on the disposition of a petition, the decision is final. But if only one board "disapproves" a petition, the Commissioner can settle the matter in an administrative appeal. Here, one board approved the petition, but the other board took no action following a hearing. The company appealed to the Commissioner, asserting that the board constructively disapproved the petition by its inaction. The Commissioner approved the annexation but surpassed a statutory deadline to issue a decision. In a suit for judicial review, the trial court affirmed. The court of appeals vacated the judgment and dismissed the case, holding that a board's inaction cannot provide the requisite disagreement for an appeal to the Commissioner.

The Supreme Court reversed. The Court held that the Commissioner had jurisdiction because, under a plain reading of the statute, a board "disapproves" a petition by not approving it within a reasonable time after a hearing. The Court further held that the Commissioner did not lose jurisdiction when the statutory deadline passed. The deadline is not jurisdictional, and the Legislature did not intend dismissal as a consequence for noncompliance with that deadline. The Court remanded the case to the court of appeals to address other challenges to the Commissioner's decision.

3. 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.

B. ARBITRATION

1. Admission Pro Hac Vice

a) *In re AutoZoners, LLC*, 694 S.W.3d 219 (Tex. Apr. 26, 2024) (per curiam) [22-0719]

In this case, the Court addressed motions by out-of-state attorneys seeking to appear pro hac vice. Velasquez sued his employer, AutoZoners, for age discrimination. A Texas attorney, Koehler, filed an answer for AutoZoners. The signature block included the electronic signature of Koehler. Below this signature, the signature block included two out-of-state attorneys, Riley and Kern, with statements that an "application for pro hac vice admission will be forthcoming." Shortly thereafter, Riley and Kern filed motions to appear pro hac vice. Velasquez objected to their admission.

At a hearing, Riley and Kern testified that they had reviewed the answer and provided input but denied preparing and filing the answer. The trial court denied their motions to appear pro hac vice on the sole ground that Riley and Kern were "signing documents before being admitted." AutoZoners sought mandamus relief from the order denying the motions.

The court of appeals denied mandamus relief. The Supreme Court granted mandamus relief. The Court held that Riley and Kern had not signed any pleadings, and the trial court abused its discretion in denying the motions to appear pro hac vice on that ground. The Court concluded that Riley and Kern had not engaged in the unauthorized practice of law and had not appeared on a frequent basis in Texas courts and that Kern's conduct in a federal case was not grounds for denying her motion. The Court concluded that mandamus relief was available to remedy the trial court's abuse of discretion.

2. Arbitrability

a) *Alliance Auto Auction of Dall., Inc. v. Lone Star Cleburne Autoplex, Inc.*, 674 S.W.3d 929 (Tex. Sept. 1, 2023) (per curiam) [22-0191]

This case concerns the issue of incorporation of American Arbitration Association rules into their contract delegate the question of arbitrability to the arbitrator when the selection of AAA rules is contingent on another clause in the agreement.

Lone Star sued Alliance, alleging that Alliance conspired with two of Lone Star's employees to embezzle money from Lone Star. Alliance moved to stay the suit and compel arbitration, relying on arbitration clauses contained in authorization agreements between Lone Star and a third party. Alliance argues those agreements designate it as a third-party beneficiary who may invoke the arbitration clause against Lone Star. The arbitration agreement states that if the parties are unable to agree on an alternative dispute resolution firm, the arbitration will be conducted under AAA rules.

The trial court denied Alliance's motion to compel arbitration. The court of appeals affirmed, holding that the question of whether a case should be sent to arbitration is a gateway issue that courts must decide. After Alliance filed its petition for review in the

Supreme Court, it issued its decision in *Totalenergies E&P USA, Inc., v. MP Gulf of Mexico, LLC*, ___ S.W.3d ___, 2023 WL 2939648 (Tex. April 14, 2023), which held that the general rule is that the incorporation of AAA rules constitutes a clear and unmistakable agreement that the arbitrator must decide whether the parties' disputes must be resolved through arbitration.

Lone Star argues that this case is distinguishable from *TotalEnergies* because (1) the parties here agreed to arbitrate under the AAA rules only if they are unable to agree on a different ADR firm; and (2) Alliance is not a party to the arbitration agreement but is instead a third-party beneficiary that may, or may not, elect to invoke the arbitration agreement. In a per curiam opinion, the Court remanded to the court of appeals to consider Lone Star's arguments, along with any other issues the parties raised that the court did not reach, in light of the Court's holdings in *TotalEnergies*.

b) *Lennar Homes of Tex. Inc. v. Rafiei*, 687 S.W.3d 726 (Tex. Apr. 5, 2024) (per curiam) [22-0830]

The issue is whether the plaintiff established that the arbitration agreement in his home-purchase contract is unconscionable because the cost to arbitrate the issue of "arbitrability" would be excessive.

Rafiei bought a house from Lennar Homes. Several years later, Rafiei sued Lennar for personal injuries that he attributed to improper installation of a garbage disposal. Lennar moved to compel arbitration pursuant to an arbitration agreement in the home-purchase contract. Rafiei opposed the motion on the ground that the costs of arbitration are so excessive that the agreement is unconscionable and unenforceable. The trial court denied Lennar's motion and the court of appeals affirmed.

The Supreme Court reversed. First, it observed that because the arbitration agreement had a clause delegating the issue of arbitrability to the arbitrator, Rafiei had to show that the costs to arbitrate the delegation clause are unconscionable, not the costs to arbitrate the entire case. If an arbitrator decides that the costs to arbitrate the entire case are unconscionable, the case is returned to the courts. The Court then concluded that Rafiei presented legally insufficient evidence to demonstrate unconscionability for that proceeding, which requires an evaluation of: (1) the cost for an arbitrator to decide arbitrability, (2) the cost for a court to decide arbitrability, and (3) Rafiei's ability to afford one but not the other.

C. 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.

D. CONSTITUTIONAL LAW

1. Abortion

a) *In re State*, 682 S.W.3d 890 (Tex. Dec. 11, 2023) (per curiam) [23-0994]

The issue in this case is whether the trial court erred in granting a temporary restraining order enjoining the Attorney General from enforcing Texas abortion laws.

Kate Cox was about twenty weeks pregnant when her unborn child was diagnosed with a genetic condition that is life-limiting. Cox, her husband, and Dr. Damla Karsan sued the State, the Attorney General, and the Texas Medical Board, seeking a declaration that Cox's pregnancy fell within a statutory exception for abortions performed "in the exercise of reasonable medical judgment" on a woman with "a life-threatening condition" that places her "at risk of death or poses a serious risk of substantial impairment of a major bodily function." In a verified pleading, Dr. Karsan asserted a "good faith belief" that Cox met the exception, but Dr. Karsan did not base this belief on her reasonable medical judgment or identify Cox's life-threatening condition. The trial court entered a temporary restraining order, enjoining the State defendants from enforcing any abortion law against the Coxes or Dr. Karsan.

The State petitioned for a writ of mandamus, and the Supreme Court conditionally granted relief. The Court stressed that a court order is unnecessary for the provision of an abortion under the emergency exception. Nonetheless, the Court directed the trial court to vacate its order because Dr. Karsan failed to invoke the exception. The court explained that "reasonable medical judgment" requires more than a subjective belief that an abortion is necessary, and it held that the trial court erred in applying a standard that is different from the statutory standard.

b) *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. 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.

4. 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.

5. Retroactivity

a) *Hogan v. S. Methodist Univ.*, 688 S.W.3d 852 (Tex. Apr. 26, 2024) [23-0565]

The issue in this certified question is whether the Pandemic Liability Protection Act—a statute shielding universities from damages for cancellation of in-person education due to the pandemic—is unconstitutionally retroactive as applied to a breach-of-contract claim.

Southern Methodist University ended in-person classes and services during the spring 2020 semester due to the pandemic. Graduate student Luke Hogan completed his degree online and graduated. He then brought a breach-of-contract claim against SMU for allegedly violating the Student Agreement, seeking to recover part of the tuition and fees he paid expecting in-person education. While the suit was pending, the Texas Legislature passed the PLPA, which shields educational institutions from monetary damages for changes to their operations due to the pandemic.

A federal district court dismissed Hogan's breach-of-contract claim. On appeal, the U.S. Court of Appeals for the Fifth Circuit certified to the Supreme Court the question whether the PLPA violates the retroactivity clause in Article I, Section 16 of the Texas Constitution as applied to Hogan's breach-of-contract claim.

The Supreme Court answered No. It reasoned that "retroactive" in the constitution has never been construed literally and is not subject to a bright-line test. Rather, the core of Article I, Section 16's bar on retroactive laws is to protect "settled expectations." Hogan did not have a reasonable and settled expectation to recover from SMU, mainly because the common-law impossibility doctrine would have barred the heart of his claim, regardless of the PLPA. Whatever remains of his claim after the impossibility doctrine did its work was novel, untested, and unsettled. The Student Agreement permitted SMU to modify its terms, and, at any rate, Hogan accepted SMU's modified performance by finishing his degree online. Thus, the Court reasoned, whatever portion of Hogan's claim the PLPA removed was too slight and tenuous to render the PLPA unconstitutionally retroactive.

6. Separation of Powers

a) *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.

7. 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.

E. CONTRACTS

1. Interpretation

a) *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.

b) *U.S. Polyco, Inc., v. Tex. Cent. Bus. Lines Corp.*, 681 S.W.3d 383 (Tex. Nov. 3, 2023) (per curiam) [22-0901]

The issue before the Court concerns whether a land-improvement contract's requirement of a further writing applies to certain improvements Polyco made so that Polyco had to obtain Texas Central's further written agreement.

Polyco sued Texas Central for breach of contract and moved for partial summary judgment on this issue. The trial court granted the motion, concluding that a further written agreement was not required. Texas Central appealed. The court of appeals held that there were multiple reasonable interpretations of the contract provision and that the in-writing provision was therefore insolubly ambiguous. The court of appeals reversed and ordered a new trial on the meaning of the contract provision.

The Supreme Court reversed and remanded to the court of appeals. The Court concluded that the multiple interpretations the court of appeals deemed reasonable are merely the parties' competing theories about the text's meaning. Looking to the structure and syntax of the provision, the Court concluded that the in-writing requirement only applies to the last antecedent. The Court remanded to the court of appeals to address Texas Central's other arguments in the first instance.

F. DAMAGES

1. Settlement Credits

a) *Bay, Ltd. v. Mulvey*, 686 S.W.3d 401 (Tex. Mar. 1, 2024) [22-0168]

The primary issue in this case is whether the defendant is entitled to a settlement credit under the one-satisfaction rule.

Bay sued Mulvey and a former Bay employee, alleging that the employee stole Bay's resources to improve Mulvey's property. Bay also sued the employee in a separate lawsuit, alleging that he engaged in a pattern of similar acts for the benefit of himself, Mulvey, and others. Bay and the employee agreed to the entry of a $1.9 million judgment, which included Bay's injury for the improvements to Mulvey's property. The employee agreed to make monthly payments to Bay. Bay then went to trial against Mulvey alone, and the jury awarded Bay damages. Mulvey sought a settlement credit based on the agreement and agreed final judgment. The trial court refused and rendered judgment on the jury's verdict. The court of appeals reversed and rendered a take-nothing judgment, holding that Mulvey was entitled to a credit that exceeded the amount of Bay's verdict.

The Supreme Court affirmed. The Court first held that the agreement and agreed final judgment together constituted a settlement agreement that obligated the employee to pay Bay $1.9 million. The Court rejected Bay's argument that promised but not-yet-received settlement payments should not be included in

determining the settlement amount. Following its settlement-credit precedents, the Court concluded that Mulvey was entitled to a credit for the full amount of the settlement unless Bay established that all or part of the settlement was allocated to an injury or damages other than that for which it sued Mulvey. Bay only presented evidence that $175,000 of the settlement was allocated to a separate injury. The Court therefore credited the remaining $1.725 million against the jury's verdict, resulting in a take-nothing judgment.

b) *Shumate v. Berry Contracting, L.P.*, 688 S.W.3d 872 (Tex. Apr. 26, 2024) (per curiam) [21-0955]

The primary issue in this case is whether the defendant is entitled to a settlement credit under the one-satisfaction rule.

Berry Contracting d/b/a Bay, Ltd. obtained a jury verdict against Frank Thomas Shumate for conspiring with a Bay employee to use Bay's materials and labor for their personal benefit. Shumate sought a settlement credit based on an agreement between Bay and its employee that incorporated an agreed judgment in a separate lawsuit. The trial court refused to apply a credit, and the court of appeals affirmed, concluding that the agreement was not a settlement.

In a per curiam opinion, the Supreme Court granted Shumate's petition and reversed in light of its opinion in *Bay, Ltd v. Mulvey*, ___ S.W.3d ___ (Tex. Mar. 1, 2024), which construed the same agreement and concluded that it was a settlement. The Court held that Shumate was entitled to a settlement credit based on that agreement. The Court remanded to the trial court to apply the credit and consider the parties' arguments regarding what effect, if any, the credit would have on the relief sought by Bay.

G. ELECTIONS

1. Ballots

a) *In re Dallas HERO*, ___ S.W.3d ___, 2024 WL 4143401 (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.

H. EMPLOYMENT LAW

1. Employment Discrimination

a) *Scott & White Mem'l Hosp. v. Thompson*, 681 S.W.3d 758 (Tex. Dec. 22, 2023) [22-0558]

This case concerns the causation standard at the summary-judgment stage in an employment-discrimination lawsuit.

Dawn Thompson worked as a registered nurse at Scott & White Memorial Hospital. She had received two prior reprimands for violating the hospital's personal-conduct policy. The second reprimand warned that any future violation "will result in separation from employment."

Thompson then received a third reprimand. She had become concerned that the parents of a child patient were not properly managing the child's medications. Thompson called the child's

school nurse and disclosed the child's health information, which Scott & White claimed was a HIPAA violation. Thompson then reported her concerns to Child Protective Services. After the child's mother complained to the hospital, it fired Thompson. The form documenting her termination stated, "As a result of this [HIPAA] violation your employment is being terminated immediately." It also included the statement: "Furthermore a CPS referral was made without all details known to Ms. Thompson."

Thompson sued Scott & White under Section 261.110(b) of the Family Code for firing her for making a statutorily protected CPS report. Scott & White moved for summary judgment, arguing that it terminated Thompson for violating its personal-conduct policy by disclosing protected health information to the school nurse—not for making the CPS report. The trial court granted summary judgment in Scott & White's favor, but the court of appeals reversed.

The Supreme Court reversed the court of appeals' judgment and reinstated the summary judgment in Scott & White's favor. It held that Scott & White's evidence conclusively negated the "but for" causation element of Thompson's claim because it demonstrated that the hospital would have fired Thompson when it did for her third violation of its policy, regardless of the CPS report. Thompson therefore could not establish a violation of Section 261.110, and summary judgment in favor of Scott & White was proper.

2. 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.

3. 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.

I. EVIDENCE

1. Exclusion for Untimely Disclosure

a) *Jackson v. Takara*, 675 S.W.3d 1 (Tex. Sept. 1, 2023) (per curiam) [22-0288]

The issue in this case is whether the trial court committed reversible error by allowing an untimely identified witness to testify.

Reuben Hitchcock fell while trimming a tree on Andrew Jackson's property and died. Hitchcock's sister, Kristen Takara, sued Jackson on the estate's behalf. Shortly before trial, Jackson identified Valerie McElwrath, a neighbor, as a person with knowledge of relevant facts. Takara moved to exclude McElwrath from testifying because the identification was untimely. Jackson's counsel represented to the trial court, without objection, that the parties had agreed to extend the discovery period and that Takara was not unfairly surprised or unfairly prejudiced because she knew McElwrath and mentioned McElwrath by name multiple times in her deposition. The trial court allowed McElwrath to testify. The jury found neither Jackson nor Hitchcock negligent, and the trial court rendered a take-nothing judgment.

A divided court of appeals reversed and remanded for a new trial. It held the trial court should have prohibited McElwrath from testifying because she was not timely identified, there was no discovery agreement that complied with Rule 11, and there was no evidence in the record that Takara was aware of McElwrath or her potential testimony.

The Supreme Court reversed and rendered judgment for Jackson. The Court held that the trial court did not abuse its discretion by allowing McElwrath to testify because the record included counsel's uncontested statements regarding the state of discovery and Takara's knowledge of McElwrath. The Court also held that the trial court's ruling, even if erroneous, would not constitute reversible error because the jury's failure to find negligence did not turn on McElwrath's testimony.

2. 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.

J. FAMILY LAW

1. Division of Community Property

a) *Landry v. Landry*, 687 S.W.3d 512 (Tex. Mar. 22, 2024) (per curiam) [22-0565]

The issue is whether legally sufficient evidence supports the trial court's finding that certain investment accounts are Husband's separate property.

In a divorce case, the trial court found that two investment accounts in Husband's name that preexisted the marriage are his separate property. At trial, Husband's expert had testified that he traced the accounts through fifteen-years' worth of statements and that the accounts were not commingled with community assets. The expert also testified that there was a four-month gap in the statements he reviewed but that the missing statements did not affect his analysis.

The court of appeals reversed the part of the judgment dividing the community estate and remanded for a new division. The court held that the "missing" account statements created a gap in the record, with the result that no evidence supports the accounts' characterization as separate property.

The Supreme Court reversed. The Court explained that while the account statements at issue were not reviewed by the expert, they were admitted into evidence at trial, are included in the appellate record, and, thus, not "missing." Because the statements are in the record, the court of appeals erred in relying on their absence to hold that Husband failed to overcome the presumption that the accounts are community property. The Court remanded to the court of appeals to conduct a new sufficiency analysis that includes consideration of the account statements.

2. 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 C.E.*, 687 S.W.3d 304 (Tex. Mar. 1, 2024) (per curiam) [23-0180]

The issue in this case is whether there was legally sufficient evidence to support termination of Mother's parental rights to her son.

DFPS began an investigation after Carlo, a seven-week-old infant, was hospitalized with a fractured skull, a brain bleed, and retinal hemorrhaging, and his parents could not provide an explanation for the injuries to hospital staff. Investigators ultimately concluded Mother likely injured Carlo. A jury made the findings necessary to terminate Mother's parental rights under Sections 161.001(b)(1)(D), (E), and (O) and Section 161.003 of the Texas Family Code, and the trial court rendered judgment on the verdict. The court of appeals reversed the judgment of termination because it concluded that the evidence was legally insufficient on each ground.

The Supreme Court held that there was sufficient evidence Mother engaged in conduct that endangered Carlo's well-being to support termination under (E). At trial, Mother and Father gave conflicting versions of the events taking place in the likely timeframe of Carlo's injuries. But there was other evidence—such as testimony that the injury likely occurred when Carlo was in Mother's care and concerns from caseworker regarding Mother's behavior and her inconsistent story throughout the investigation—that was legally sufficient to support the jury's finding that Mother engaged in endangering conduct. The Court thus reversed the court of appeals' judgment and remanded to that court to address Mother's remaining issues that the court of appeals had not addressed in its first opinion.

c) *In re R.J.G.*, 681 S.W.3d 370 (Tex. Dec. 15, 2023) [22-0451]

The issue in this case is whether strict compliance is required to avoid parental-rights termination based on the alleged failure to comply with the provisions of a court-ordered service plan.

The Department of Family and Protective Services removed Mother's three children and prepared a service plan identifying required actions for her to obtain reunification. The Department alleged that Mother failed to complete requirements that she participate in individual counseling and complete classes on parenting and substance abuse. It sought termination solely on that basis under Section 161.001(b)(1)(O) of the Family Code.

Mother argued that she

substantially complied with these requirements. The Department's only witness testified that Mother had complied with the plan's requirements but not when she needed to or in the way she was ordered to comply. The trial court ordered termination of Mother's parental rights, concluding that strict compliance with the plan was required. The court of appeals affirmed.

The Supreme Court reversed, holding that strict or complete compliance with every plan requirement is not always necessary to avoid termination under (O). The Court noted that (O) authorizes termination only when the plan requires the parent to perform direct, specifically required actions. In addition, the parent must have failed to comply with a material plan requirement; termination is not appropriate for noncompliance that is trivial or immaterial in light of the plan's requirements overall. In this case, the plan did not specifically require Mother to achieve any particular benchmark in her individual counseling sessions, so the Department did not establish by clear and convincing evidence that Mother failed to comply with that requirement. And there was evidence that Mother completed the parenting and substance abuse classes with another provider, so her asserted failure to provide a certificate of completion was too trivial and immaterial, in light of the degree of her compliance with the plan's material requirements, to support termination. Because Mother complied with the material provisions of the plan, the Court held there was insufficient evidence to support termination by clear and convincing evidence under (O). The Court therefore reversed and vacated the order terminating Mother's parental rights.

d) *In re R.R.A.*, 687 S.W.3d 269 (Tex. Mar. 22, 2024) [22-0978]

The issue in this case is whether the State must prove that a parent's drug use directly harmed the child to prove endangerment as a ground for termination of parental rights.

Father had a history of methamphetamine use, unemployment, and homelessness for two months while parenting his three children, who were between one- and three-years old. The Department removed the children from Father's care. During the Department's attempts to reunify the children with Father over the course of a year and a half, Father tested positive for drugs twice more, stopped taking court-mandated drug tests for nearly a year, and had no contact with the children for about six months before trial. Father did not secure housing or employment. The trial court ordered Father's parental rights terminated under grounds that require that a parent's conduct "endanger" the child, including one ground specific to drug use. A divided court of appeals reversed and held that individual pieces of evidence were insufficient to show that Father's drug use directly endangered the children.

The Supreme Court reversed. It reaffirmed that endangerment does not require that the parent's conduct directly harm the child. Instead, a pattern of parental behavior that presents a substantial risk of harm to the child permits a factfinder to reasonably find endangerment. This pattern can be shown when drug use affects the

parent's ability to parent. The Court went on to hold that based on the totality of the evidence—Father's felony-level drug use, refusal to provide court-ordered drug tests, inability to secure housing and employment, and prolonged absence from the children—legally sufficient evidence supported the trial court's finding of endangerment. The Court remanded the case to the court of appeals to consider Father's challenge to the trial court's best-interest findings in the first instance.

Justice Blacklock filed a dissenting opinion. He would have held that the Department did not prove by clear and convincing evidence that the children were sufficiently endangered to warrant termination.

K. GOVERNMENTAL IMMUNITY

1. Contract Claims

a) *Campbellton Rd., Ltd. v. City of San Antonio ex rel. San Antonio Water Sys.*, 688 S.W.3d 105 (Tex. Apr. 12, 2024) [22-0481]

The issue in this case is whether a signed document providing for sewer services is a written contract for which the Local Government Contract Claims Act waives governmental immunity.

A private developer planned to develop land it owned into residential subdivisions. To ensure sewer service and guarantee sewer capacity, the developer signed a written instrument with a municipal water system, which included terms of an option for the developer to participate in and fund the construction of off-site oversized infrastructure, which the system would then own. The developer did not develop its land into residential subdivisions within the stated ten-year term. By the time it started developing the land, the system had no remaining unused sewer capacity. The developer sued the system for breach of contract, alleging that it had acquired vested rights to sewer capacity.

The Act waives immunity when a local governmental entity enters into a written contract that states the essential terms of an agreement for providing services to that entity. Here, the municipal system asserted that it is entitled to governmental immunity, but the trial court denied the plea to the jurisdiction. The court of appeals reversed, holding that the Act does not apply because the system had no contractual right to receive any services and would not have legal recourse if the developer unilaterally decided not to proceed with its developments.

The Supreme Court reversed, holding that the Act waives the system's immunity from suit because the developer adduced evidence that (1) a contract formed when the developer decided to and did participate in the off-site oversizing project, (2) the written contract states the essential terms of an agreement for the developer to participate in the project, and (3) the agreement is for providing a service to the system that was neither indirect nor attenuated. The Court remanded the case to the trial court for further proceedings.

b) *Legacy Hutto v. City of Hutto*, 687 S.W.3d 67 (Tex. Mar. 15, 2024) (per curiam) [22-0973]

This case concerns statutory requirements for a contract between a governmental entity and a business entity.

Legacy Hutto sued the City for its failure to pay for work Legacy had performed under a contract. Section 2252.908(d) of the Government Code prohibits a governmental entity from entering into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity when the contract is signed. Legacy had never submitted the disclosure. The City argued that the lack of disclosure meant that the contract was not "properly executed," as required by Chapter 271 of the Local Government Code, which waives a governmental entity's immunity to suit for breach of contract. The City thus argued that its immunity to suit was not waived for Legacy's claim. The City filed a plea to the jurisdiction and a Rule 91a motion on that basis.

The trial court granted the City's plea and motion but also granted Legacy leave to replead. Both parties appealed. The court of appeals affirmed, holding among other things that Chapter 271's waiver of immunity requires compliance with Section 2252.908(d).

Both parties petitioned for review. After they had done so, the Legislature passed HB 1817, which amended Section 2252.908 to require that a governmental entity notify a business entity of its failure to submit a disclosure of interested parties. HB 1817 also provides that a contract is deemed to be "properly executed" until the governmental entity provides notice to the business entity. Lastly, it permits a court to apply the new statutory requirements to already-pending cases if the court finds that failure to enforce the new requirements would lead to an inequitable or unjust result. Due to this change in the law, the Supreme Court granted the petitions for review, vacated the court of appeals' judgment, and remanded for the trial court to conduct further proceedings in accordance with the new statutory requirements.

c) *San Jacinto River Auth. v. City of Conroe*, 688 S.W.3d 124 (Tex. Apr. 12, 2024) [22-0649]

The issue in this case is whether an alternative-dispute-resolution procedure in a government contract limits an otherwise applicable waiver of immunity under the Local Government Contract Claims Act.

The cities of Conroe and Magnolia entered into municipal-water contracts with the San Jacinto River Authority. The contracts contained provisions that required pre-suit mediation in the event of certain types of default. The cities, along with other municipalities and utilities, began to dispute the rates set by SJRA under the water contracts. Substantial litigation ensued, including suits by several private utilities against SJRA. SJRA then brought third-party claims against the cities for failure to pay amounts due under the contracts. The cities filed pleas to the jurisdiction, arguing that their immunity had not been waived because SJRA failed to submit its claims to pre-suit

mediation and because the contracts failed to state their essential terms. The trial court granted both pleas and dismissed SJRA's claims against the cities. SJRA filed an interlocutory appeal, and the court of appeals affirmed, holding that the cities' immunity was not waived.

The Supreme Court reversed, holding that contractual alternative dispute resolution procedures do not limit the waiver of immunity in the Local Government Contract Claims Act. Instead, the Act provides that such procedures are enforceable so that courts may exercise jurisdiction to order compliance with those provisions. The Supreme Court also held that the parties' dispute did not trigger the mandatory mediation procedure in SJRA's contracts with the cities. Finally, the Supreme Court rejected the cities' argument that their immunity was not waived because the contracts failed to state their essential terms. The contracts complied with the common law and the Act's requirements, and so stated their essential terms.

2. 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.

3. 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.

4. Ultra Vires Claims

a) *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.

L. HEALTH AND SAFETY

1. Involuntary Commitment

a) *In re A.R.C.*, 685 S.W.3d 80 (Tex. Feb. 16, 2024) [22-0987]

At issue in this case is whether a second-year psychiatry resident qualifies as "psychiatrist" under the Texas Health and Safety Code.

A.R.C. was detained on an emergency basis after exhibiting psychotic behavior during a visit to an emergency room. After a medical examination yielded troubling results, the State filed an application for involuntary commitment. By statute, a court cannot hold a hearing to determine whether involuntary civil commitment is appropriate unless it has received "at least two certificates of medical examination for mental illness completed by different physicians." One of those certificates must be completed by "a psychiatrist" if one is available in the county. In this case, both certificates of medical examination filed with respect to A.R.C. were completed by second-year psychiatry residents.

In the probate court, A.R.C. argued that neither resident qualifies as a psychiatrist under the statute because each was licensed under a physician-in-training program and was training under more senior doctors. The court disagreed and ordered A.R.C. to undergo in-patient mental health services for forty-five days.

A split panel of the court of appeals held that the residents are not psychiatrists and vacated the probate court's order.

The Supreme Court granted the State's petition for review, reversed the court of appeals' judgment, and remanded the case to that court to consider A.R.C.'s remaining challenges. The Court held that physicians who specialize in psychiatry are psychiatrists under the applicable statute. The statutory definition of "physician" includes medical residents who practice under physician-in-training permits,

and dictionaries show that psychiatrists are physicians who specialize their practices in psychiatry. Because the second-year residents who completed A.R.C.'s certificates of medical examination met that standard, they qualify as psychiatrists.

M. INSURANCE

1. Appraisal Clauses

a) *Rodriguez v. Safeco Ins. Co. of Ind.*, 684 S.W.3d 789 (Tex. Feb. 2, 2024) [23-0534]

The U.S. Court of Appeals for the Fifth Circuit certified this question to the Supreme Court: "In an action under Chapter 542A of the Texas Prompt Payment of Claims Act, does an insurer's payment of the full appraisal award plus any possible statutory interest preclude recovery of attorney's fees?"

A tornado struck Mario Rodriguez's home. His insurer, Safeco, issued a payment, which Rodriguez accepted. But Rodriguez claimed he was owed an additional sum and then sued, asserting breach of contract and statutory claims under the Insurance Code. The parties agreed that Chapter 542A would govern an attorney's fees award for any of Rodriguez's claims.

After removing the case to federal court, Safeco invoked the policy's appraisal provision. The appraisal panel valued the damage, and Safeco paid that amount plus interest to Rodriguez. The parties' remaining disagreement was whether Safeco's payment of the appraisal award foreclosed an award of attorney's fees under Chapter 542A.

The Court answered the certified question yes. Under Chapter 542A, attorney's fees are limited to reasonable fees multiplied by a specified ratio. The ratio is "the amount to be awarded in the judgment to the claimant for the claimant's claim under the insurance policy" divided by the amount claimed in a statutory notice under Chapter 542A. The Court reasoned that, here, the numerator of the ratio is zero. The Court reasoned that no amount could be awarded in a judgment under the policy because Safeco had complied with its contractual obligation when it timely paid the full amount owed under the policy's appraisal provision. The Court rejected Rodriguez's argument that this interpretation led to an absurd result because under the default American Rule, each side pays its own attorney's fees.

2. Policies/Coverage

a) *In re Ill. Nat'l Ins. Co.*, 685 S.W.3d 826 (Tex. Feb. 23, 2024) [22-0872]

This mandamus action concerns the no-direct-action rule and when a settlement agreement may be admissible as evidence to establish the amount of the insured's loss.

Relator GAMCO sued Cobalt for securities fraud. Cobalt's insurers denied coverage. Cobalt filed for bankruptcy, and GAMCO and Cobalt settled. The parties agreed that GAMCO would pursue the settlement amount solely through insurance proceeds. The federal bankruptcy and district courts approved the settlement.

GAMCO then intervened in a suit by Cobalt against its insurers. The trial court entered summary-judgment orders ruling that: (1) GAMCO was permitted to sue Cobalt's insurers,

(2) Cobalt suffered insured losses, and (3) the settlement was enforceable against the insurers. The insurers sought mandamus relief, which the court of appeals denied.

The Supreme Court granted relief in part. It held that the settlement agreement legally obligated Cobalt to pay to GAMCO its insurance benefits. If Cobalt fails to fulfill its obligations, GAMCO's release will not become effective. And because the settlement agreement establishes that Cobalt is in fact liable to GAMCO for any recoverable insurance benefits, Cobalt has suffered a covered loss and the no-direct-action rule does not prevent GAMCO from suing the insurers directly.

However, the settlement did not result from a fully adversarial proceeding and was therefore not binding against the insurers as to coverage and the amount of Cobalt's loss. Cobalt did not have a meaningful incentive to ensure that the settlement accurately reflected GAMCO's damages. Mandamus relief was warranted on this issue because the trial court's rulings prevent the insurers from challenging their liability for the full settlement amount.

3. Pre-Suit Notice

a) *In re Lubbock Indep. Sch. Dist.*, ___ S.W.3d ___, 2024 WL 4575104 (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.

N. INTENTIONAL TORTS

1. Defamation

b) *Polk Cnty. Publ'g Co. v. Coleman*, 685 S.W.3d 71 (Tex. Feb. 16, 2024) [22-0103]

This case involves the application of the Texas Citizens Participation Act to a defamation claim against a newspaper.

The *Polk County Enterprise* published an article criticizing local prosecutor Tommy Coleman and his former employer, the Williamson County District Attorney's office, for their involvement in the wrongful conviction of Michael Morton. Coleman sued the Polk County Publishing Company—the *Enterprise*'s owner—alleging that the article was defamatory. Coleman challenged as false the statement that he had "assisted with the prosecution of Michael Morton" while a prosecutor in Williamson County. Coleman averred that he was not a licensed lawyer when Morton was convicted in 1987; that he was only a prosecutor in the Williamson County DA's office from 2008 to 2012; and that, while there, he never appeared as counsel, signed court filings, discussed case strategy, argued in court, or gave any public statements or interviews in the Morton case. The trial court denied Polk County Publishing's motion to dismiss under the TCPA, and the court of appeals affirmed.

The Supreme Court reversed. In an opinion by Justice Blacklock, the Court explained that an article is substantially true and not defamatory if the "gist" of the article is true, even if it "errs in the details." The *Enterprise* article reported that Coleman, while present in the courtroom during one of Morton's post-conviction hearings, mocked Morton's efforts to obtain the DNA evidence that ultimately exonerated him. The Court reasoned that, reading the article as a whole, an average reader would understand the article's gist to be that Coleman "assisted with the prosecution" by mocking Morton's post-conviction efforts to exonerate himself and by providing courtroom support for his office's opposition to Morton's efforts. The Court also held that the challenged statement is not actionable for the additional reason that the undisputedly true account of Coleman's courtroom mocking of Morton, in the mind of an average reader, would be more damaging to Coleman's reputation than the specific statement that Coleman alleged to be false and defamatory.

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.

O. 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.

P. JURISDICTION

1. Appellate

a) *In re A.B.*, 676 S.W.3d 112 (Tex. Sept. 15, 2023) (per curiam) [22-0864]

The issue is whether an appellant can consolidate two separate appeals from a single judgment in one court of appeals by moving to consolidate in one court of appeals and voluntarily dismissing the appeal in another, when both courts of appeals have statutory jurisdiction to hear the case and no party objects.

In Gregg County, the trial court terminated Mother's and Father's parental rights in one trial court proceeding. Both the Sixth and Twelfth Courts of Appeals have jurisdiction to hear appeals from Gregg County. Father noticed his appeal to the Twelfth Court, and Mother to the Sixth Court. Father then amended his notice of appeal to reflect that he was appealing to the Sixth Court under the same case number as Mother. Father also moved to dismiss his appeal in the Twelfth Court, and the Twelfth Court granted his motion. After briefing was complete, the Sixth Court determined that it lacked jurisdiction over Father's appeal because the Twelfth Court had acquired dominant jurisdiction, and Father's amended notice of appeal did not properly invoke the Sixth Court's jurisdiction.

The Supreme Court reversed, holding that Father's amended notice of appeal attempted compliance with the rule of judicial administration requiring consolidation of such cases. The Sixth Court acquired dominant jurisdiction when Father indicated his lack of intent to prosecute the appeal in the Twelfth Court.

b) *In re A.C.T.M.*, 682 S.W.3d 234 (Tex. Dec. 29, 2023) (per curiam) [23-0589]

In this appellate-jurisdiction case, the court of appeals dismissed as untimely two attempts by Mother to appeal the trial court's termination of her parental rights.

The trial court first made an oral pronouncement terminating Mother's parental rights in October. Mother filed her notice of appeal from that pronouncement before the trial court signed a written order. The trial court did sign a written order in November, but it was never made part of the appellate record. The court of appeals

dismissed Mother's appeal for lack of jurisdiction after concluding that the trial court had not yet issued a final judgment.

In January, after the court of appeals issued its opinion and judgment, the trial court signed a second order terminating Mother's parental rights. Mother filed a new notice of appeal, but a split panel of the court of appeals dismissed this appeal as untimely too. In an about-face, the majority concluded that the November order was the trial court's final judgment after all, rendering Mother's second notice of appeal untimely. The majority further reasoned that the trial court's January order is void because it was issued after the court's plenary power expired. Mother filed a petition for review in the Supreme Court. The Department of Family and Protective Services conceded error in its response.

The Supreme Court reversed without requesting further briefing or hearing argument, holding that Mother timely sought to invoke the appellate court's jurisdiction with respect to both orders. The Court explained that if the November order was the trial court's final judgment, then Mother's premature appeal from the court's oral pronouncement was effective under Texas Rule of Appellate Procedure 27.1(a) to invoke the appellate court's jurisdiction. Furthermore, that the November order was not included in the record of Mother's first appeal presented a record defect, not a jurisdictional defect. By obtaining the January order and filing a new notice of appeal, Mother was following the court of appeals' instructions, and she could not have done more to invoke her appellate rights. The Court remanded the case to the court of appeals with instructions to address the merits.

c) *Sealy Emergency Room, L.L.C. v. Free Standing Emergency Room Managers of Am., L.L.C.,* 685 S.W.3d 816 (Tex. Feb. 23, 2024) [22-0459]

This case raises questions of appellate jurisdiction and finality of judgments, including whether a trial court can sever unresolved claims following a grant of partial summary judgment, thereby creating an appealable final judgment, and the extent to which summary judgment against a party's claim resolves a related request for attorney's fees.

FERMA sued Sealy ER for breach of contract. Sealy ER counterclaimed and requested attorney's fees on those claims. FERMA obtained a grant of partial summary judgment on its counterclaims that did not separately dispose of Sealy ER's request for attorney's fees. FERMA moved to sever the claims disposed of on partial summary judgment. Sealy ER agreed with FERMA's proposal to sever but moved for reconsideration of the partial summary judgment ruling. The trial court granted the motion to sever and denied the motion for reconsideration. Sealy ER sought to appeal the trial court's judgment, but the court of appeals determined it lacked jurisdiction in light of the claims still pending in the original action and because the trial court's partial summary judgment order did not dispose of Sealy ER's request for attorney's fees on its counterclaims.

The Supreme Court reversed. If

an order in a severed action disposes of all the remaining claims in that action or includes express finality language, then that order results in a final judgment regardless of whether claims remain pending in the original action. The Court further noted that although an erroneous severance does not affect finality or appellate jurisdiction, it may have consequences for any preclusion defenses. The Court also held that when a party seeks attorney's fees as a remedy for a claim under a prevailing-party standard, a summary judgment against the party on that claim automatically disposes of the fee request, and therefore a trial court's failure to expressly deny a request for attorney's fees in this context will not affect a judgment's finality for purposes of appeal.

2. 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.

3. 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.

4. 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.

Q. JUVENILE JUSTICE

1. Mens Rea

a) *In re T.V.T.*, 675 S.W.3d 303 (Tex. Sept. 8, 2023) (per curiam) [22-0388]

This case concerns whether consent is relevant when a child under the age of fourteen is charged with aggravated sexual assault of another child under fourteen.

The State charged T.V.T. with aggravated sexual assault. At the time of the offense, T.V.T. was thirteen years old and the complainant was twelve. The trial court placed T.V.T. on probation and required that he receive sex-offender treatment. The court of appeals reversed and dismissed the case, holding that T.V.T. could not commit sexual assault because he lacked the legal capacity to consent to sex. Shortly thereafter, the Supreme Court held in *State v. R.R.S.*, 597 S.W.3d 835 (Tex. 2020), that juveniles under fourteen are capable of committing aggravated sexual assault.

In light of *R.R.S.*, the State moved for rehearing. The court of appeals denied the motion but issued a supplemental opinion, holding that consent, while not a defense, can still inform whether T.V.T. had the intent to commit aggravated sexual assault. The court also noted that when both the accused and complainant are close in age and under fourteen years old, it is difficult to distinguish between the victim and the offender.

The Supreme Court reversed. The Court first concluded that, even though T.V.T.'s probation had ended, the case was not moot because he still faced potential collateral consequences based on his adjudication as a sex

offender. The Court then held that evidence of a victim's consent is not relevant to the accused's *mens rea*, reasoning that such a rule would circumvent the Legislature's exclusion of consent as a defense for engaging in the prohibited conduct with children under fourteen. The Court also found immaterial the fact that the T.V.T. and the victim were close in age, noting that the plain text of the statute covers conduct between children who are both under fourteen. The Court remanded the case to the court of appeals for consideration of T.V.T.'s constitutional arguments.

R. 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. Health Care Liability Claims

a) *Uriegas v. Kenmar Residential HCS Servs., Inc.*, 675 S.W.3d 787 (Tex. Sept. 15, 2023) (per curiam) [22-0317]

The issue in this Chapter 74 case is whether two expert reports provide a fair summary of the experts' opinions regarding the standard of care and breach elements of a negligence claim against a residential care facility.

Brandon Uriegas, a nonverbal adult with intellectual and physical disabilities, resided at a residential care facility operated by Kenmar. Uriegas fell while showering and was treated for scalp lacerations. The next day, Uriegas fell in the bathroom again, allegedly while unsupervised, and did not receive an immediate medical evaluation. When Uriegas could not stand the following day, Kenmar staff took Uriegas to the hospital where he was diagnosed with a fractured hip and femur. Uriegas's guardian sued Kenmar and provided expert reports. Cumulatively, the reports state that after Uriegas fell the first time, Kenmar should have closely monitored Uriegas, especially while using the bathroom, and that Kenmar should have sought an immediate medical assessment of Uriegas after the second fall because Uriegas could not verbalize any pain or discomfort. The trial court denied Kenmar's motion to dismiss under Chapter 74 on the basis that the reports insufficiently described the applicable standard of care and breach of that standard. Agreeing with Kenmar, the court of appeals reversed.

The Supreme Court reversed the court of appeals, holding that the reports together provide a fair summary of the applicable standard of care and breach, namely, increased monitoring after a fall and medical assessments for nonverbal patients. That Kenmar disagrees about the appropriate standard of care is not a reason to reject the expert report at this stage of the case.

S. MUNICIPAL LAW

1. Authority

a) *City of Dallas v. Emps.' Ret. Fund of the City of Dallas*, 687 S.W.3d 55 (Tex. Mar. 15, 2024) [22-0102]

At issue is whether the City of Dallas could properly give veto power over amending its city code to a third party.

By ordinance, the City of Dallas established the Employees' Retirement Fund of the City of Dallas, which provides benefits for Dallas employees, and codified that ordinance in Chapter 40A of its city code. A board of trustees administers the Fund. The City later adopted another ordinance that purports to prevent any further amendments to Chapter 40A unless the board approves them. In 2017, the City amended Chapter 8 of its code—by ordinance, without the board's approval—to impose term limits on the Fund's board members.

The Fund resisted the term-limits amendment because it was passed without the board's approval. The Fund and the City each sought declaratory relief about the amendment's validity. The trial court rendered judgment for the City. The court of appeals reversed. According to that court, Chapter 40A was a codified trust

document, and trust law barred amendment to it except as the document provided. The amendment, it held, was invalid because imposing term limits on the board changed the trust document's terms without board approval.

The Supreme Court reversed. Although it agreed with the court of appeals that the ordinance imposing term limits amended Chapter 40A, the Court held that the board's veto power was unenforceable and could not prevent the otherwise valid term-limits amendment from taking effect. That amendment impliedly repealed the board's veto power. Chapter 40A's status as a codified ordinance meant that the term-limits amendment was just one ordinance amending another, not an ordinance purporting to amend something protected by a separate or higher source of law. Even if trust law applies to the Fund, trust law does not authorize much less require the City to bestow the core power of legislating on any third party, such as the board. To hold otherwise would improperly prevent the City from amending its own code, authority that is constitutionally given only to the City.

The Court declined to analyze a separate issue about whether the amendment remained valid despite being passed without the City voters' approval. The Court remanded the case to the court of appeals to consider this separate issue in the first instance.

T. NEGLIGENCE

1. Duty

a) *HNMC, Inc. v. Chan*, 683 S.W.3d 373 (Tex. Jan. 19, 2024) [22-0053]

The issue in this case is whether a property owner owes a duty to make an adjacent public roadway safe from, or otherwise warn of, third-party drivers.

Leny Chan, an HNMC nurse, was struck and killed by a careless driver while she was crossing the street adjacent to the HNMC hospital where she worked. Chan's estate and surviving relatives sued HNMC, the driver, and the driver's employer for negligence. A jury found HNMC 20% liable, and the trial court entered a final judgment against HNMC based on that finding. The court of appeals affirmed the judgment, holding that HNMC owed a duty to Chan under the factors described in *Greater Houston Transportation Co. v. Phillips*, 801 S.W.2d 523 (Tex. 1990).

The Supreme Court reversed and rendered judgment for HNMC. The Court explained that courts should not craft case-specific duties using the *Phillips* factors when recognized duty rules apply to the factual situation at hand. Because the facts of this case implicated several previously recognized duty rules—including the rule that a property owner need not make safe public roadways adjacent to its property and the rule that a property owner who exercises control over adjacent property is liable for that adjacent property as a premises occupier—HNMC had, at most, a limited duty as a premises occupier based on its exercise of control over certain parts of the right-of-way

adjoining its hospital. But there was no evidence that any condition HNMC controlled in the right-of-way caused Chan's harm and therefore no basis for liability against HNMC.

2. Premises Liability

a) *Albertsons, LLC v. Mohammadi*, 689 S.W.3d 313 (Tex. Apr. 5, 2024) (per curiam) [23-0041]

At issue in this slip-and-fall case is whether the premises owner's knowledge of a leaking bag placed in a wire shopping cart is evidence of the owner's actual knowledge of the dangerous condition that caused the fall.

Maryam Mohammadi slipped and fell at a Randalls grocery store next to a shopping cart used by Randalls to store returned or damaged goods. She alleged that a leaking bag placed in the cart caused her to slip. Randalls disputed that the floor was wet. The jury charge contained separate questions about Randalls' constructive knowledge of the danger and its actual knowledge of the danger, and the jury was instructed to answer the actual-knowledge question only if it answered "yes" to the constructive-knowledge question. The jury answered "no" to the constructive-knowledge question and therefore did not answer the actual-knowledge question. The trial court rendered a take-nothing judgment for Randalls.

The court of appeals reversed, holding that the jury should have been given the opportunity to answer the question on Randalls' actual knowledge. Though there is no evidence that Randalls knew of the wet floor before the fall, the court reasoned that Randalls had knowledge of the dangerous condition because there is some evidence that an employee knowingly placed a leaking grocery bag in the shopping cart.

The Supreme Court reversed and reinstated the trial court's judgment, holding that any charge error is harmless because there is legally insufficient evidence of Randalls' actual knowledge. The Court reiterated that the relevant dangerous condition is the condition at the time and place injury occurs, not the antecedent situation that created the condition. Here, the dangerous condition for which Randalls could be liable was the wet floor, not the leaking bag placed into the shopping cart.

b) *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.

c) *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.

3. Unreasonably Dangerous Conditions

a) *Union Pac. RR. Co. v. Prado*, 685 S.W.3d 848 (Tex. Feb. 23, 2024) [22-0431]

This case asks what makes a railroad crossing extra-hazardous or unreasonably dangerous.

Rolando Prado was killed by a Union Pacific train after he failed to stop at a railroad intersection located on a private road owned by Ezra Alderman Ranches. Prado's heirs sued the

Ranch and Union Pacific for negligence, negligence per se, and gross negligence. They argued that various elements obstructed the view of the train and that the defendants breached their duties to warn of extra-hazardous and unreasonably dangerous conditions. The trial court granted summary judgment for the defendants. The court of appeals reversed, holding that fact issues existed as to whether the crossing was extra-hazardous and unreasonably dangerous.

The Supreme Court reversed and reinstated the trial court's summary judgments. The Court held that a reasonably prudent driver would stop at the posted stop sign at the intersection where he could see and hear an oncoming train. Evidence that most drivers do not stop at a particular stop sign does not establish that reasonably prudent drivers could not stop. Evidence of one similar accident over a nearly forty-year period was also no evidence that the crossing was extra-hazardous.

The Court next held that there was no evidence that the Ranch had actual knowledge that the crossing was unreasonably dangerous. There was no evidence that any Ranch employee knew that the previous fatality resulted from a train–vehicle collision or if the circumstances of that accident were similar. And assuming the Ranch had a duty to evaluate the dangerousness of the crossing, that would establish only that the Ranch should have known it was unreasonably dangerous, not that it actually knew.

4. Willful and Wanton Negligence

a) *Marsillo v. Dunnick*, 683 S.W.3d 387 (Tex. Jan. 12, 2024) [22-0835]

In this healthcare-liability case arising from an emergency-room physician's treatment of a snakebite, the issue is whether the plaintiff has produced evidence of "willful and wanton negligence" by the physician.

Because antivenom poses risks to a patient, the hospital at which Dr. Kristy Marsillo worked developed detailed guidelines for the determination of whether and when administration of antivenom is appropriate. Marsillo followed those guidelines when treating rattlesnake-victim Raynee Dunnick. As a result, Marsillo began infusing Raynee with antivenom three hours after she arrived at the hospital and four hours after she was bitten. Raynee was transferred to a children's hospital where she continued to receive antivenom over the course of a few days before being released.

Raynee's parents sued Marsillo, alleging that her failure to administer antivenom immediately upon Raynee's arrival at the hospital caused Raynee lasting pain and impairment. By statute, a physician is not liable for injury to a patient "arising out of the provision of emergency medical care in a hospital emergency department" without proof that the physician acted "with willful and wanton negligence." The trial court granted Marsillo's no-evidence motion for summary judgment on breach of duty and causation, but the court of appeals reversed.

The Supreme Court reversed the court of appeals' judgment and

reinstated the trial court's summary judgment for Marsillo. The Court began by examining the meaning of willful and wanton negligence. The parties and the lower courts have assumed that the term is synonymous with gross negligence. The Court agreed that willful and wanton negligence is "at least gross negligence."

Next, the Court explained that Raynee had not produced evidence sufficient to raise a genuine issue of material fact on gross negligence because her expert's affidavit is conclusory and, thus, no evidence. Because Raynee had not raised a fact issue on gross negligence, the Court left to a future case the task of defining the precise contours of willful and wanton negligence.

U. 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) *Thomson v. Hoffman*, 674 S.W.3d 927 (Tex. Sept. 1, 2023) (per curiam) [21-0711]

At issue in this case is whether a 1956 deed reserved a fixed or floating royalty interest.

Peter and Marion Hoffman conveyed to Graves Peeler 1,070 acres of land in McMullen County, Texas, but reserved a royalty interest for Peter Hoffman. The deed expressly gave Peter "an undivided three thirty-second's (3/32's) interest (same being three-fourths (3/4's) of the usual one-eighth (1/8th) royalty) in and to all the oil, gas and other minerals." Other parts of the deed then referred to 3/32 without using the double-fraction description. Two interpleader actions were filed and consolidated in the trial court for a determination of the deed's meaning. The trial court concluded that the deed created a fixed 3/32 nonparticipating royalty interest, but the court of appeals reversed, holding that "the usual one-eighth (1/8th) royalty" language indicated an intent to reserve a floating interest.

The Hoffmans petitioned for review. After the parties filed briefs on the merits, the Supreme Court decided *Van Dyke v. Navigator Group*, 668 S.W.3d 353 (Tex. 2023), in which it held that an antiquated mineral instrument containing "1/8" within a double fraction raised a rebuttable presumption that 1/8 was used as a term of art to refer to the total mineral estate, not simply one-eighth of it. Because the court of appeals did not have the benefit of *Van Dyke* and its rebuttable-presumption framework, the Supreme Court vacated the court of appeals' judgment and remanded for further proceedings in light of changes in the law.

3. Pooling

a) *Ammonite Oil & Gas Corp. v. R.R. Comm'n of Tex.*, ___ S.W.3d ___, 2024 WL 3210180 (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.

4. 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.

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

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.

W. PROCEDURE—APPELLATE

1. Finality of Judgments

a) *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.

b) *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) *In re S.V.*, ___ S.W.3d ___, 2024 WL 3996108 (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.

4. Temporary Orders

a) *In re State*, ___ S.W.3d ___, 2024 WL 2983176 (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.

5. 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.

X. PROCEDURE—PRETRIAL

1. Discovery

a) *In re Liberty Cnty. Mut. Ins. Co.*, 679 S.W.3d 170 (Tex. Nov. 17, 2023) (per curiam) [22-0321]

The issue in this case is whether the trial court abused its discretion by quashing a subpoena seeking medical records from a plaintiff's primary care physician in a case where the plaintiff's injuries are in dispute.

Following a car accident, Thalia Harris sued the other driver and settled for that driver's policy limits. Harris then sued her insurer, Liberty County Mutual Insurance Company, for underinsured motorist benefits, alleging that her damages exceeded the settlement amount. Liberty sent two subpoenas to Harris's primary care physician seeking all documents, records, and films pertaining to the care, treatment, and examination of Harris for a fifteen-year period. Harris moved to quash both subpoenas as facially overbroad and for sanctions. In its written response, and again at the hearing, Liberty agreed to reduce the timeframe of the requests to ten years (five years before the accident and five years after). The trial court granted Harris's motion to quash and sanctioned Liberty's counsel. Liberty sought mandamus relief, which the court of appeals denied. Liberty then petitioned the Supreme Court for a writ of mandamus.

The Court conditionally granted Liberty's petition. The Court held that the trial court clearly abused its discretion because Liberty's requests sought relevant information and, as modified, were not so overbroad or disproportionate as to justify an order precluding all discovery from Harris's primary care physician. By suing Liberty for UIM benefits, Harris placed the existence, causation, and extent of her injuries from the car accident at issue. The record also showed that Harris was involved in multiple other car accidents both before and after the accident at issue, some of which involved similar injuries. The Court further held that mandamus relief was appropriate because the trial court's order denied Liberty a reasonable opportunity to develop a defense that goes to the heart of its case, and it would be difficult to determine on appeal whether the discovery's absence would affect the outcome at trial. Finally, the Court set aside the sanctions order because it was supported only by the erroneous order quashing Liberty's discovery requests.

b) *In re Peters*, ___ S.W.3d ___, 2024 WL 4394982 (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.

2. Forum Non Conveniens

a) *In re Weatherford Int'l, LLC*, 688 S.W.3d 874 (Tex. Apr. 26, 2024) (per curiam) [22-1014]

The issue is whether the trial court abused its discretion by denying a motion to dismiss for forum non conveniens.

Kevin Milne was working for a Houston-based affiliate of the Weatherford company when he accepted an international assignment to work for a Weatherford affiliate in Egypt. Pursuant to Weatherford Houston's policy, Milne was required to undergo medical exams before commencing the assignment and then every two years for its duration. Milne's first exam was facilitated by Weatherford Egypt, and it cleared him to visit offshore rigs in Egypt and Tunisia. A second exam conducted by a different organization in South Africa provided the clearance required by Weatherford Houston. Unbeknownst to Milne, the first exam revealed a renal mass around his left kidney, and the report recommended further assessment. Milne first learned of the mass and follow-up recommendation a year later when he requested his medical records from Weatherford Egypt. By that point, the mass had already metastasized, and Milne passed away shortly after.

Milne's widow and children, all non-U.S. citizens, filed wrongful-death claims against Weatherford Houston in Texas. Weatherford Houston moved to dismiss them for forum non conveniens and identified Egypt as an appropriate forum. The trial court denied Weatherford Houston's motion, and the court of appeals denied mandamus relief.

Weatherford Houston filed a petition for writ of mandamus in the Supreme Court. The Court granted mandamus relief, concluding that all six statutory forum non conveniens factors favor dismissal and that Egypt is a more appropriate forum for the family's claims because, among other reasons, Weatherford Egypt's policies and practices governed the handling of Milne's medical information.

3. Statute of Limitations

b) *Sanders v. Boeing Co.*, 680 S.W.3d 340 (Tex. Dec. 1, 2023) [23-0388]

This certified question concerns the interpretation of Section 16.064 of the Texas Civil Practice and Remedies Code, which tolls limitations when a prior action is dismissed "because of lack of jurisdiction" and then is refiled in a court of "proper jurisdiction" within sixty days after the date the dismissal "becomes final."

Two flight attendants sustained injuries on the job. They sued the Boeing Company and other defendants in federal district court, which later dismissed their suit for failure to adequately plead diversity jurisdiction. The flight attendants filed this suit shortly after the Fifth Circuit affirmed the dismissal, but the district court dismissed it as barred by the statute of limitations.

On appeal to the Fifth Circuit, the flight attendants argued that Section 16.064 tolled the statute of limitations while they pursued their prior suit because that case was dismissed for lack of jurisdiction and they filed this suit less than sixty days after the Fifth Circuit affirmed. The Fifth Circuit certified two questions to the Supreme Court: (1) Does Section 16.064 apply to this lawsuit where the flight attendants could have invoked the prior district court's subject-matter jurisdiction with proper pleadings?; and (2) Did the flight attendants file this lawsuit within sixty days of when the prior judgment became "final" for purposes of Section 16.064?

The Supreme Court answered both questions "Yes." First, the Court concluded that Section 16.064 applies whenever the prior action was dismissed "because of lack of jurisdiction," even if the court could have had jurisdiction. The statute does not require that the prior court be a "court of improper jurisdiction." Second, the Court held that a dismissal "becomes final" under the statute only after the parties have exhausted their appellate remedies and the appellate court's power to alter the judgment ends.

4. Summary Judgment

a) *Gill v. Hill*, 688 S.W.3d 863 (Tex. Apr. 26, 2024) [22-0913]

This case concerns the burden of proof at the summary-judgment stage when a plaintiff asserts that a void judgment prohibits limitations from barring its suit.

In 1999, several taxing entities obtained a judgment foreclosing on the properties of more than 250 defendants, including James Gill. The following month, David Hill purchased Gill's former mineral interests, and Hill recorded the sheriff's deed with the county. Twenty years later, Gill's successors sued Hill to declare the foreclosure judgment and resulting deed void for lack of due process and to quiet title to the mineral interests in their names. They argued that the 1999 judgment was void because Gill was never properly served. Hill moved for summary judgment under a statute that requires suits against purchasers of property at a tax sale to be brought within one year after the deed is filed of record, and he attached a copy of the sheriff's deed to his motion. The trial court granted summary judgment for Hill, and a divided court of appeals affirmed.

The Supreme Court held that the trial court correctly granted summary judgment. The Court concluded that Hill satisfied his summary-judgment burden by conclusively showing that the statute of limitations expired before the suit was filed. Gill's successors conceded that limitations had expired but asserted that their suit was not barred because the foreclosure judgment and deed were void for lack of due process. Gill's successors therefore had the burden to raise a genuine issue of material fact that the foreclosure judgment was void, and they failed to present any such evidence.

The Court concluded, however, that the case should be remanded to the trial court because the summary-judgment proceedings took place without the benefit of two recent decisions from the Court: *Draughon v. Johnson*, 631 S.W.3d 81 (Tex. 2021), which addressed the burdens of proof for summary judgments based on limitations, and *Mitchell v. MAP Resources, Inc.*, 649 S.W.3d 180 (Tex. 2022), which clarified the types of evidence that can be used to support a collateral attack on a judgment such as that asserted by Gill's successors. The Court thus vacated the lower courts' judgments and remanded to the trial court for further proceedings.

b) *Verhalen v. Akhtar*, ___ S.W.3d ___, 2024 WL 4394980 (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.

Y. 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. Rendition of Judgment

a) *Baker v. Bizzl*e, 687 S.W.3d 285 (Tex. Mar. 1, 2024) [22-0242]

The issue in this case is whether the trial court rendered judgment fully resolving the divorce action in an email sent only to the parties' counsel.

At the conclusion of a bench trial on cross-petitions for divorce, the judge orally declared "the parties are divorced" "as of today" but neither divided the marital estate nor ruled on the grounds pleaded for divorce. The judge later emailed the parties' counsel with brief rulings on the outstanding issues and instructed Wife's attorney to prepare the divorce decree. Two months later, Wife died, and her counsel subsequently tendered a final divorce decree to the court.

Husband moved for dismissal, arguing that (1) an unresolved divorce action does not survive the death of a party and (2) the court's prior email was not a rendition of judgment on the open issues. Over Husband's objection, the trial court signed the divorce decree, but on appeal, the court of appeals agreed with Husband that the decree was void. The court held that the oral pronouncement was clearly interlocutory, the email lacked language indicating a present intent to render judgment, and dismissal was required when Wife died before a full and final rendition of judgment.

The Supreme Court affirmed. Without deciding whether the email stated a present intent to render judgment, the Court held that the writing was ineffective as a rendition because

the decision was not "announced publicly." Generally, judgment is rendered when the court's decision is "officially announced orally in open court, by memorandum filed with the clerk, or otherwise announced publicly." A ruling shared only with the parties or their counsel in a nonpublic forum is not a public announcement of the court's decision.

Justice Lehrmann concurred to note her view on an unpresented issue. If presented, she would hold that a trial court's interlocutory marital-status adjudication continues to have legal significance after a party dies even though the trial court would lack jurisdiction to subsequently divide the marital estate.

Justice Young's concurrence proposed modernizing the law to eliminate distinctions between "rendering," "signing," and "entering" judgment by adopting an all-purpose effectiveness date based on the date of electronic filing.

Z. 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.

AA. REAL PROPERTY

1. Easements

a) *Albert v. Fort Worth & W. R.R. Co.*, 690 S.W.3d 92 (Tex. Feb. 16, 2024) (per curiam) [22-0424]

The issue presented is whether legally sufficient evidence supports a jury's finding of an easement allowing a landowner to cross adjacent railroad tracks to access a highway.

Albert purchased a tract of land in Johnson County, which is separated from a state highway by a strip of land owned by Fort Worth & Western Railroad. Western operates railroad tracks along that strip. After the purchase, Albert and his business partners formed Chisholm Trail Redi-Mix, LLC to operate a concrete plant on the property. After the plant became operational, Chisholm Trail's trucks used a single-lane gravel road to cross the tracks and access the highway. The gravel road is the sole point of access between the concrete plant and the highway.

Western sent Albert a cease-and-desist letter demanding that he and Chisholm Trail stop using the gravel crossing. Albert and Chisholm Trail sued, seeking a declaration that they possessed easements by estoppel, necessity, and prescription allowing them to use the gravel road. The jury found that the plaintiffs were entitled to all three easements, and the trial court rendered judgment on the verdict. The court of appeals reversed, holding that the evidence is legally insufficient to support the easements.

The Supreme Court affirmed the court of appeals' judgment in part and reversed it in part. The Court agreed that the evidence is legally insufficient to support the jury's findings as to the easements by estoppel and necessity, but it held the evidence sufficient to support the prescriptive easement. The testimony presented at trial could enable a reasonable and fair-minded juror to find that Albert and his predecessors-in-interest used the gravel crossing in a manner that was adverse, open and notorious, continuous, and exclusive for the requisite ten-year period. The Court remanded the case to the court of appeals to consider additional, unaddressed issues.

2. Implied Reciprocal Negative Easements

a) *River Plantation Cmty. Improvement Ass'n v. River Plantation Props. LLC*, ___ S.W.3d ___, 2024 WL 2983168 (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.

3. 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.

4. 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.

BB. RES JUDICATA

1. 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.

CC. STATUTE OF LIMITATIONS

1. Lien on Real Property

b) *Moore v. Wells Fargo Bank*, 685 S.W.3d 843 (Tex. Feb. 23, 2024) [23-0525]

These certified questions concern whether a lender may reset the limitations period to foreclose on a property by rescinding its acceleration of a loan in the same notice that it reaccelerates the loan.

After the Moores failed to make payments on a loan secured by real property, the lenders accelerated the loan, starting the running of the four-year limitations period to foreclose on the property. Several months later, the lenders notified the Moores that they had rescinded the acceleration and, in the same notice, reaccelerated the loan. The lenders issued the Moores four similar notices over the next four years and never foreclosed on the property. After four years, the Moores sought a declaratory judgment that the limitations period had run. The federal district court granted the lenders' motion for summary judgment, holding that

the lenders had rescinded the acceleration under Section 16.038 of the Civil Practice and Remedies Code. The Fifth Circuit certified the following questions of law to the Supreme Court: (1) May a lender simultaneously rescind a prior acceleration and re-accelerate a loan under Section 16.038? and (2) If a lender cannot simultaneously rescind a prior acceleration and re-accelerate a loan, does such an attempt void only the re-acceleration, or both the re-acceleration and the rescission?

The Court answered the first question "yes." The lenders' notices to the Moores complied with the requirements of Section 16.038 to be in writing and served via an appropriate method. The statute did not require that a notice of rescission be distinct or separate from other notices, nor did it establish a waiting period between rescission and reacceleration.

2. Tolling

a) *Hampton v. Thome*, 687 S.W.3d 496 (Tex. Mar. 8, 2024) [22-0435]

At issue is whether an incomplete or defective medical authorization form can toll the statute of limitations under Section 74.051(c) of the Civil Practice and Remedies Code.

A health care liability claimant is required to provide notice to the defendant at least sixty days prior to filing suit. This notice must be accompanied by a medical authorization form that permits the defendant to obtain information from relevant health care providers. After being released from the hospital after a surgery, Dorothy Hampton fell at her house and was found confused and disoriented. Hampton notified Dr. Leonard Thome of her intent to bring a health care liability claim, alleging he had prematurely released her from the hospital. This notice was accompanied by an incomplete medical authorization form, which was missing several health care providers that had treated Hampton. Hampton's form also left out a sentence, found in the statutory form provided in Section 74.052(c), that extends authorization to future providers.

Hampton eventually filed her suit past the two-year statute of limitations, but within the 75-day tolling period specified in Section 74.051(c). Dr. Thome moved for summary judgment on limitations grounds, claiming that Hampton's deficient form could not trigger the 75-day tolling period. The district court denied Dr. Thome's motion for summary judgment. On appeal, the court of appeals reversed, concluding that tolling was unavailable due to defects in Hampton's form.

The Supreme Court reversed. In an opinion by Justice Blacklock, the Court held that an incomplete or erroneous medical authorization form is still an authorization form for tolling purposes. The appropriate remedy for an incomplete or defective form is a 60-day abatement as provided by Section 74.052(a)-(b).

Justice Boyd filed a dissenting opinion. He would have held that only a fully compliant authorization form tolls the statute of limitations.

DD. SUBJECT MATTER JURISDICTION

1. Standing

a) *Busbee v. County of Medina*, 681 S.W.3d 391 (Tex. Dec. 15, 2023) (per curiam) [22-0751]

This case involves a dispute between the 38th and 454th Judicial Districts over an office building in Medina County.

In 1998, when Medina County was part of the 38th Judicial District, the 38th District used funds from its forfeiture account to buy an office building in the County. The property's deed named the County as the grantee but restricted the building's use to 38th District business for as long as the County owned the property. The deed also required the 38th District Attorney's consent before the County could sell the property.

In 2019, the Legislature carved Medina County out of the 38th District into the new 454th District. Because of the deed's restrictions on use, the County decided to sell the property and divide the proceeds with the two counties that remained in the 38th District. Before the sale closed, newly elected 38th District Attorney Christina Busbee notified the County that she did not consent to the sale and took the position that all sale proceeds were 38th District forfeiture funds under Chapter 59 of the Texas Code of Criminal Procedure.

Medina County sued Busbee in her official capacity to quiet title. Busbee asserted several counterclaims stemming from her assertions that the property—and any proceeds from its sale—rightfully belonged to the 38th District Attorney and that the County could not sell the property without her consent. The County filed a plea to the jurisdiction as to the counterclaims, arguing among other grounds that Busbee lacked standing. The trial court granted the plea to the jurisdiction on the standing ground and did not reach the other jurisdictional issues presented in the plea. The court of appeals affirmed, holding that only the Attorney General may sue to enforce Chapter 59 and that, because Busbee's claims were all "based on Chapter 59," she lacked standing to bring them.

The Supreme Court reversed, holding that whether Busbee may sue under Chapter 59 affects her right to relief but does not implicate the trial court's subject-matter jurisdiction over the case. The Court explained that Busbee has standing in the constitutional, jurisdictional sense if she has a concrete injury that is traceable to the defendant's conduct and redressable by court order. Busbee's claims that the County is attempting to sell the property without her mandated consent and that the 38th District Attorney is entitled to all proceeds from the property's sale present such an injury. The Court expressed no opinion on the merits of Busbee's claims or the court of appeals' analysis of Chapter 59, holding only that the court's conclusion could not support an order granting a plea to the jurisdiction. The Court remanded the case to the trial court for further proceedings.

EE. 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.

b) *Duncan House Charitable Corp. v. Harris Cnty. Appraisal Dist.*, 676 S.W.3d 653 (Tex. Sept. 1, 2023) (per curiam) [21-1117]

This case concerns the applicability of a charitable tax exemption.

Duncan House applied for a charitable tax exemption for the 2017 tax year covering its interest in an historic home, but its application was denied. Duncan House filed suit for judicial review. When its protest for a 2018 exemption was also denied, it amended its petition to also challenge the denial of the 2018 exemption. The trial court dismissed the 2018 claim for want of jurisdiction because Duncan House never applied for the 2018 exemption. The court of appeals affirmed, holding that a timely filing of an application for the exemption is a statutory prerequisite to receive the exemption.

The Supreme Court reversed, holding that Duncan House did not need to apply for 2018 if it was entitled to the 2017 exemption. That issue remains pending in the trial court. If the

courts ultimately conclude that Duncan House did not qualify for the exemption in 2017, Duncan House's failure to timely apply for the 2018 exemption will preclude it from receiving the exemption for 2018. But if the courts ultimately allow the exemption for 2017, Duncan House will then be entitled to the exemption for all subsequent years, including 2018. The Court remanded to the trial court for further proceedings.

2. 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.

FF. 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.

III. GRANTED CASES

A. ADMINISTRATIVE LAW

2. Administrative Procedure Act

a) *Tex. Dep't of State Health Servs. v. Kensington Title-Nev., LLC*, ___ S.W.3d ___, 2023 WL 4373384 (Tex. App.—Austin 2023), *pet. granted* (Sept. 27, 2024) [23-0644]

The Administrative Procedure Act waives sovereign immunity in a suit seeking a declaration about an administrative rule's "applicability." The issue in this case is whether the request for declaratory relief challenges a rule's application (*how* the rule applies) as opposed to its applicability (*whether* the rule applies).

Kensington Title-Nevada, LLC acquired real property on which the occupant had abandoned stored radioactive waste. Kensington initiated decommissioning activities but stopped before completion. The Texas Department of State Health Services then fined Kensington for possessing the material without a license and for failing to decommission in a timely manner. Kensington challenged the fine through a formal administrative hearing. Concurrently, Kensington sued the Department requesting a declaration that the administrative rule could not be applied to force Kensington to accept liability for radioactive materials abandoned on its property. The Department filed a plea to the jurisdiction arguing that Kensington failed to invoke the APA's immunity waiver because it only seeks a determination about the rule's application, not its applicability. The trial court denied the Department's plea, but the court of appeals reversed and dismissed for want of subject-matter jurisdiction.

On petition for review, Kensington contends that the appeals court's failure to apply the immunity waiver rests on an improper rewriting of the request for declaratory relief. The Department's response argues that dismissal was proper because (1) the court's analysis was correct; and (2) Kensington lacks standing for want of a redressable injury. As to the latter, the Department asserts that the administrative action was based on Kensington's exercise of dominion and control over the regulated materials, not ownership of real property.

The Court granted the petition for review.

1. Commission on Environmental Quality

a) *Tex. Comm'n on Env't Quality v. Save Our Springs All., Inc.*, 668 S.W.3d 710 (Tex. App.—El Paso 2022), *pet. granted* (June 14, 2024) [23-0282]

The issue is whether a Texas Commission on Environmental Quality order approving a permit to discharge wastewater into a creek violates state and federal law governing water-quality standards.

The City of Dripping Springs applied to TCEQ for a permit to discharge wastewater into Onion Creek, which is home to two endangered species of salamander. The creek is considered a "high quality" waterbody, meaning that the quality of its waters exceeds the standards required to maintain their existing uses, which include recreation, aquatic life, aquifer protection, and domestic water supply. Under state and federal law, an application to discharge wastewater into a high-quality waterbody must satisfy two tiers of review.

After contested-case proceedings in the agency and the State Office of Administrative Hearings, TCEQ issued a final order approving the permit. Nonprofit conservation group Save Our Springs Alliance filed suit for judicial review of the order under the Administrative Procedure Act, arguing that TCEQ misapplied the standards both tiers of review and failed to demonstrate reasoned decision-making in its order.

Agreeing with Save Our Springs, the trial court reversed the order as unsupported by law or substantial evidence. A split panel of the court of appeals reversed the trial court's judgment and affirmed TCEQ's final order issuing the permit. The Supreme Court granted Save Our Springs' petition for review.

2. Judicial Review

a) *Port Arthur Cmty. Action Network v. Tex. Comm'n on Env't Quality*, 92 F.4th 1150 (5th Cir. 2024), *certified question accepted* (Feb. 23, 2024) [24-0116]

At issue in this certified question is the meaning of the phrase "has proven to be operational" in the Texas Commission on Environmental Quality's definition of "best available control technology."

Port Arthur LNG, LLC applied to the Commission for an air-quality permit associated with a proposed natural gas liquefaction plant and export terminal in Port Arthur, Texas. Texas law requires that regulated emitters use the best available control technology, defining that requirement as an air-pollution control method that "has proven to be operational, obtainable, and capable of reducing or eliminating emissions from the facility." Port Arthur LNG's application sought authorization to exceed applicable thresholds for nitrogen oxide, carbon monoxide, and particulate matter. After concluding that the application met all applicable permit requirements, including that the facility would use best available control technology for all applicable sources, the Commission issued a final order granting the permit.

The Port Arthur Community Action Network (PACAN), a not-for-profit

community organization, sought judicial review of the permit in the U.S. Court of Appeals for the Fifth Circuit. PACAN argued that the lower-emission limits in a permit recently granted to another LNG facility represent the best available control technology and, thus, the Commission should have imposed those same limits on the Port Arthur facility or explained why it had not. The Commission argued that the limits for the other LNG facility are not best available control technology because they have never been achieved in operation—i.e., they are not "proven to be operational." The Fifth Circuit initially vacated the Commission's order on the ground that it did not employ the best available control technology for nitrogen oxide and carbon monoxide because the Commission had approved a different facility to use experimental emissions limitations, which could provide greater emissions reductions. On petitions for rehearing and rehearing en banc, the Fifth Circuit withdrew its opinion and certified the following question to the 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 [Title 30 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 accepted the certified question.

b) *Tex. Dep't of Fam. & Protective Servs. v. Grassroots Leadership, Inc.*, 665 S.W.3d 135 (Tex. App.—Austin 2023), *pet. granted* (Aug. 30, 2024) [23-0192]

This case concerns the validity of an administrative rule governing immigration detention centers and the mootness and reviewability of the rule challenge.

In 2014, U.S. Immigration and Customs Enforcement began to detain undocumented families with children at two immigration-detention centers in Texas. But a federal court ruled that ICE violated a consent decree requiring detained minors to be placed in facilities with appropriate state childcare licenses. After the ruling, the Texas Department of Family and Protective Services promulgated Rule 748.7, establishing licensing requirements for family residential centers.

The advocacy group Grassroots Leadership, several detained mothers, and a daycare operator sued the Department to challenge Rule 748.7. The private operators of the two detention centers intervened. After the trial court declared the rule invalid, the court of appeals dismissed the case for lack of standing. The Supreme Court reversed and remanded, holding that the detained mothers (and their children) sufficiently alleged concrete personal injuries traceable to the rule's adoption.

On remand, the Department and private operators argued that the dispute is now moot because the plaintiff–detainees are no longer detained and are not reasonably likely to be detained at the centers again. The court of

appeals agreed but applied a public-interest exception to the mootness doctrine and affirmed the trial court's judgment that Rule 748.7 is invalid because the Department lacked statutory authority to promulgate it.

The Department and the private operators petitioned for review, arguing that the rule challenge is moot, there is no public-interest exception in Texas, and Rule 748.7 is valid. The Supreme Court granted the Department's and the private operators' petitions for review.

3. Public Information Act

a) *Univ. of Tex. at Austin v. Gatehouse Media Tex. Holdings, II, Inc.*, 656 S.W.3d 791 (Tex. App.—El Paso 2022), *pet. granted* (May 31, 2024) [23-0023]

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

Gatehouse Media sent a Public Information Act request to the University, seeking the results of disciplinary proceedings in which the University determined that a student had been an "alleged perpetrator" of a violent crime or sexual offense and committed a violation of the University's rules or policies. The University declined to provide the information, asserting that the Federal Education Rights and Privacy Act of 1974 does not require this information's disclosure.

Gatehouse filed a petition for mandamus in the trial court, seeking to compel the disclosure. Gatehouse then moved for summary judgment, claiming that while FERPA makes the University's disclosure of disciplinary information discretionary, the mandatory-disclosure requirements of the PIA revoked the University's discretion, requiring disclosure here. The trial court granted Gatehouse's motion, finding that the information was presumed subject to disclosure because the University failed to seek an opinion from the Office of the Attorney General, as the PIA requires. The court of appeals affirmed.

The University filed a petition for review, arguing that disclosure of the requested information is discretionary under both state and federal law. Additionally, the University contends that past opinions from the Attorney General and this Court render such an opinion unnecessary in this case. The Supreme Court granted the petition.

B. ATTORNEYS

1. Barratry

a) *Cheatham v. Pohl*, 690 S.W.3d 322 (Tex. App.—Houston [1st Dist.] 2022), *pet. granted* (May 31, 2024) [23-0045]

This case raises questions about the extraterritorial reach of Texas's civil barratry statute and whether barratry claims are subject to a two- or four-year statute of limitations.

Mark Cheatham, a Louisiana plaintiff, hired Texas attorneys, Michael Pohl and Robert Ammons, to represent him in a wrongful-death suit. Cheatham later asserted civil barratry claims against Pohl and Ammons in Texas, alleging that the attorneys paid a sham financing company run by Pohl's wife, Donalda, to offer him

money for funeral expenses as an incentive to hire Pohl and Ammons.

Pohl and Ammons filed motions for partial summary judgment, asserting that Cheatham's claims were barred by a two-year statute of limitations. The trial court denied the motions, concluding that a four-year statute of limitations applied. Pohl, Ammons, and Donalda filed subsequent motions for summary judgment, asserting that the barratry statute has no extraterritorial reach to conduct that occurred out of state. The trial court granted the motions. The court of appeals reversed and remanded, reasoning that the attorneys' conduct occurred in Texas, but even if it had not, the statute can permissibly be extended to out-of-state conduct.

Pohl, Donalda, and Ammons petitioned for review, arguing that the court of appeals impermissibly extended the reach of the barratry statute and maintaining that such claims are subject to a two-year statute of limitations. The Supreme Court granted their petitions for review.

2. Disciplinary Proceedings

a) *In re Lane*, Cause No. 67623 (BODA Nov. 16, 2023), *argument granted on disciplinary appeal* (Aug. 30, 2024) [23-0956]

The main issue in this disciplinary appeal is whether the four-year limitations period in Texas Rule of Disciplinary Procedure 17.06 applies to a judgment imposing reciprocal discipline under Part IX of the rules.

In early 2023, the Illinois Supreme Court issued a final judgment suspending Lane for inappropriate emails she sent to a federal magistrate judge in 2017. After Lane sent a copy of that judgment to Texas's Chief Disciplinary Counsel, the Commission for Lawyer Discipline filed a petition for reciprocal discipline with the Board of Disciplinary Appeals. In November 2023, after a hearing, BODA issued its judgment of identical discipline with two members dissenting.

The BODA majority and dissent disagree whether Rule 17.06 applies to reciprocal-discipline proceedings and, if it does, whether Lane waived the defense by failing to raise it in her response to the Commission's petition or at the hearing. Rule 17.06 states a general rule prohibiting discipline "for Professional Misconduct that occurred more than four years before the date on which a Grievance alleging Professional Misconduct is received by the Chief Disciplinary Counsel." The rule contains express exceptions for compulsory discipline under Part VIII and for prosecutorial misconduct.

The arguments presented by Lane and the Commission in this appeal address whether reciprocal discipline is initiated by a Grievance, whether the limitations rule is compatible with the procedure for reciprocal discipline in Part IX, whether the lack of an express exception for reciprocal discipline in Rule 17.06 is meaningful, and whether the limitations rule is an affirmative defense that is waived if not timely raised.

The Supreme Court set the appeal for oral argument.

3. Legal Malpractice

b) *Newsom, Terry & Newsom, LLP v. Henry S. Miller Com. Co.*, 684 S.W.3d 502 (Tex. App.—Dallas 2022), *pet. granted* (Mar. 15, 2024) [22-1143]

In this case, the issues are the propriety of an assignment of a legal-malpractice claim and whether a jury instruction impermissibly commented on the weight of the evidence.

HSM is a real estate broker. Its former employee negotiated the purchase of nine commercial properties on behalf of a client. During the negotiations, the employee represented to the seller that the buyer was the beneficiary of a multimillion-dollar trust, that he had verified the buyer's financial means, and that the transactions would close imminently. But after the closing date was rescheduled multiple times, the buyer disappeared. The properties were either deeded to banks in lieu of foreclosure or sold at a loss.

Lawyer Steven Terry represented HSM and its employee in the seller's subsequent lawsuit. Despite knowing that the buyer could be held at least partly responsible for the seller's damages, Terry initially did not try to find him or designate him as a responsible third party. Terry later moved to designate the buyer as an RTP shortly before trial. The seller objected to the motion's untimeliness. The trial court denied the motion and ultimately rendered judgment on the jury's verdict for the seller.

In the aftermath, HSM sued Terry for legal malpractice, alleging that he was negligent in failing to timely designate the buyer as an RTP and in stipulating that HSM was responsible for the employee's conduct. Around the same time, the seller filed an involuntary bankruptcy petition against HSM. The reorganization plan approved by the bankruptcy court assigned part of HSM's malpractice claim to the seller and also gave the seller the right to veto any settlement between HSM and Terry.

This appeal arises from the second trial of the legal-malpractice suit. The trial court rendered judgment on the jury's verdict for HSM, awarding it $15 million in actual and exemplary damages. A split panel of the court of appeals reversed and remanded for a third trial. The majority held that language in a jury instruction on designating RTPs constituted an impermissible comment on the weight of the evidence about the buyer's responsibility. Terry also reurged his challenge, rejected by the court in the first appeal, that HSM's recovery is barred because the assignment of its malpractice claim and settlement-veto power to the seller is impermissible under Supreme Court caselaw. The court declined to reconsider that holding.

HSM and Terry filed cross-petitions for review, which the Supreme Court granted.

C. CONTRACTS

1. Interpretation

a) *Am. Midstream (Ala. Intrastate), LLC v. Rainbow Energy Mktg. Corp.*, 667 S.W.3d 837 (Tex. App.—Houston [1st Dist.] 2023), *pet. granted* (Oct. 18, 2024) [23-0384]

This case involves contract interpretation and repudiation, lost-profits damages, and the election-of-remedies doctrine.

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 absent certain contractual exemptions. American Midstream limited its balancing services on various occasions and claims that it was excused from performing under the contract. The parties' representatives spoke on a conference call in which Rainbow claims American Midstream repudiated the contract. 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 and related claims. After a bench trial, the trial court found for Rainbow on all its claims, and Rainbow elected to recover on its breach-of-contract claim. The trial court awarded Rainbow more than $6 million in lost-profit damages. In a divided opinion, the court of appeals affirmed. It held that the trial court properly interpreted the contract and sufficient evidence supports the trial court's findings of breach and its award of lost profits.

American Midstream petitioned the Supreme Court for review. It argues that (1) the contract excused American Midstream's performance; (2) the trial court erred by awarding Rainbow speculative lost profits; and (3) the court of appeals erred by creating an exception to the election-of-remedies doctrine for contracts "performed as discrete transactions conducted on an on-going basis." The Court granted the petition.

D. CONSTITUTIONAL LAW

1. Due Process

a) *Stary v. Ethridge*, 695 S.W.3d 417 (Tex. App.—Houston [1st Dist.] 2022), *pet. granted* (Aug. 30, 2024) [23-0067]

This case concerns the proper burden of proof to support a permanent protective order that prohibits contact between a parent and minor child.

Christine Stary and Brady Ethridge divorced in May 2018. In March 2020, Ethridge filed an application for a protective order, alleging that Stary had committed acts of family violence and abuse against their children, including an arrest for third-degree felony offense of injury to a child. The trial court granted the protective order, prohibiting Stary from having any contact with the children, stating that the order would remain in effect "in permanent duration for [Stary's] lifetime" subject to the children filing a motion to modify the order.

Stary appealed, and the court of appeals affirmed. It held that the "permanent" protective order did not

effectively terminate Stary's parental rights, and, thus, due process did not require application of the "clear and convincing evidence" standard of proof; that the evidence is legally and factually sufficient to support the order; and that the trial court's exclusion of Ethridge's history of domestic violence was not reversible error.

Stary petitioned for review, arguing that due process requires a heightened standard of proof and that the evidence adduced does not rise to that level. The Supreme Court granted the petition.

2. Separation of Powers

b) *Comm'n for Law. Discipline v. Webster*, 676 S.W.3d 687 (Tex. App.—El Paso 2023), *pet. granted* (June 14, 2024) [23-0694]

The issue in this case is whether sovereign immunity or the separation of powers doctrine protects government lawyers from professional discipline procedures arising from alleged misrepresentations made to a court.

First Assistant Attorney General Webster signed the State's briefs in *Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020), in which Texas challenged the election procedures of other states in the 2020 election. The Supreme Court of the United States held that Texas failed to raise a cognizable interest in other states' election procedures and dismissed the case. These proceedings arise from a disciplinary complaint against Webster that alleges he was dishonest in making assertions in the *Pennsylvania* briefs.

The trial court granted Webster's plea to the jurisdiction and dismissed the disciplinary action on grounds of separation of powers. The court concluded that the action impermissibly sought to limit the Attorney General's broad power to file lawsuits on behalf of the State. The court of appeals reversed, holding that neither separation of powers nor sovereign immunity deprived the trial court of jurisdiction. The court reasoned that sovereign immunity does not protect Webster's personal license to practice law and that the Attorney General, like all attorneys, must follow the ethical rules of professional conduct.

Webster filed a petition for review, invoking sovereign immunity and contending that the disciplinary action improperly influences the Attorney General's broad discretion in filing suits and weighing evidence when deciding to file suits. The Supreme Court granted review.

3. Religion Clauses

c) *Perez v. City of San Antonio*, 2024 WL 3963878 (5th Cir. Aug. 28, 2024), *certified question accepted* (Sep. 6, 2024) [24-0714]

This certified question concerns Article I, Section 6-a of the Texas Constitution, which prohibits the state of Texas and its political subdivisions from prohibiting or limiting religious services.

The City of San Antonio's plans to improve Brackenridge Park require the City to temporarily close the Lambert Beach area of the park. Plaintiffs Gary Perez and Matilde Torres—who are members of the Native American Church and consider the Lambert Beach area a sacred place—sued the

City, alleging that the City's planned changes to and temporary closure of Lambert Beach violate Section 6-a. The district court denied plaintiffs' request for access to the Lambert Beach area for individual worship and their request to minimize tree removal.

The Fifth Circuit seeks guidance from the Supreme Court regarding the scope of Section 6-a. The City argues that the changes aim to promote safety and public health, while plaintiffs contend that Section 6-a does not even allow the City to try to satisfy strict scrutiny. The Fifth Circuit certified the following question to the Texas Supreme Court:

> 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 Court accepted the certified question.

E. CORPORATIONS

1. Nonprofit Corporations

a) *S. Cent. Jurisdictional Conf. of the United Methodist Church v. S. Methodist Univ.*, 674 S.W.3d 334 (Tex. App.—Dallas 2023), *pet. granted* (Oct. 18, 2024) [23-0703]

At issue in this case is whether a nonmember nonprofit corporation may amend its articles of incorporation when those articles provided that no amendments shall be made without the prior approval of a religious conference.

Southern Methodist University is a nonprofit corporation founded by a predecessor-in-interest to the South Central Jurisdictional Conference of the United Methodist Church. Since its founding, the University's articles of incorporation stated that it was to be owned, maintained, and controlled by the Conference and that the Conference possessed the right to approve all amendments. In 2019, without the Conference's approval, the University's board of trustees amended its articles to remove these provisions and filed a sworn certificate of amendment with the secretary of state. The Conference sued the University, seeking declaratory relief and asserting breach of contract, promissory estoppel, breach of fiduciary duty, and a statutory claim alleging that the University filed a materially false amendment certificate.

The trial court dismissed some of the Conference's claims before granting summary judgment for the University on the remaining claims. The court of appeals affirmed in part and reversed in part, holding that the Conference was authorized to challenge the University's amendments under the Business Organizations Code, that both statements of opinion and fact could be actionable as materially false filings, and that plaintiffs can recover damages for nonpecuniary losses caused by those filings.

The University petitioned for review. It argues that the Conference is barred from bringing its breach-of-contract claim, that the University's articles cannot constitute a contract with the Conference, that the complained-of statements in the University's amendment certificate were good-faith legal opinions that cannot be materially

false, and that the Conference could not have suffered the damages requisite for its statutory claim. The Supreme Court granted the petition.

F. EMPLOYMENT LAW

1. Age Discrimination

a) *Tex. Tech Univ. Health Scis. Ctr.-El Paso v. Flores*, 657 S.W.3d 502 (Tex. App.—El Paso 2022), *pet. granted* (Mar. 15, 2024) [22-0940]

The issue in this case is whether the trial court should have granted Tech's plea to the jurisdiction on the plaintiff's age-discrimination claim.

Loretta Flores, age 59, applied to work as Chief of Staff for university president, Dr. Richard Lange. Lange, however, had personally encouraged Amy Sanchez, a 37-year-old Tech employee, to apply for the Chief of Staff position. Both candidates met the education and experience requirements and submitted all required application materials. Flores submitted an additional five letters of recommendation from her previous roles at Tech. Lange mentioned Flores's age during her interview, although the parties dispute what was said. Lange ultimately hired Sanchez for the position.

Flores sued for age discrimination and retaliation. Tech filed a plea to the jurisdiction, which the trial court denied. The court of appeals reversed as to the retaliation claim but affirmed as to age discrimination, holding that a reasonable fact finder could conclude that Lange's proffered reasons for not hiring Flores were pretextual and that age was at least a motivating factor in Tech's decision not to select Flores for the Chief of Staff position. Tech petitioned the Supreme Court for review, arguing that Flores did not meet the required showing that Tech's proffered reason for denying Flores the position was both false and a pretext for discrimination. The Court granted Tech's petition for review.

2. Employment Discrimination

b) *Butler v. Collins*, 2024 WL 3633698 (5th Cir. Aug. 2, 2024), *certified question accepted* (Aug. 9, 2024) [24-0616]

This certified question case concerns whether the Texas Commission on Human Rights Act preempts common law tort claims brought against the plaintiff's former coworkers.

After Southern Methodist University denied Professor Cheryl Butler's application for tenure and promotion, Butler filed suit against SMU and various SMU employees, asserting various statutory and common law claims, including common law claims of fraud, defamation, and conspiracy to defame against the defendant-employees. The district court granted a motion to dismiss against Butler on some of her claims, finding that the common law claims brought against the defendant-employees were preempted by the TCHRA.

The Fifth Circuit noted that the Texas Supreme Court has held that the TCHRA preempts common-law tort claims asserted against the plaintiff-employee's employer but has not addressed whether the TCHRA preempts such claims brought against other employees. The Fifth Circuit therefore certified the following question regarding

Butler's claims against the defendant–employees:

> Does the Texas Commission on Human Rights Act ("TCHRA"), TEXAS LABOR CODE § 21.001, *et seq.*, preempt 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 Court accepted the certified question.

G. FAMILY LAW

1. Division of Marital Estate

a) *In re J.Y.O.*, 684 S.W.3d 796 (Tex. App.—Dallas 2022), *pet. granted* (Mar. 15, 2024) [22-0787]

At issue in this case is the trial court's characterization and division of a discretionary bonus, retirement account, and marital residence.

Lauren and Hakan Oksuzler divorced in December 2019. The next February, Hakan was scheduled to receive a $140,000 bonus from his employer, Bank of America. The bonus was at the sole discretion of Bank of America and contingent on Hakan's continued employment; however, the bonus was based on work he performed while the parties were still married. In addition to the bonus, Hakan contributed to a retirement account through Bank of America before and during the marriage. Hakan also owned the marital residence as his separate property before the marriage, but the parties executed a deed while they were married that listed both Hakan and Lauren as the grantor and grantee.

In August 2020, the trial court signed a final divorce decree that awarded Hakan as his separate property the $140,000 bonus, a portion of his retirement account, and the marital residence. The court of appeals (1) affirmed the judgment awarding Hakan the bonus because his right to it vested when the parties were no longer married; (2) reversed the judgment awarding Hakan a portion of his retirement account because he presented no evidence that the funds in the account were separate property; and (3) reversed the judgment awarding Hakan the marital residence because he presented no evidence rebutting the presumption that he gifted one half of the residence to Lauren.

Hakan petitioned the Supreme Court for review, arguing that the marital residence and a portion of his retirement account are his separate property. Lauren cross-petitioned the Court for review, arguing that the bonus should not be awarded entirely to Hakan as his separate property because it compensated him for work performed during the marriage.

The Court granted both petitions for review.

2. Divorce Decrees

a) *In re Marriage of Benavides*, 692 S.W.3d 526 (Tex. App.—San Antonio 2023), *pet. granted* (June 14, 2024) [23-0463]

The issues in this case are (1) whether, and in what circumstances, a guardian may petition for divorce on behalf of a ward; and (2) the effect of one spouse's death on the appeal from a divorce decree.

Carlos and Leticia Benavides married in 2005. Carlos was later placed under the guardianshipof his adult daughter, Linda.In 2018, Linda filed a petition for divorce on Carlos's behalf. Linda moved for partial summary judgment that the divorce should be granted because Carlos and Leticia lived apart for more than three years—a no-fault ground for divorce under the Family Code. The trial court granted Linda's motion and rendered a final divorce decree. Leticia appealed, but while her appeal was pending, Carlos passed away. The court of appeals concluded that Carlos's death mooted Leticia's appeal of the partial summary judgment granting the divorce, but it otherwise affirmed the divorce decree and its disposition of the couple's property.

Leticia petitioned for review, arguing that her challenge to the divorce decree is not moot, that a guardian cannot petition for divorce on behalf of a ward, and that a living-apart divorce requires that at least one of the spouses voluntarily separated. The Supreme Court granted the petition for review.

3. Spousal Support

a) *Mehta v. Mehta*, ___ S.W.3d ___, 2023 WL 3521901 (Tex. App.—Fort Worth 2023), *pet. granted* (Oct. 25, 2024) [23-0507]

The principal issue in this case is whether child-support payments should be considered when determining a spouse's eligibility for spousal maintenance.

Manish Mehta filed for divorce from his spouse, Hannah Mehta. In the final divorce decree, the trial court ordered Manish to pay child support and spousal maintenance to Hannah. Manish appealed, arguing that the evidence is legally insufficient to support the spousal maintenance award under Chapter 8 of the Texas Family Code.

The Family Code allows the trial court to award spousal maintenance when the spouse seeking maintenance will lack sufficient property upon divorce to provide for their minimum reasonable needs. In its review, the court of appeals included Manish's child support payments as part of the property available to provide for Hannah's minimum reasonable needs. It then reviewed evidence of Hannah's minimum reasonable needs. After comparing the two, the court reversed the award of spousal maintenance, holding that Hannah is ineligible for spousal maintenance because she has sufficient property to provide for her needs.

Hannah filed a petition for review. She argues that the court of appeals erred because spousal maintenance is intended to provide only for the spouse's needs, while the purpose of child support is to financially support the children. Accordingly, Hannah

argues that receipt of child support should not be considered when determining a spouse's eligibility for spousal maintenance. The Supreme Court granted the petition.

H. GOVERNMENTAL IMMUNITY

1. Official Immunity

a) *City of Houston v. Rodriguez*, 658 S.W.3d 633 (Tex. App.—Houston [14th Dist.] 2022), *pet. granted* (Jan. 26, 2024) [23-0094]

At issue in this case is whether a police officer acted with reckless disregard such that the Texas Tort Claims Act's emergency exception does not apply, and whether the officer acted in good faith such that he is entitled to official immunity.

Officer Corral was engaged in a high-speed chase with a suspect who drove erratically and at one point against traffic. Corral tried to make a sudden right turn but was unable to complete it because of his speed. He swerved into the curb to avoid hitting a truck waiting at the stop sign but lost control and struck the truck. Corral's affidavit asserted that he only hit the curb because his brakes were not working.

The City filed a motion for summary judgment asserting official immunity and immunity under the Texas Tort Claims Act's emergency exception. The trial court denied the motion, and the court of appeals affirmed. The court held that the City did not meet its initial burden to demonstrate good faith because Corral's affidavit did not assess the risk of harm in light of the condition of his vehicle's brakes and that Corral's alleged brake failure raises a fact issue as to whether he acted recklessly.

The City filed a petition for review, arguing that Corral engaged in risk assessment measures that precluded a fact issue for recklessness and that the unrefuted evidence offered by both parties establishes Corral's good faith. The City also argues that nothing in the record provides a reasonable inference that Corral's brakes were malfunctioning or that he was aware his brakes were malfunctioning before the incident. The Supreme Court granted the petition.

2. Texas Tort Claims Act

a) *City of Austin v. Powell*, 684 S.W.3d 455 (Tex. App.—Austin 2022), *pet. granted* (Jan. 26, 2024) [22-0662]

At issue in this case is whether a police officer in a high-speed chase acted with reckless disregard such that the emergency exception under the Texas Tort Claims Act does not apply and immunity is waived.

Officer Bullock was assigned as backup to pursue a suspect in a vehicle chase. He was following Officer Bender who slowed down suddenly to make a right turn based on the radio report of the suspect's location. Bullock rammed into the back of Bender's vehicle, causing the two police cruisers to crash into Powell's van sitting at the stop sign.

After Powell sued the City, the trial court denied the City's plea to the jurisdiction based on the Texas Tort Claims Act's emergency exception. The court of appeals affirmed, concluding that Bullock's failure to maintain a safe following distance, combined with his

inattention and failure to control his speed, create a fact issue on recklessness. The City filed a petition for review in the Supreme Court, challenging the court of appeals' analysis. The Court granted the petition.

I. INSURANCE

1. Insurance Code Liability

a) *In re State Farm Mut. Auto. Ins. Co.*, ___ S.W.3d ___, 2023 WL 5604145 (Tex. App.—Dallas 2023), and ___ S.W.3d ___, 2023 WL 5604142 (Tex. App.—Dallas 2023), *argument granted on pet. for writ of mandamus* (June 14, 2024) [23-0755]

The issue in this case is whether the trial court must sever and abate Insurance Code claims when a motorist sues her insurance company for underinsured-motorist benefits and violations of the Insurance Code.

Mara Lindsey alleges that she was injured in an automobile accident. Lindsey settled with the driver of the other vehicle for his insurance policy limit and then sought underinsured-motorist benefits from State Farm. State Farm, through its claims adjuster, offered Lindsey far less than she claims she is entitled to under her policy. Lindsey sued State Farm and the claims adjuster, seeking a declaratory judgment that she is entitled to additional benefits and for violations of the Insurance Code. State Farm moved to sever and abate the Insurance Code claims until the underlying declaratory-judgment action determines the amount of liability and damages caused by the allegedly underinsured motorist. Lindsey opposed the motion, arguing that bifurcation is the proper procedure for underinsured-motorist cases, and discovery on the extracontractual claims is permitted against the insurer before the bifurcated trial. The trial court denied State Farm's motion and the court of appeals denied mandamus relief.

State Farm petitioned for a writ of mandamus from the Supreme Court. State Farm argues that the Insurance Code claims should have been severed and abated and that Lindsey is not entitled to discovery on those claims until she establishes that she is entitled to underinsured motorist benefits because the liability and damages caused by the underinsured driver exceeded the amount of the third party's policy limits. State Farm also argues that because the claims should have been abated, the trial court abused its discretion in refusing to quash the depositions of State Farm's corporate representative and claims adjuster, who lack personal knowledge about the facts of the underlying accident. Finally, State Farm argues that the trial court abused its discretion by limiting State Farm's access to Lindsey's medical records when her medical condition is at issue. The Court granted argument on the petition for writ of mandamus.

2. Policies/Coverage

a) *Ohio Cas. Ins. Co. v. Patterson-UTI Energy, Inc.*, 656 S.W.3d 729 (Tex. App.—Houston [14th Dist.] 2022), *pet. granted* (June 21, 2024) [23-0006]

This case concerns the interpretation of an excess insurance policy that follows an underlying policy, except where the terms, conditions, definitions, and exclusions of the policies conflict.

The Patterson entities hired Marsh USA, an insurance broker, to obtain multiple layers of general liability insurance coverage. Through Marsh, Patterson obtained an underlying policy that provides coverage for defense costs, including attorney's fees. Patterson also obtained multiple policies providing excess layers of coverage, including a policy issued by Ohio Casualty. The Ohio Casualty policy contract states that except for the "terms, conditions, definitions and exclusions" set out in the Ohio Casualty policy, its coverage follows the underlying policy. Patterson was sued for personal injuries following an industrial accident and settled with the plaintiffs. Patterson then sought coverage from its insurers. Ohio Casualty promptly provided its share of the settlement amount, but it refused coverage for Patterson's defense costs.

Patterson sued both Ohio Casualty and Marsh, asserting that either Ohio Casualty breached the insurance contract by failing to provide coverage for defense costs or else Marsh falsely represented to Patterson that the Ohio Casualty policy covered defense costs. The parties filed competing motions for summary judgment on the issue of coverage. The trial court concluded that the Ohio Casualty policy does cover defense costs and granted summary judgment for Patterson. The court of appeals affirmed, reasoning that the Ohio Casualty policy does not specifically disclaim the underlying policy's coverage of defense costs.

Ohio Casualty filed a petition for review, arguing that its policy only provides coverage for certain types of loss that does not include defense costs. Ohio Casualty contends that because it set out definitions related to covered loss in its policy, those definitions control over the definitions related to covered loss in the underlying policy. The Court granted the petition for review.

J. INTENTIONAL TORTS

1. Defamation

a) *Roe v. Patterson*, 2024 WL 1956148 (5th Cir. May 3, 2024), *certified question accepted* (May 10, 2024) [24-0368]

This certified-question case asks whether a person can be held liable for supplying defamatory material to a publisher. Jane Roe alleges that she was sexually assaulted by a fellow student of Southwestern Baptist Theological Seminary in 2015. She sued the seminary and its president, Leighton Paige Patterson, for negligently failing to protect her from the assaults and for allegedly defaming her after. The district court granted summary judgment for Patterson and the seminary on all claims, and Roe appealed.

The U.S. Court of Appeals for the Fifth Circuit affirmed the district court's grant of summary judgment

against Roe on her negligence claims but certified the following questions regarding her defamation claims to the Suprem Court:

> 1. Can a person who supplies defamatory material to another for publication be liable for defamation?
> 2. 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?

The Court accepted the certified questions.

K. JURISDICTION

1. Personal Jurisdiction

a) *BRP-Rotax GmbH & Co. KG v. Shaik*, ___ S.W.3d ___, 2023 WL 4992606 (Tex. App.—Dallas 2023), *pet. granted* (June 14, 2024) [23-0756]

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

Sheema Shaik suffered serious injuries when a plane she was flying crashed at an airport in Texas. She and her husband sued BRP-Rotax, the plane's engine manufacturer, asserting claims for strict products liability, negligence, and gross negligence. Rotax is based in Austria and sells its engines to international distributors who then sell the engines worldwide. The engine in this case was sold by Rotax under a distribution agreement to a distributor in the Bahamas whose designated territory included the United States.

The trial court denied Rotax's special appearance contesting personal jurisdiction. The court of appeals affirmed. Applying the stream-of-commerce-plus test, the court held that Rotax purposefully availed itself of the Texas market and that Shaik's claims arose from or related to those contacts with Texas.

Rotax petitioned this Court for review. It argues that all relevant contacts with Texas were initiated by Rotax's distributor, which Rotax had no control over or ownership interest in. In response, Shaik argues that Rotax's distribution agreement indicated an intent to serve the U.S. market, including Texas, and that Rotax maintained a website that allowed Texas customers to register their engines and identified a Texas-based repair center. The Court granted the petition for review.

2. Political Questions

a) *Elliott v. City of College Station*, 674 S.W.3d 653 (Tex. App.—Texarkana 2023), *pet. granted* (October 18, 2024) [23-0767]

At issue is whether claims under the Texas Constitution's "republican form of government" clause present a nonjusticiable political question.

Shana Elliott and Lawrence Kalke live in the City of College Station's extraterritorial jurisdiction. They cannot vote in City elections, but City codes regulate their property. Elliott and Kalke seek to place portable signs on their property and build a driveway for a mother-in-law suite. City ordinances prohibit portable signs

and require a permit to build a driveway.

Elliott and Kalke sued the City and its officials, alleging that the ordinances facially violate the Texas Bill of Rights' "republican form of government" clause by regulating them despite their inability to vote in City elections. The City argued that the claims are not ripe because the ordinances have not been enforced against the plaintiffs. The City also argued that claims under the "republican form of government" clause present a nonjusticiable political question. The trial court agreed and granted the City's plea to the jurisdiction. The court of appeals affirmed.

The plaintiffs filed a petition for review. They argue that they have standing and that their claims are ripe and justiciable. The Supreme Court granted the petition.

3. Ripeness

a) *City of Houston v. The Commons of Lake Hous., Ltd.*, ___ S.W.3d ___, 2023 WL 162737 (Tex. App.—Houston [1st Dist.] 2022), *pet. granted* (Aug. 30, 2024) [23-0474]

This case concerns the application of the futility doctrine to inverse-condemnation and takings claims.

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 2017, the City approved Commons' plans for the community utilities and paving. The following year, the City passed the 2018 floodplain ordinance. The 2018 ordinance requires new residential structures within the 100-year floodplain to be built a foot higher above the flood elevation than the previous ordinance required.

Commons sued the City for inverse condemnation and takings, alleging that the City's amended floodplain ordinance interferes with Commons' use and enjoyment of its property and deprives it of economically productive use of the land. The City filed a plea to the jurisdiction arguing that Commons' regulatory takings claim is not ripe because the City has not made a final decision on a permit or plan application. Commons responded that the City had ample opportunity to issue a final decision, but unreasonably withheld one, making Commons' claim under the futility doctrine ripe.

The trial court denied the City's plea, but the court of appeals reversed. The court of appeals held that Commons' regulatory takings claim is barred by governmental immunity because the 2018 ordinance was a valid exercise of the City's police power and therefore could not constitute a taking.

Commons petitioned for review, arguing that its claim is ripe under the futility doctrine and that governmental immunity does not bar its inverse-condemnation claim because a valid exercise of police power can still constitute a taking. The Supreme Court granted the petition.

L. JUVENILE JUSTICE

1. Juvenile Court

a) *In re J.J.T.*, ___ S.W.3d ___, 2023 WL 7311217 (Tex. App.—Houston [1st Dist.] 2023), *pet. granted* (Aug. 30, 2024) [23-1028]

The issue is whether the juvenile court erred in transferring a case to criminal district court where the defendant was a minor at the time of the murder but was charged after his 18th birthday.

In December 2022, J.J.T. was charged with a murder that occurred in October 2020, while J.J.T. was under the age of 18. The delay in charging J.J.T. concerned obtaining phone records from another witness.

The juvenile court waived jurisdiction and transferred the case to criminal district court under Section 54.02(j)(4) of the Family Code. Subpart (A) permits transfer if "for a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday." Subpart (B) permits transfer if "after due diligence . . . it was not practicable to proceed in juvenile court" because "the state did not have probable cause to proceed" before the 18th birthday. The juvenile court's order did not specify whether it was based on (A) or (B).

A split panel of the court of appeals held that the juvenile court lacked jurisdiction to make the transfer and dismissed the case for lack of jurisdiction. The majority concluded that (B) is not implicated because the trial court did not make a due diligence finding and that the evidence is insufficient under (A) because the State had probable cause to proceed before J.J.T.'s 18th birthday.

In the Supreme Court, the State argues that the transfer was appropriate under (A); the court of appeals unduly focused on probable cause; and, even if probable cause existed, that does not mean it was "practicable" to proceed in juvenile court if, for example, the State could not reasonably expect to secure a conviction based on the evidence available before the juvenile's 18th birthday.

The Supreme Court granted the State's petition for review.

M. MEDICAL LIABILITY

1. Expert Reports

a) *Columbia Med. Ctr. of Arlington Subsidiary, L.P. v. Bush*, 692 S.W.3d 606 (Tex. App.—Fort Worth 2023), *pet. granted* (June 21, 2024) [23-0460]

The issue in this case is the sufficiency of an expert report supporting a health care liability claim against a hospital directly under Chapter 74 of the Civil Practice and Remedies Code.

Ireille Williams-Bush died from pulmonary embolism soon after she was discharged from Columbia Medical Center's emergency department. She had presented to the ER with chest pain, shortness of breath, and severe fainting. The ER physicians diagnosed Ireille with cardiac-related conditions, never screened her for pulmonary embolism, and discharged her in stable condition with instructions to follow up with a cardiologist.

Ireille's husband, Jared Bush, sued the hospital for medical negligence. Bush served the hospital with an expert report prepared by a

cardiologist, who opined that the hospital should have had a testing protocol to rule out pulmonary embolism and other emergency conditions prior to discharge. The expert also opined that having this protocol would have resulted in a proper diagnosis and precluded Ireille's discharge and eventual death.

The hospital objected to the expert report and moved to dismiss Bush's claim. The trial court denied the motion, but the court of appeals reversed and directed the trial court to dismiss the claim with prejudice. The court of appeals held that the report is conclusory, and therefore insufficient, on the element of causation. The court of appeals reasoned that the report fails to explain how a hospital policy—which can only be implemented by medical staff—could have changed the decisions, diagnoses, and orders of Ireille's treating physicians.

Bush petitioned the Supreme Court for review, arguing that the court of appeals misinterpreted the Court's caselaw to impose too high a burden for causation in a direct-liability claim and that the report is sufficient because it provides a fair summary of the causal link between the hospital's failure and Ireille's death. The Supreme Court granted the petition.

2. Health Care Liability Claims

a) *Leibman v. Waldroup*, ___ S.W.3d ___, 2023 WL 2603206 (Tex. App.—Houston [1st Dist.] 2023), *pet. granted* (Sept. 27, 2024) [23-0317]

The main issue in this appeal is whether the plaintiffs' negligence suit against Leibman to recover damages for injuries sustained in a dog attack triggered the Texas Medical Liability Act's expert-report requirement.

Dr. Leibman, a gynecologist, wrote a series of letters to the landlord of his patient, stating that the patient has generalized anxiety disorder, she has four certified service animals, and she appears to need these service animals to control her anxiety. The purpose of the letters was to help the patient avoid eviction. At some point after the first note was written, the patient registered her dog Kingston as a service animal through a private company, which gave her a card identifying Kingston as a service dog under the Americans with Disabilities Act. One day the patient dressed Kingston in a "service dog" vest and brought him to a restaurant, where he attacked a toddler.

The toddler's parents sued the restaurant, the patient, and Leibman. The plaintiffs allege that Leibman was negligent in providing the letters without ascertaining whether Kingston is actually a service animal trained to perform specific tasks and that his conduct proximately caused the toddler's injuries by enabling the patient to misrepresent Kingston to the public. Leibman filed a motion to dismiss, arguing that the plaintiffs' suit alleges a health care liability claim under the TMLA and that the claim must be dismissed because the plaintiffs failed to timely serve an expert report. The trial court denied the motion, and the court of appeals affirmed. The court held that the plaintiffs' suit against Leibman does not allege a health care liability claim,

as defined in the Act, because it complains about Leibman's representation that Kingston is a certified service animal, rather than his diagnosing the patient with generalized anxiety disorder or his statement that service animals may help her control that disorder.

Leibman filed a petition for review, which the Supreme Court granted.

N. NEGLIGENCE

1. Causation

a) *Werner Enters., Inc. v. Blake*, 672 S.W.3d 554 (Tex. App.—Houston [14th Dist.] 2023) (en banc), *pet. granted* (Aug. 30, 2024) [23-0493]

This car-crash case involves arguments about the sufficiency of the evidence, charge error, and damages.

Shiraz Ali, a novice driver employed by Werner Enterprises, was driving an 18-wheeler on I-20 westbound in Odessa in December 2014. He was accompanied by his supervisor, who was sleeping. In the eastbound lanes, Trey Salinas drove Jennifer Blake and her three children. Salinas hit black ice, lost control of his vehicle, and spun across the 42-foot-wide grassy median into Ali's westbound lane. Ali promptly braked, but the vehicles collided, resulting in the death of one child and serious injuries to the rest of the Blakes.

The Blakes sued Ali and Werner for wrongful death and personal injuries. The trial court rendered judgment on the jury's verdict, which found Ali and Werner liable and awarded the Blakes more than $100 million in damages. Sitting en banc, the court of appeals affirmed over two dissents.

Ali and Werner filed a petition for review. They argue that Ali did not owe a duty to reasonably foresee that the Blakes' vehicle would cross the median into his path, that no evidence supports a finding that Ali's conduct proximately caused the crash, that Werner cannot be held liable for derivative theories of negligent hiring, training, and supervision when it accepted vicarious liability for Ali's conduct, that the court of appeals erred by rejecting petitioners' claims of charge error on grounds of waiver, and that the jury's comparative-responsibility findings are not supported by legally sufficient evidence.

The Supreme Court granted the petition.

2. Duty

a) *Santander v. Seward*, ___ S.W.3d ___, 2023 WL 4576015 (Tex. App.—Dallas 2023), *pet. granted* (Sept. 27, 2024) [23-0704]

The issues include (1) when an off-duty officer working for a private employer is considered to be on duty, (2) whether negligence claims by police officers responding to a request for assistance should have been pleaded as premises-liability claims, and (3) whether the common law "firefighter rule" applies.

Chad Seward was an off-duty police officer employed by Point 2 Point and assigned to work at a Home Depot store. He was asked by a Home Depot employee to issue a criminal trespass warning to a suspected shoplifter. Following police department procedures, Seward checked the suspect for outstanding warrants and then called for

assistance. Two officers responded and guarded the suspect while Seward confirmed the warrant. The suspect pulled a gun and shot the officers, killing one and injuring the other.

The officers sued Seward, Home Depot, and Point 2 Point under various negligence theories. The trial court dismissed the claims against Seward based on the Tort Claims Act's election of remedies, concluding that he was on duty. The trial court later granted Home Depot's and Point 2 Point's motions for summary judgment.

The court of appeals largely reversed. Among other things, it concluded a genuine fact issue exists as to whether Seward was on duty before he confirmed the suspect's warrant. The court of appeals also rejected Home Depot's other arguments for summary judgment, including that the officers' claims sound only in premises liability and that the firefighter rule applies.

Seward, Home Depot, and Point 2 Point petitioned for review. Seward and Point 2 Point argue that Seward was on duty during his entire encounter with the suspect. Home Depot challenges the various grounds on which the court of appeals reversed the trial court's summary judgment.

The Supreme Court granted the petition.

3. Vicarious Liability

a) *Renaissance Med. Found. v. Lugo*, 672 S.W.3d 901 (Tex. App.—Corpus Christi–Edinburg 2023), *pet. granted* (June 21, 2024) [23-0607]

The issue is whether a nonprofit health organization certified under Section 162.001(b) of the Occupations Code can be held vicariously liable for the negligence of a physician employed by the organization.

Renaissance Medical Foundation is a nonprofit health organization certified by the Texas Medical Board. Dr. Michael Burke, who works for Renaissance, performed brain surgery on Rebecca Lugo's daughter. Lugo sued Renaissance, in addition to suing Dr. Burke, alleging that it is vicariously liable for Dr. Burke's negligence in performing the surgery that caused permanent physical and mental injuries to her daughter.

Renaissance moved for summary judgment, arguing that it cannot be held vicariously liable because it is statutorily and contractually barred from controlling Dr. Burke's practice of medicine. The trial court denied the motion after concluding that Dr. Burke's employment agreement gives Renaissance the right to exercise the requisite degree of control over Dr. Burke to trigger vicarious liability. Renaissance filed an interlocutory appeal. The court of appeals affirmed.

Renaissance petitioned for review, arguing that the Section 162.001(b) framework, which prohibits Renaissance from interfering with the employed physician's independent medical judgment, precludes vicarious liability. The Supreme Court granted the petition for review.

O. OIL AND GAS

1. Leases

a) *Hahn v. ConocoPhillips Co.*, ___ S.W.3d ___, 2022 WL 17351596 (Tex. App.—Corpus Christi–Edinburg 2022), *pet. granted* (June 21, 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, Texas.

In 2002, Hahn conveyed the tract to William and Lucille Gips but reserved a 1/8 non-participating royalty interest. Eight years later, the Gipses leased the tract to a subsidiary of ConocoPhillips. The lease entitled the Gipses to a 1/4 royalty and gave Conoco the right to pool the acreage covered by the lease. After Hahn ratified the lease, Conoco pooled the tract into a larger unit. Hahn and the Gipses then signed a stipulation of interest, agreeing that Hahn reserved a 1/8 "of royalty" when he conveyed the tract to the Gipses.

In 2015, Hahn sued Conoco and the Gipses, alleging that he reserved a fixed 1/8 royalty in the tract, rather than a floating royalty. The trial court disagreed and granted summary judgment for the Gipses. But the court of appeals reversed, holding that Hahn reserved a fixed royalty and that the trial court erred by considering the stipulation of interest.

On remand, Conoco argued that because Hahn ratified the Gipses' lease, his royalty should be diminished by their 1/4 royalty. The trial court granted summary judgment for Conoco, but the court of appeals reversed, holding that Hahn was only bound to the lease's pooling provision. The court of appeals also disagreed with Conoco that the intervening decision in *Concho Resources, Inc. v. Ellison*, 627 S.W.3d 226 (Tex. 2021), required it to consider the stipulation of interest.

Conoco petitioned the Supreme Court for review, arguing that the court of appeals erred by (1) concluding that Hahn ratified only the lease's pooling provision, and (2) disregarding the stipulation of interest.

The Court granted Conoco's petition for review.

2. Royalty Payments

a) *Myers-Woodward, LLC v. Underground Servs. Markham, LLC*, ___ S.W.3d ___, 2022 WL 2163857 (Tex. App.—Corpus Christi–Edinburgh 2022), *pet. granted* (Aug. 30, 2024) [22-0878]

This case raises questions of who owns the right to use underground salt caverns created through the salt-extraction process and how a salt royalty interest is calculated.

USM owns the mineral estate of the property at issue, together with rights of ingress and egress for the purpose of mining salt. Myers owns the surface estate and a 1/8 nonparticipating royalty in the minerals. USM sued Myers, seeking declaratory relief regarding the royalty's calculation and the right to use the underground salt caverns, in which it stored hydrocarbons. Myers countersued, seeking, among other things, a declaration that USM cannot use the subsurface to store hydrocarbons. The parties filed competing summary-judgment motions.

The trial court granted USM's motion in part, declaring USM the owner of the subsurface caverns, and granted Myers's motion in part, holding USM may only use the caverns for the purposes specified in the deed, effectively denying USM the right to use the salt caverns for storing hydrocarbons. The trial court then held that Myers's royalty is based on the market value of the salt at the point of production, and it entered a take-nothing judgment on Myers's remaining claims. Both parties appealed.

The court of appeals reversed the judgment declaring that USM owns the subsurface caverns and rendered judgment that they belong to Myers. The court expressly declined to follow *Mapco, Inc. v. Carter*, 808 S.W.2d 262, 278 (Tex. App.—Beaumont 1991*), rev'd in part on other grounds*, 817 S.W.2d 686 (Tex. 1991) (per curiam) (holding that the salt owner owns and is entitled to compensation for the use of an underground storage cavern), holding instead that most authority in Texas requires a conclusion that the surface estate owner owns the subsurface. It affirmed the remainder of the judgment, including the holding that the Myers's royalty interest is 1/8 of the market value of USM's salt production at the wellhead.

Both Myers and USM petitioned for review, raising issues regarding the calculation of Myers's royalty interest and the ownership of the caverns. The Supreme Court granted both petitions.

P. PROCEDURE—APPELLATE

1. Waiver

a) *Bertucci v. Watkins*, 690 S.W.3d 341 (Tex. App.—Austin 2022), *pets. granted* (May 31, 2024) [23-0329]

These cross-petitions raise issues of briefing waiver and whether fiduciary duties are owed among business partners.

Bertucci and Watkins founded several companies to develop low-income housing projects. After many years of working together, Bertucci came to suspect that Watkins was misappropriating the companies' funds and sought an accounting. Because of the dispute, certain company profits were placed in escrow, and eventually, Watkins sued for their distribution. Bertucci counterclaimed on behalf of himself and derivatively on behalf of the companies for theft and breach of fiduciary duty. Watkins maintains that Bertucci, now deceased, orally approved compensating Watkins with the allegedly misappropriated funds. The parties filed competing motions for summary judgment, and the trial court granted Watkins' motion.

The court of appeals, sitting en banc, reversed. First, it held that Bertucci waived his appeal of the summary judgment on the derivative claims by failing to brief them. The court concluded fact issues precluded summary judgment on Bertucci's individual claims. The court also held that Watkins' testimony that Bertucci orally approved of the transactions should have been excluded under the Dead Man's Rule, which precludes testimony by a testator against the executor in a civil proceeding. Both parties filed petitions

for review.

Bertucci argues that his brief should have been liberally construed so that appeal of the derivative claims was not lost by waiver. He also argues that the trial court erred in admitting an auditor's report into evidence, alleging that it is unverified and unreliable. Watkins argues that he is entitled to summary judgment on the breach of fiduciary duty claim because, as limited partners in a partnership, Watkins did not owe Bertucci a fiduciary duty as a matter of law. Watkins further argues that the statute of limitations has run on Bertucci's claims because the discovery rule does not apply. Finally, Watkins argues that his testimony about Bertucci's oral approvals was corroborated and therefore admissible under the Dead Man's Rule. The Supreme Court granted both petitions for review.

Q. PROCEDURE—PRETRIAL

1. 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.

2. Multidistrict Litigation

a) *In re Jane Doe Cases*, *argument granted on pet. for writ of mandamus* (Mar. 15, 2024) [23-0202]

This mandamus arises out of the "tag-along" transfer of the underlying lawsuit to an MDL involving other sex-trafficking cases. The issue in this case is whether the MDL panel erred by refusing to remand the case, thereby allowing it to remain in the MDL.

In the underlying case, Jane Doe alleges that she was a victim of sex trafficking. She contends that another user befriended her on Facebook and

sent her messages convincing her to meet in person, after which she was forced into sex with several others at a hotel owned by Texas Pearl. In 2018, Doe sued Facebook and Texas Pearl, alleging they both had roles in facilitating her trafficking. In 2019, the MDL panel transferred seven other cases involving sex trafficking allegations to an MDL pretrial court. In 2022, Texas Pearl transferred the underlying case into the MDL as a tag-along case, asserting that Doe's claims are closely related to the MDL cases because those cases also involve sex-trafficking allegations against hotels. Facebook moved to remand, arguing that the case is not sufficiently related to the MDL cases to be transfered.

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.

The Supreme Court granted review of Facebook's mandamus petition.

3. Summary Judgment

a) *Myers v. Raoger Corp.*, ___ S.W.3d ___, 2023 WL 4346826 (Tex. App.—Dallas 2023), *pet. granted* (Sept. 27, 2024) [23-0662]

The issue is whether the evidence is sufficient to create a fact issue about whether it was apparent to a restaurant that its patron was obviously intoxicated.

Nasar Khan went to dinner with Kelly Jones at Cadot Restaurant, where he consumed at least four alcoholic beverages. After driving Jones home, Khan rear-ended Barrie Myers. Khan went to the hospital, where he failed a field-sobriety test and had a 0.139 BAC several hours after the collision.

Myers sued Cadot under the Dram Shop Act, alleging that Cadot is liable because it served a patron who was obviously intoxicated. Cadot filed no-evidence and traditional motions for summary judgment, arguing that Khan did not show any visible signs of intoxication at Cadot. In support of its traditional motion, Cadot submitted deposition and affidavit testimony of several witnesses who interacted with Khan that night, including Jones, Cadot's owner, and the officer who performed Khan's field-sobriety test. Each testified that Khan showed no signs of intoxication. In response, Myers submitted the testimony of several witnesses who claimed that based on Khan's BAC, he would have showed signs of intoxication at Cadot. Myers also submitted Khan's own testimony that he was overserved and that Cadot should have observed that he was intoxicated. The trial court granted Cadot's motion for summary judgment. The court of appeals reversed, holding that a fact issue exists about whether it was apparent to Cadot that Khan was obviously intoxicated.

Cadot filed a petition for review that challenges the court of appeals' holding. The Court granted the petition.

R. PROFESSIONAL SERVICES

1. Anti-Fracturing Rule

a) *Rivas v. Pitts*, 684 S.W.3d 849 (Tex. App.—Austin 2023), *pet. granted* (Mar. 15, 2024) [23-0427]

At issue is whether a plaintiff can maintain fraud and breach of fiduciary duty claims against his accountants.

From 2007 to 2018, Brandon Pitts and other accountants at the Pitts & Pitts firm provided accounting services to Rudolph Rivas, a custom home builder. These services included preparing tax returns and financial statements, defining ledger accounts, and training Rivas's staff in various accounting skills. In 2016, Rivas discovered several accounting errors that had artificially inflated the valuation of shareholder equity in his company. Rivas had to pay millions of dollars to various financial institutions to avoid defaulting on loans. Rivas also struggled to secure new lines of credit, and several of his businesses have since failed.

Rivas sued the accountants for professional negligence, breach of contract, breach of fiduciary duty, and fraud. The accountants filed a traditional and no-evidence motion for summary judgment as to each claim. The trial court granted the accountants' motion without stating its reasoning.

The court of appeals affirmed in part and reversed in part. The court first held that Rivas had waived or confessed error with respect to his negligence and breach of contract claims, and it affirmed the summary judgment for those claims. The accountants argued that Rivas's claims for fraud and breach of fiduciary duty are barred by the anti-fracturing rule, which prohibits a plaintiff from converting a claim for professional negligence into some other common-law or statutory claim. The accountants also argued that there is no evidence to support either claim. The court of appeals rejected both arguments and reversed the summary judgment with respect to the fraud and breach of fiduciary duty claims.

The accountants petitioned the Supreme Court for review, urging their anti-fracturing rule and no-evidence points. The Supreme Court granted the petition.

S. REAL PROPERTY

1. Bona Fide Purchaser

a) *CRVI Riverwalk Hosp., LLC v. 425 Soledad, Ltd.*, 691 S.W.3d 644 (Tex. App.—San Antonio 2022), *pet. granted* (May 31, 2024) [23-0344]

A main issue is whether a creditor's bona fide protections pass to a subsequent purchaser if the property is purchased through a receivership sale rather than through foreclosure.

A parking garage, hotel, and office building initially were under common ownership. The owner retained the garage and hotel but sold the office building, which was eventually acquired by 425 Soledad. The original owner and purchaser executed an agreement making a certain number of parking spots in the garage available to the office building and its tenants. The agreement stated that it would run with the land and be binding on the parties' successors and assigns, but it was never recorded.

The garage and hotel were later

sold to a purchaser who financed the transaction with two promissory notes. CRVI Crowne acquired the B note. When the new owner of the garage and hotel defaulted, Crowne chose to place the properties into receivership rather than foreclose on them. A related entity, CRVI Riverwalk, purchased the garage and hotel through the receiver. After Riverwalk became the owner of the garage and hotel, 425 Soledad requested parking spaces pursuant to the agreement made by the garage and hotel's original owner. Riverwalk refused to provide the spaces, and 425 Soledad sued.

Riverwalk argues that the parking agreement is unenforceable because Crowne was a bona fide creditor when it purchased the note without notice of the unrecorded agreement; then, when Riverwalk purchased the garage and hotel from the receiver, Crowne's bona fide protections passed through to it. The trial court rejected these arguments and entered judgment for 425 Soledad after a bench trial.

The court of appeals reversed. The court agreed with the trial court that the parking agreement is an easement, but it concluded that Crowne was a bona fide creditor and that Crowne's status "sheltered" and passed through to Riverwalk when Riverwalk purchased the garage and hotel through the receivership sale.

425 Soledad petitioned the Supreme Court for review. It argues that because Riverwalk purchased the properties from the debtor's receiver, and not from creditor Crowne in a foreclosure sale, that Crowne's bona fide protections, if any, cannot shelter or pass through to Riverwalk. The Court granted the petition.

2. Deed Restrictions

a) *EIS Dev. II, LLC v. Buena Vista Area Ass'n*, 690 S.W.3d 369 (Tex. App.—El Paso 2023), *pet. granted* (May 31, 2024) [23-0365]

The central issue in this case is the interpretation of a deed restriction.

EIS Development II acquired land in Ellis County to develop as a residential subdivision. The land came with a deed restriction stating: "No more than two residences may be built on any five acre tract. A guest house or servants' quarters may be built behind a main residence location . . . ." The subdivision was platted with 73 homes on 100 acres, with all but one lot being smaller than two acres. Nearby landowners formed the Buena Vista Area Association and sued to enforce the deed restriction.

The trial court denied EIS's plea in abatement, which sought to join adjoining landowners who were not already parties. The court concluded that the deed restriction unambiguously limits building on the property to two main residences per five-acre tract, and it granted partial summary judgment for the Association on that issue. The parties then proceeded to a jury trial on EIS's affirmative defense of "changed conditions." The jury failed to find that EIS had established that defense. The trial court entered a final judgment for the Association that permanently enjoined EIS from building more than two main residences per five-acre tract. The court of appeals affirmed.

In its petition for review, EIS challenges the trial court's denial of its

plea in abatement, the court's interpretation of the deed and other legal rulings, and the jury instructions. The Supreme Court granted the petition.

T. TAXES

1. Sales Tax

a) *GEO Grp., Inc. v. Hegar*, 661 S.W.3d 470 (Tex. App.—Amarillo 2023), *pet. granted* (Aug. 30, 2024) [23-0149]

The issue is whether companies that own and operate correctional and detention facilities qualify for a sales-tax exemption under state law.

During the relevant tax period, GEO operated correctional and detention facilities in Texas under contracts with both the State of Texas and the United States. The Comptroller later audited GEO's payment of sales and use tax for the relevant period and assessed a deficiency. GEO requested redetermination, refunds, and audit reductions, but the Comptroller rejected GEO's contention that certain purchases were exempt from taxation and denied the request. GEO then brought a taxpayer suit for refund.

In the trial court, the parties stipulated that GEO would be entitled to a refund of more than $3 million if it is an entity or organization eligible for exempt status under Rule 3.322(c) in Title 34 of the Administrative Code. So qualifying would then make GEO's purchases eligible for the exemptions set forth in Section 151.309 of the Tax Code. Following a bench trial, the trial court rendered judgment that GEO is not entitled to the claimed refunds. The court of appeals affirmed.

GEO petitioned for review, arguing that the lower courts applied the wrong evidentiary standard and misconstrued the term "instrumentality" in Rule 3.322(c). The Supreme Court granted the petition.

U. TEXAS CITIZENS PARTICIPATION ACT

1. Applicability

a) *Whataburger Rests. LLC v. Ferchichi*, ___ S.W.3d ___, 2022 WL 17971316 (Tex. App.—San Antonio 2022), *pet. granted* (Aug. 30, 2024) [23-0568], *consolidated for oral argument with Pate v. Haven at Thorpe Lane, LLC*, 681 S.W.3d 476 (Tex. App.—Austin 2023), *pet. granted* (Aug. 30, 2024) [23-0993]

The issue in these cases is the applicability of the Texas Citizens Participation Act to a motion to compel discovery that includes a request for attorney's fees.

In *Whataburger*, Sadok Ferchichi sued Crystal Krueger after she rear ended Ferchichi while driving a Whataburger-owned vehicle. Ferchichi learned during mediation that Whataburger had evidence that it did not produce in discovery. Ferchichi moved to compel production of the evidence and to award reasonable attorney's fees as sanctions. Whataburger and Krueger filed a TCPA motion to dismiss the motion to compel.

Pate involves a suit for common-law fraud and DTPA violations by fifty plaintiffs who signed leases to live in Haven's student-housing apartment complex. Before the lawsuit, Jeretta Pate and April Burke, the mothers of two plaintiffs, created a Facebook group, conveyed information to media

outlets who ran stories about the Haven complex, and asserted grievances with governmental authorities. Haven served subpoenas duces tecum on the nonparty mothers, seeking documents and communications about Haven and the lawsuit. The mothers objected to many requests for production and included a privilege log. Haven filed a motion to compel and for attorney's fees, and the mothers responded by filing a TCPA motion to dismiss that motion.

In both cases, the trial court denied the motion to dismiss. And in both cases, the court of appeals reversed. Both courts of appeals held that the discovery motion before it is a "legal action" under the TCPA that was made in response to the exercise of the right to petition (*Whataburger*) or to "communication, gathering, receiving, posting, or processing of consumer opinions or commentary, evaluations of consumer complaints, or reviews or ratings of businesses" (*Pate*). Additionally, both courts held that the movant did not establish a prima facie case for sanctions so as to avoid dismissal.

Ferchici and Haven each petitioned for review. They argue that a motion to compel discovery that includes a request for attorney's fees is not a legal action under the TCPA, that their motions were not made in response to the exercise of a protected right, and that they established their prima facie cases for sanctions. The Supreme Court granted both petitions.

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