

# Court Advisory

Fourth Court of Appeals  
Cadena-Reeves Justice Center  
300 Dolorosa, Suite 3200  
San Antonio, Texas 78205-3037



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FOR IMMEDIATE RELEASE  
April 17, 2015

## Fourth Court of Appeals to Hear Oral Argument

The Fourth Court of Appeals will hear oral arguments in two appeals on Tuesday, April 21, 2015, beginning at 9:00 a.m., before the following panel of justices: Justice Karen Angelini, Justice Marialyn Barnard, and Justice Rebeca C. Martinez.

The following cases will be presented:

*Westfreight Systems, Inc. v. John Michael Heuston, Individually and as Dependent Administrator of the Estate of Juana Garza, Deceased, and Geronimo Rodriguez, Individually* – Westfreight Systems, Inc. appeals a judgment awarding damages to the heirs of Juana Garza, who died after rear-ending an eighteen-wheel tractor-trailer truck. Westfreight contends the evidence is legally insufficient to support proximate causation. On cross-appeal, Heuston maintains the evidence is factually insufficient to support the jury's verdict finding Garza negligent and attributing twenty percent of the responsibility to her.

*United Parcel Service, Inc. and Roland Leal v. Robert Scott Rankin, Individually, Rachele Rankin, Individually and as Next Friend for Avery Rankin, Kara Rankin, and Samuel Rankin, Minors* - UPS and Leal appeal the over \$4 million judgment in favor of appellees, which was the result of litigation relating to an accident between Rankin, a bicyclist, and a UPS package vehicle. On appeal, UPS and Leal bring several issues, including charge error, sufficiency of the evidence to support jury findings, and the admission of certain evidence. Appellees have also brought a cross appeal, arguing that the trial court erred in its award of attorneys' fees to appellees.

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The Fourth Court of Appeals will hear oral arguments in one appeal on Wednesday, April 22, 2015, beginning at 2:00 p.m., before the following panel of justices: Justice Patricia O. Alvarez, Justice Luz Elena D. Chapa, and Justice Jason Pulliam.

The following case will be presented:

*DiAthegeen, LLC v. Phytion Biotech, Inc., Phytion Biotech, LLC, and Phytion Biotech, GmbH* - This is an appeal and cross-appeal from the trial court's judgment that partially vacated an arbitration award.

DiAthegeen held rights in certain patents and patent applications concerning technology for producing long-acting protein drugs in cultured plant cells. It entered into an exclusive sub-license agreement with Phytion Biotech, Inc., pursuant to which Phytion would develop, obtain approval for, and market a new drug using the patented technology. The agreement granted Phytion the exclusive rights to use and exploit the technology. It also gave Phytion the right to relinquish its rights at any time, but so long as it kept its right, the agreement required Phytion to use commercially reasonable efforts to develop a product and established a minimum performance standard. Phytion was required to return the material DiAthegeen had furnished if the agreement was terminated. In the event of an uncured breach of the agreement by Phytion, DiAthegeen was entitled to recover all losses, costs, expenses and damages incurred or suffered by it. However, the agreement expressly provided that no indirect or consequential damages or lost profits could be recovered.

DiAthegeen alleged a breach by Phytion and the dispute was submitted to arbitration, pursuant to the parties' agreement. The arbitration panel awarded DiAthegeen \$1.875 million in damages for the breach. The panel declared Phytion had no further right, title, or interest in the technology and ordered Phytion to return the original and all copies of the technology DiAthegeen had provided or pay an additional \$10,000. In addition, the panel awarded DiAthegeen its attorneys' fees and costs incurred in the arbitration proceedings, prejudgment interest, and postjudgment interest.

DiAthegeen filed a petition to confirm the award against the three Phytion entities. Phytion sought to vacate the award on the ground the arbitration panel exceeded its authority by awarding damages prohibited by the parties' contract. The trial court vacated the award of \$1.875 million and the prejudgment interest on that part of the award. In all other respects, the court confirmed the award and decreed the three Phytion entities are jointly and severally liable. The court denied DiAthegeen's request for attorneys' fees incurred in the state court litigation.

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Finally, the court awarded post-judgment interest from the date of the trial court's order, at the statutory rate.

On appeal, DiAthegeen argues: (1) the arbitration panel did not exceed its authority and the trial court erred in by vacating the damage award and the interest on that award and (2) the trial court erred in denying its request for attorney's fees incurred in the confirmation litigation. The Phyton entities argue in their cross-appeal that (1) the trial court should have also vacated the awards of attorney's fees, costs, and interest associated with the vacated damage award and (2) the trial court erroneously modified the arbitration award to make the Phyton entities jointly and severally liable.

The oral arguments will be held in the Fourth Court's Courtroom, Caden-Reeves Justice Center, Third Floor, 300 Dolorosa, San Antonio, Texas.