



Case Summaries December 20, 2024

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DECIDED CASES

INSURANCE

Policies/Coverage

Ohio Cas. Ins. Co. v. Patterson-UTI Energy, Inc., ___ S.W.3d ___, 2024 WL ___ (Tex. Dec. 20, 2024) [[23-0006](#)]

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

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

The trial court granted Patterson's motion for summary judgment, concluding that the policy covers defense expenses. The court of appeals affirmed. The Supreme Court granted Ohio Casualty's petition for review.

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

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

GRANTED CASES

WORKERS' COMPENSATION

Exclusive Jurisdiction

Univ. of Tex. Rio Grande Valley v. Oteka, ___ S.W.3d ___, 2023 WL 413587 (Tex. App.—Corpus Christi—Edinburg 2023), *pet. granted* (Dec. 20, 2024) [[23-0167](#)]

In this personal-injury case, the issue on appeal is whether an employee must obtain a predicate finding from the Division of Workers' Compensation that her injuries did not occur in the course and scope of her employment for the trial court to have subject-matter jurisdiction over her negligence claim against the employer.

A university professor was walking through the parking lot after attending a commencement ceremony when a vehicle driven by a university police officer struck and injured her. The professor sued the university for negligence. As an affirmative defense, the university asserted that workers' compensation benefits are the exclusive remedy because the injuries occurred during the course and scope of her employment. Disputing that her injury was work related, the professor moved for partial summary judgment on the affirmative defense. The university then filed a plea to the jurisdiction, arguing that the Division has exclusive jurisdiction to determine the course-and-scope issue and that the professor therefore failed to exhaust her administrative remedies.

The trial court denied the plea, and the university appealed. The court of appeals affirmed, holding that exhaustion is not required because the professor's suit is not based on the ultimate question whether she is eligible for workers' compensation benefits.

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

TEXAS CITIZENS PARTICIPATION ACT

Timeliness of Trial Court's Ruling

Farmland Partners Inc. v. First Sabrepoint Cap. Mgmt., L.P., ___ S.W.3d ___, 2023 WL 4286017 (Tex. App.—Dallas 2023), *pet. granted* (Dec. 20, 2024) [[23-0634](#)]

The central issue in this appeal is whether a trial court has the authority to grant a motion to dismiss under the Texas Citizens Participation Act after the motion has been denied by operation of law.

After an investment researcher published an article about Farmland Partners, Farmland alleged that the article was defamatory and caused its stock price to decline. Accusing Sabrepoint of participating with the researcher to manipulate the securities market and profit from the stock-price decline, Farmland sued in Colorado state court. The case was removed to federal court, and the court dismissed the suit for lack of personal jurisdiction. Farmland then filed suit in Texas state court. Sabrepoint moved to dismiss the suit under the TCPA because the article was protected speech. Sabrepoint also moved for summary judgment based on collateral estoppel, arguing that the federal court determined in its jurisdictional decision that Sabrepoint was not involved with the article. The trial court granted both motions, and Farmland appealed.

The court of appeals determined that the TCPA order is void and not appealable because the motion was initially denied by operation of law under the TCPA when the trial court did not rule within thirty days of the hearing on that motion. The court then reversed the summary judgment, concluding that Sabrepoint has not established that collateral estoppel applies, and it remanded the case to the trial court.

Sabrepoint petitioned for review, arguing that (1) the trial court had authority to

grant the TCPA motion outside the thirty-day statutory window and (2) the court of appeals erred in reversing the summary judgment. The Supreme Court granted the petition.

NEGLIGENCE

Causation

Tenaris Bay City Inc. v. Ellisor, ___ S.W.3d ___, 2023 WL 5622855 (Tex. App.—Houston [14th Dist.] 2023), *pet. granted* (Dec. 20, 2024) [[23-0808](#)]

This flooding case presents issues related to the legal sufficiency of causation evidence to support negligence claims.

For decades, homeowners in Matagorda County lived near a grass farm. In 2013, Tenaris bought the farm and built a manufacturing facility on the land. In 2017, Hurricane Harvey hit. Although rainfall in the county was significantly less than in Houston, the homeowners allege their properties flooded for the first time. They sued Tenaris for negligence, alleging that the facility's presence and storm-drainage deficiencies caused the flooding. During the trial, both sides presented weather and civil-engineering experts. The trial court granted a directed verdict on gross negligence in Tenaris's favor and rendered judgment for the homeowners on favorable jury findings for negligence, negligent nuisance, and negligence per se. The parties stipulated to damages of \$2,800,000. Tenaris appealed, and the court of appeals affirmed the trial court's judgment.

The Supreme Court granted Tenaris's petition for review, which argues that (1) the court of appeals applied the wrong causation standard; (2) expert causation evidence was required but legally insufficient to prove Tenaris caused the flooding; and (3) the trial court erred by striking the grass farm as a responsible third party.

MUNICIPAL LAW

Zoning

City of Dallas v. PDT Holdings, Inc., ___ S.W.3d ___, 2023 WL 4042598 (Tex. App.—Dallas 2023), *pet. granted* (Dec. 20, 2024) [[23-0842](#)]

The petitioner challenges the court of appeals' reversal of a judgment in its favor that the City of Dallas is estopped from enforcing a zoning ordinance.

PDT submitted plans for the construction of a thirty-six-foot-high townhome to the City of Dallas. The City approved the plans and issued a building permit. The City did not identify that its Residential Proximity Slope ordinance, which requires structures to have a maximum height of twenty-six feet, applies to the townhome. PDT began construction. A few months later, the City issued a stop-work order for PDT's failure to comply with a different regulation. The order did not mention the slope ordinance. A few months after that, when the townhome was 90% complete, the City issued another stop-work order, this time for violation of the slope ordinance. PDT sought a variance from the Board of Adjustment, which was denied.

In the trial court, PDT alleged that it is entitled to relief under several theories, including equitable estoppel, laches, and waiver. After a bench trial, the trial court rendered judgment for PDT. The judgment, drafted by PDT, states only that the City is estopped from enforcing the slope ordinance against the townhome. The City did not request findings of fact and conclusions of law. The court of appeals reversed and rendered judgment that PDT is not entitled to relief on its claim for equitable estoppel.

PDT filed a petition for review. It argues that the court of appeals applied the

wrong standard of review in its analysis, that the court should have considered its alternative theories before reversing the judgment, and that policy considerations support the application of equitable estoppel here. The Supreme Court granted the petition.

CONTRACTS

Damages

Simmons v. White Knight Dev., LLC, ___ S.W.3d ___, 2023 WL 5624126 (Tex. App.—Waco 2023), *pet. granted* (Dec. 20, 2024) [[23-0868](#)]

This case concerns whether a seller awarded specific performance of a real estate contract is also entitled to monetary compensation for expenses incurred because of the purchaser's late performance.

In 2016, Dick and Julie Simmons sold real estate to White Knight Development with a “buy back” agreement requiring the Simmonses to repurchase the property if subdivision residents extended certain deed restrictions by 2018. Residents extended the restrictions in October 2016, and White Knight demanded the Simmonses perform the buy back agreement. They refused, and White Knight sued for specific performance, breach of contract, and fraud in the inducement of a real estate contract. After a bench trial, the trial court found the Simmonses liable for breach of contract and ordered specific performance. It also awarded White Knight \$308,136.14 in “actual damages/consequential damages” for expenses incurred between the time the Simmonses should have performed and the trial.

The court of appeals affirmed the order of specific performance but modified the judgment to delete the monetary award to White Knight. It recognized that courts may award compensation incidental to specific performance to account for the delay in performance and adjust the equities between the parties. But here, the court reasoned, nothing indicates that the trial court made the monetary award to adjust the equities, as it spoke only of damages from the breach. The court of appeals thus deleted the award on the ground that White Knight cannot receive both specific performance and damages for the breach.

White Knight petitioned for review. It argues that the trial court's findings of fact and conclusions of law demonstrate that it made the monetary award to adjust the equities between the parties. Additionally, White Knight argues that the court of appeals improperly invoked a magic-words requirement that prevents warranted incidental compensation because it is labeled as damages. The Supreme Court granted the petition.

CONSTITUTIONAL LAW

Due Process

Thompson v. Landry, ___ S.W.3d ___, 2023 WL 4770126 (Tex. App.—Houston [1st Dist.] 2023), *pet. granted* (Dec. 20, 2024) [[23-0875](#)]

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

Mae Landry inherited her grandmother's interest in a twelve-acre property. Tax authorities obtained a 2015 default judgment, foreclosing liens on the property to collect delinquent property taxes. They served all defendants by posting notice on the courthouse door. Cindy Thompson later purchased the property at a tax sale. Landry

lived on the property before and after the sale, and her husband paid rent to Thompson until Thompson asked the Landrys to vacate. Ten years after the sale of the property, Landry sued to void the default judgment and to quiet title, alleging that citation by posting violated her constitutional right to procedural due process.

The trial court granted Landry's summary judgment motion and declared the default judgment void, denying Thompson's summary judgment motions based on limitations and laches. The court of appeals reversed, holding that there is a fact issue as to whether Landry's due process rights were violated.

Thompson petitioned for review, arguing that the court of appeals incorrectly applied Texas Supreme Court precedent. Thompson argues that Landry had actual notice of the default judgment, and this notice prevents her due process claim. She also argues that Landry's claim is barred by the Tax Code, which imposes a two-year limitations period on claims disputing title against purchasers if the original owner lived in the property as her homestead when a delinquent tax suit was first filed. The Supreme Court granted the petition.

TEXAS CITIZENS PARTICIPATION ACT

Initial Burden

Walgreens v. McKenzie, 676 S.W.3d 170 (Tex. App.—Houston [14th Dist.] 2023), *pet. granted* (Dec. 20, 2024) [[23-0955](#)]

The main issue in this case is whether a party moving to dismiss a negligent-hiring claim under the Texas Citizens Participation Act meets its initial burden to demonstrate that the TCPA applies when the claim implicates an employee's exercise of a First Amendment right.

While shopping at Walgreens, Pamela McKenzie was detained and questioned by a police officer, who received an employee's report that McKenzie had shoplifted from the store earlier that day and on prior occasions. After reviewing surveillance video, the officer determined that McKenzie was not the thief, and she was released. McKenzie sued Walgreens, alleging that the employee knew that she was not the person in the video before reporting to the police and that she was targeted because of her race. She asserted several tort claims, including a claim that Walgreens was negligent in hiring, training, and supervising the employee who called the police. Walgreens moved to dismiss all her claims under the TCPA, arguing that its employee's report to law enforcement was a protected exercise of a First Amendment right. The trial court denied the motion, and Walgreens filed an interlocutory appeal.

A divided court of appeals panel affirmed with respect to the negligent-hiring claim but reversed otherwise and dismissed the remainder of McKenzie's claims. The majority reasoned that the negligent-hiring claim does not implicate the TCPA because it is based in part on conduct by Walgreens occurring before the incident and not based entirely on the employee's constitutionally protected police report. Thus, the majority held, Walgreens did not meet its initial burden to demonstrate that the TCPA applies to this claim. One justice dissented in part, opining that the majority had erroneously treated the negligent-hiring claim as an independent tort claim that may be viable even if there is no liability for an underlying tort. By a 5-4 vote, the court denied Walgreen's motion for rehearing en banc.

The Supreme Court granted Walgreen's petition for review.

PROCEDURE—PRETRIAL

Responsible Third-Party Designation

In re E. Tex. Med. Ctr. Athens, ___ S.W.3d ___, 2023 WL 8103959 (Tex. App.—Austin 2023), *argument granted on pet. for writ of mandamus* (Dec. 20, 2024) [[23-1039](#)]

At issue is whether a negligence claim against a nonsubscribing employer is an action to collect workers' compensation benefits excluded from the scope of the proportionate-liability statute.

Sharon Dunn, an ER nurse employed by East Texas Medical Center Athens was injured when an EMT pushed a stretcher into her back. She initially sued the EMT and his employer, but those claims were dismissed because she failed to file expert reports by the statutory deadline as required under the Texas Medical Liability Act. While those claims were still pending, Dunn amended her petition to include a negligence claim against ETMC Athens, a nonsubscriber to workers' compensation. After the original defendants were dismissed, ETMC Athens filed a motion for leave to designate them as responsible third parties. Dunn did not object to the motion, and the trial court granted leave. Eleven months later, Dunn moved to strike the designation, arguing that ETMC Athens is foreclosed from designating RTPs because the proportionate-responsibility statute, found in Chapter 33 of the Texas Civil Practices and Remedies Code, is inapplicable. Specifically, she argued that her negligence claim against ETMC Athens is “an action to collect workers' compensation benefits under the workers' compensation laws of this state,” to which Chapter 33 does not apply.

The trial court granted Dunn's motion to strike. The court of appeals denied ETMC Athens's petition for writ of mandamus, holding that the trial court did not abuse its discretion in striking the RTPs because a negligence action against a nonsubscriber employer is an action to collect workers' compensation benefits under the Texas Workers' Compensation Act.

ETMC Athens filed a petition for writ of mandamus in the Supreme Court, arguing that the trial court clearly abused its discretion in striking the RTPs on nonevidentiary sufficiency grounds and that it lacks an adequate remedy on appeal. ETMC Athens argues that Dunn waived her nonevidentiary arguments by failing to timely raise them and that ETMC Athens is entitled to designate RTPs because Dunn's suit is a common-law negligence suit, not an action to collect workers' compensation benefits excluded from the scope of Chapter 33. The Supreme Court granted argument on the petition for writ of mandamus.

ADMINISTRATIVE LAW

Public Information Act

Paxton v. Am. Oversight, 683 S.W.3d 873 (Tex. App.—Austin 2024), *pet. granted* (Dec. 21, 2024) [[24-0162](#)]

At issue is whether trial courts have jurisdiction to issue writs of mandamus against the Governor and Attorney General to compel information under the Public Information Act.

In 2021 and 2022, American Oversight submitted various PIA requests to the Office of the Governor and the Office of the Attorney General. These requests largely pertained to official governmental communications surrounding the events of January 6, 2021, and the 2022 shooting in Uvalde. Both offices provided some documents but also reported that they did not find documents responsive to the requests for communications between government officials and external entities, including the

National Rifle Association. Both offices also sought to withhold information they view as excepted from disclosure. Both offices received open records letter rulings from OAG's Open Records Decision opining that the documents are excepted from disclosure and can be withheld.

American Oversight sued the Governor and Attorney General in their official capacities in Travis County district court, seeking a writ of mandamus to compel disclosure of the requested information. The Governor and Attorney General filed pleas to the jurisdiction asserting sovereign immunity and mootness. They argued, among other things, that American Oversight failed to plead a viable claim that they had "refuse[d]" to supply public information. The trial court denied the pleas. The court of appeals affirmed.

The Governor and Attorney General petitioned the Supreme Court for review, arguing that the trial court lacked mandamus jurisdiction over American Oversight's suit because only the Supreme Court has jurisdiction to issue a writ of mandamus against executive officers. They also argue that American Oversight has not demonstrated a waiver of sovereign immunity by showing that the government refused to supply public information. The Court granted the petition.

PROCEDURE—PRETRIAL

Summary Judgment

State of Texas v. \$3,774.28, 692 S.W.3d 759 (Tex. App.—Amarillo 2024) *pet. granted* (Dec. 20, 2024) [[24-0258](#)]

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

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

The trial court granted summary judgment for the claimants. At a hearing on a related motion for leave in which the State sought to have the affidavit considered, the trial court said that it understood the Texas Rules of Civil Procedure to require all evidence considered in a no-evidence summary judgment to be attached to the summary judgment response. The court of appeals affirmed, concluding that the rules require attachment.

The State filed a petition for review. It argues that the court of appeals erred by concluding that there is an attachment requirement in the no-evidence rule. The State also argues that its references to and discussion of the affidavit in its response were sufficient to direct the trial court to the affidavit, which was indisputably on file with the court. Accordingly, the State argues that because the affidavit raises a genuine issue of material fact, the trial court erred in granting summary judgment for the claimants.

The Supreme Court granted the petition.

NEGLIGENCE

Public Utilities

In re Oncor Elec. Delivery Co., 694 S.W.3d 789 (Tex. App.—Houston [14th Dist.] 2024), *argument granted on pet. for writ of mandamus* (Dec. 20, 2024) [[24-0424](#)]

At issue is whether the multidistrict litigation court should have dismissed plaintiffs' gross negligence and intentional nuisance claims against transmission and distribution utility companies.

In February 2021, Winter Storm Uri created record-setting demand for electricity. ERCOT ordered transmission and distribution utilities to "load shed" (interrupt power) to protect the electric grid from collapse. The TDUs' load shedding reduced electric service on ERCOT's grid, causing blackouts for four days.

Thousands of customers filed hundreds of lawsuits against electricity companies, including TDUs, seeking damages related to the power outages. The cases were consolidated into a multidistrict litigation court. Plaintiffs alleged various claims, including negligence, gross negligence, and nuisance. The TDUs moved to dismiss under Texas Rule of Civil Procedure 91a, arguing that the claims are barred by the tariff governing their operations. The trial court dismissed some claims but refused to dismiss the negligence, gross negligence, and nuisance claims. The court of appeals granted mandamus relief in part, ordering dismissal of the negligence and strict-liability nuisance claims, while allowing the gross negligence and intentional nuisance claims to proceed.

The TDUs petitioned the Supreme Court for mandamus relief. They argue that the common law does not impose tort duties on TDUs in emergency load-shedding. Additionally, they contend that their tariff's force majeure provision bars gross negligence and intentional nuisance claims arising from good-faith compliance with ERCOT's emergency orders. The Court granted argument on the petition for writ of mandamus.