Case Summaries
February 7, 2025

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RECENTLY GRANTED CASES

Sw. Airlines Pilots Ass'n v. Boeing Co., ___ S.W.3d ___, 2022 WL 951027 (Tex. App.—Dallas 2022), *pet. granted* (Jan. 10, 2025) [22-0631]

This case raises questions of federal preemption and the assignability of causes of action.

In 2016, the Southwest Airlines Pilots Association entered a collective bargaining agreement with the airline on behalf of its member pilots and agreed that the pilots would fly the new Boeing 737 MAX aircraft. The FAA grounded the aircraft in 2019, and SWAPA sued Boeing in state court on behalf of itself and its pilots for the resulting damages. Boeing removed the case to federal court, but that court determined it lacked jurisdiction and remanded. While the remand motion was pending, more than 8,000 pilots assigned all grounding-related claims against Boeing to SWAPA. Boeing filed a plea to the jurisdiction following the remand, arguing that SWAPA lacked standing to bring claims on behalf of the pilots and that the Railway Labor Act preempted SWAPA's own state law claims. The trial court granted the plea and dismissed both sets of claims with prejudice.

The court of appeals reversed in part and modified the trial court's judgment in part. It held that SWAPA did not meet the associational standing requirements to bring claims on behalf of its pilots. But the court recognized that the pilots' assignment of their claims could confer standing on SWAPA in a future suit and modified the trial court's dismissal as to those claims to be without prejudice. It then held that SWAPA possessed standing to bring claims on its own behalf and reversed the trial court's dismissal of those claims. Finally, the court held that SWAPA's own claims were not preempted by the Act because it only preempts claims between airline carriers and employees.

Boeing petitioned for review. It argues that the Act preempts all claims requiring the interpretation of a collective bargaining agreement and not just those involving airline carriers and employees. Boeing also argues that the pilots' assignments could not confer future standing on SWAPA because they circumvent associational standing limitations and should be invalidated on public policy grounds. The Supreme Court granted Boeing's motion for rehearing and its petition for review.

Cactus Water Servs., LLC v. COG Operating, LLC, 676 S.W.3d 733 (Tex. App.—El Paso 2023), *pet. granted* (Jan. 31, 2025) [23-0676]

This dispute concerns whether the mineral lessee or the surface estate holder owns the "produced water" from oil and gas operations.

COG is the mineral lessee under four leases with two surface owners in Reeves County. COG's operations focus on hydraulic fracking, which involves pumping large quantities of water into wells to extract oil and gas. The fluid that returns to the surface contains a mixture of various minerals. Once the oil and gas are removed, the remaining fluid is known as produced water. Until recently, produced water was disposed of as a byproduct of oil and gas operations. Now, produced water can be treated and recycled for other uses.

Years after executing the mineral leases with COG, the surface owners executed Produced Water Lease Agreements with Cactus. These leases conveyed to Cactus the produced water from oil and gas operations on the land. Cactus informed COG of its leases. COG sued Cactus, seeking a declaratory judgment that under the mineral leases, COG owned the produced water from its operations. Cactus counterclaimed, asserting its right of ownership under the PWLAs. The trial court granted summary judgment in COG's favor and declared that COG owned the produced water that was part of COG's product stream. The court of appeals affirmed. It concluded that produced water is waste as a matter of law, and COG has the exclusive right to the produced water.

Cactus filed a petition for review. It argues that the court of appeals erred because the surface estate owns all subsurface water absent an express conveyance. Here, Cactus argues, the only express conveyances of the produced water were to Cactus in the PWLAs. The Supreme Court granted the petition.

BioTE Med., LLC v. Carrozzella, ___ S.W.3d ___, 2023 WL 4779484 (Tex. App.—Fort Worth 2023), *pet. granted* (Jan. 31, 2025) [23-0724]

In this case, Dr. Carrozzella challenges the court of appeals' rulings that the Covenants Not to Compete Act did not apply to a provision of his contract with BioTE Medical, that the provision was not otherwise void, and that BioTE could therefore enforce the provision in the underlying suit.

Carrozzella treats patients suffering from hormone imbalances. BioTE contracted with Carrozzella to provide him equipment and support necessary to offer BioTE's pellet therapy to Carrozzella's patients. The contract stated that, should Carrozzella ever provide a different supplier's pellet therapy, he would owe BioTE a one-time "Residual Benefit" fee, equal to the highest average fees Carrozzella paid BioTE in any three-month period during the previous year. In 2020, Carrozzella notified BioTE that he would no longer use its services, planned to provide a different pellet therapy, and did not consider the fee provision enforceable.

BioTE sued Carrozzella, who moved for partial summary judgment, arguing that the residual benefit fee was an unenforceable restraint on competition under the Covenants Not to Compete Act. The trial court granted Carrozzella's motion, and BioTE appealed. The court of appeals reversed, holding that the residual benefit fee was not a covenant not to compete. The court of appeals also held that the agreement was not unenforceable as violative of public policy.

Carrozzella petitioned the Supreme Court for review, arguing that the residual benefit fee is an unenforceable restraint on competition under both the Covenants Not

to Compete Act and Chapter 15 of the Business and Commerce Code generally. The Supreme Court granted the petition for review.

Rush Truck Ctrs. of Tex., L.P. v. Sayre, ___ S.W.3d ___, 2023 WL 8270236 (Tex. App.—Dallas 2023), *pet. granted* (Jan. 31, 2025) [24-0040]

This case raises venue and jurisdiction issues in an interlocutory appeal from a venue ruling.

Six-year-old Emory Sayre died after a school bus accident. Her parents sued the manufacturer, Rush Truck, in Dallas County for product liability. Rush Truck moved to transfer venue to either Parker County, where the accident occurred, or Comal County, Rush Truck's headquarters. The trial court denied the motion. Rush Truck brought an interlocutory appeal, asserting error in the trial court's venue ruling. The court of appeals affirmed, holding that a substantial part of the events or omissions giving rise to the Sayres' product liability claim arose in Dallas County. The court of appeals noted evidence that the bus was ordered, delivered, inspected, titled, billed, and paid for out of Rush Truck's Dallas County office.

Rush Truck petitioned for review, arguing that interlocutory appeals of venue determinations are available in all cases with multiple plaintiffs, that the court of appeals erred in considering allegations outside the venue section of pleadings, and that no substantial events or omissions giving rise to the Sayres' claim occurred in Dallas County. The Supreme Court granted review.

Pearland Urb. Air, LLC v. Cerna, 693 S.W.3d 711 (Tex. App.—Houston [14th Dist.] 2024), *pet. granted* (Jan. 31, 2025) [24-0273]

The issue in this case is whether an arbitrator or a court should determine whether an arbitration agreement signed during an earlier visit to a trampoline park governs an incident that occurred during a later visit.

Abigail Cerna and her minor son, R.W., visited an Urban Air trampoline park in August 2020. At that visit, Cerna—on R.W.'s behalf—signed a release containing an arbitration clause that delegated questions of arbitrability to the arbitrator. Cerna and R.W. visited the same park again in November without signing a new agreement. During the later visit, R.W. cut his foot while jumping on a trampoline.

Cerna sued Urban Air for negligence. Urban Air moved to compel arbitration, arguing that the agreement signed by Cerna in August applied to the November visit and that, in any case, the arbitrator must resolve the arbitrability dispute. The trial court denied Urban Air's motion to compel arbitration, and Urban Air filed an interlocutory appeal. The court of appeals reversed, holding first that the August agreement was a valid arbitration agreement and second that the question of whether the August agreement applied to the November visit is one of scope, not existence, which must be decided by the arbitrator given the delegation in the August agreement.

Cerna petitioned the Supreme Court for review, arguing that the threshold question is one of existence—whether any valid arbitration clause exists that applies to the November visit—and that this threshold question must therefore be determined by a court. The Supreme Court granted the petition for review.