Case Summaries
February 14, 2025

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DECIDED CASES

Port Arthur Cmty. Action Network v. Tex. Comm'n on Env't Quality, ___ S.W.3d ___, 2025 WL ___ (Tex. Feb. 14, 2025) [24-0116]

In this case the Court answers a certified question from the United States Court of Appeals for the Fifth Circuit.

Port Arthur LNG sought a permit from the Texas Commission on Environmental Quality to expand its liquefied natural gas plant. To receive a permit, the applicant must show that emission sources at the facility satisfy Best Available Control Technology requirements. Port Arthur Community Action Network, an environmental group, challenged whether BACT was met, arguing that Port Arthur LNG had proposed emission limits for certain pollutants that exceeded the limits TCEQ had previously approved for another plant, the Rio Grande Plant. The Rio Grande Plant has a permit but has yet to be constructed. TCEQ rejected PACAN's challenge and granted a permit to Port Arthur LNG. PACAN appealed this decision to the Fifth Circuit under the federal Natural Gas Act.

The Fifth Circuit certified this question to the Texas Supreme 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 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 answered the question as follows. BACT is technology that has already proven, through experience and research, to be operational, obtainable, and capable of reducing emissions. BACT does not extend to methods that TCEQ deems to be capable of operating in the future. Further, BACT is not limited to a pollution control method that is currently operating under a previously granted permit. The earlier permit, such as one for a facility that has yet to be built, might exceed a level of pollution control that is currently available, technically practical, and economically reasonable. A previously permitted emissions level for one facility is neither necessary nor sufficient to establish BACT for other, similar facilities.

Roe v. Patterson, ___ S.W.3d___, 2025 WL ___ (Tex. Feb. 14, 2025) [24-0368]

In two certified questions, the United States Court of Appeals for the Fifth Circuit asks, "Can a person who supplies defamatory material to another for publication be liable for defamation?" and "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?"

Jane Roe alleges she was sexually assaulted while attending Southwest Baptist Theological Seminary. Southwest later removed President Leighton Patterson, citing in part Patterson's mishandling of Roe's allegations. Seeking Patterson's reinstatement, a group of donors published a letter stating that Roe had lied to the police and falsely characterized a consensual relationship as assault. Roe sued Southwest and Patterson for defamation, claiming that Patterson's agent was the source of defamatory statements in the letter. The district court granted summary judgment for Southwest and Patterson, and the Fifth Circuit certified questions regarding liability for defamation.

The Supreme Court answered "yes" to both questions. It held that a person who supplies defamatory material to another for publication may be liable if the person intends or knows that the defamatory material will be published. A plaintiff may survive summary judgment without identifying the specific statements the defendant made if the evidence is legally sufficient to support a finding that the defendant was the source of the defamatory content.

Paxton v. Comm'n for Law. Discipline, ___ S.W.3d ___, 2025 WL ___ (Tex. Feb. 14, 2025) (per curiam) [24-0452]

After the Supreme Court held that the Attorney General's first assistant could not be subjected to collateral professional discipline based on alleged misstatements in initial pleadings filed on behalf of the State of Texas, *see Webster v. Comm'n for Law. Discipline*, ___ S.W.3d ___, 2024 WL 5249494, at *1, *21 (Tex. Dec. 31, 2024), the Commission for Lawyer Discipline nonsuited its nearly identical lawsuit against Attorney General Ken Paxton. The Commission then moved to dismiss the petition as moot. The Attorney General conceded that the case was moot but argued that the Supreme Court should vacate both the court of appeals' judgment and its opinion.

The Supreme Court, in a per curiam opinion, agreed. In addition to vacating the court of appeals' judgment, the Court exercised its discretion and concluded that the public interest would be served by vacating the court of appeals' opinion.