# Case Summaries
# June 20, 2025

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## DECIDED CASES

***Boeing Co. v. Sw. Airlines Pilots Ass'n***, ___ S.W.3d ___, 2025 WL ___ (Tex. June 20, 2025) [22-0631]

This case concerns preemption under the Railway Labor Act and associational standing.

SWAPA represents Southwest Airlines pilots and negotiates collective bargaining agreements with Southwest on their behalf. Boeing manufactures planes, and in 2011, launched the new 737 MAX. Southwest wanted its pilots to fly the MAX; the pilots refused. SWAPA alleges that Boeing inserted itself into SWAPA's negotiations with Southwest and falsely assured SWAPA that the MAX was safe to fly without additional training. SWAPA relied on Boeing's misrepresentations when it entered into a new contract, agreeing to fly the MAX. But after two MAX planes crashed, the FAA grounded them.

SWAPA sued Boeing. Boeing filed a plea to the jurisdiction arguing that (1) the Railway Labor Act preempts SWAPA's claims and (2) SWAPA lacks "associational standing" to pursue the claims on the individual pilots' behalf. In response to Boeing's standing challenge, SWAPA members assigned their claims against Boeing to SWAPA. Boeing then amended its plea to argue that the assignments are void as against public policy because they attempt to circumvent Texas law's associational-standing and class-action requirements. The trial court granted the plea and dismissed SWAPA's claims with prejudice.

The court of appeals held that (1) the Railway Labor Act does not preempt SWAPA's claims, (2) SWAPA lacks associational standing to pursue the claims on its members' behalf, but (3) the assignments are not void. The court modified the judgment so that it dismissed SWAPA's associational claims without prejudice.

The Supreme Court affirmed. It held that SWAPA's claims were not preempted because they do not depend on the interpretation of a collective bargaining agreement and the assignments are not void as against public policy. SWAPA therefore has standing to pursue its members' individual claims in a second suit, and the court of

appeals did not err in modifying the judgment to dismiss without prejudice. The Court remanded to the trial court for further proceedings on the claims SWAPA asserted on its own behalf.

Justice Bland dissented in part. She would hold that the assignments are void because they attempt to circumvent statutory requirements for associational standing.

***Mehta v. Mehta***, ___ S.W.3d ___, 2025 WL ___ (Tex. June 20, 2025) [23-0507]

At issue in this case is whether the trial court abused its discretion in awarding spousal maintenance in a divorce decree.

Before they divorced, Hannah and Manish Mehta had three children, one of whom was a "medically fragile" child. The trial court ordered Manish to pay child support and spousal maintenance to Hannah. Manish appealed. The court of appeals reversed the spousal maintenance award, concluding that Hannah presented insufficient evidence that she would lack sufficient property after the divorce to meet her minimum reasonable needs. Hannah petitioned the Supreme Court for review.

The Court reversed and reinstated the spousal maintenance award. The Court held that the court of appeals erred by considering only the incomplete quantitative evidence of Hannah's expenses to the exclusion of other evidence, including testimony that she was unable to pay essential, basic living expenses. The Court also concluded that courts may consider child support payments received by the spouse seeking maintenance, provided that the court also considers child-related expenses that the custodial spouse will incur. The Court held that Hannah provided sufficient evidence that she would lack sufficient property after the divorce to provide for her minimum reasonable needs. Because Hannah also established that she is the custodial parent of a disabled child requiring substantial care and personal supervision, the trial court did not abuse its discretion in finding that she was eligible for spousal maintenance.

Justice Lehrmann filed a concurring opinion, emphasizing that courts determining eligibility for spousal maintenance should consider all available income—including child support payments—and all reasonable expenses—including child-related expenses—because both materially affect the seeking spouse's ability to meet her minimum reasonable needs.

***BRP-Rotax GmbH & Co. KG v. Shaik***, ___ S.W.3d ___, 2025 WL ___ (Tex. June 20, 2025) [23-0756]

The issue in this case is whether the trial court had specific personal jurisdiction over Rotax under the stream-of-commerce-plus test.

Sheema Shaik suffered serious injuries in a plane crash in Texas. Rotax is the designer and manufacturer of the airplane's engine. Shaik and her husband sued Rotax in Texas for strict liability, negligence, and gross negligence. Rotax is an Austrian company. An independent Bahamian distributor, Kodiak, purchased the engine at issue in Austria, shipped it to the Bahamas, and then sold it to its sub-distributor in Florida, which in turn sold the engine to the Texas company that installed the engine into the plane that crashed.

Rotax filed a special appearance challenging the trial court's personal jurisdiction over Rotax given its lack of physical presence in or direct connection to Texas. The trial court denied the special appearance, and the court of appeals affirmed. It held that under the stream-of-commerce-plus test, Rotax had sufficient indirect contacts with Texas for Texas courts to exercise specific personal jurisdiction.

The Supreme Court reversed. It reiterated that stream-of-commerce jurisdiction requires a stream, not a dribble, caused by the defendant rather than only by third parties. The engine here came to Texas by the unilateral actions of third parties—not any "stream" engineered, controlled, or manipulated by Rotax. Instead, under a distribution agreement, Rotax's sole relevant distributor, Kodiak, had substantial discretion in marketing and advertising Rotax products and was responsible for warranty claims and establishing repair centers throughout its territory, which spanned nearly the entire Western Hemisphere. No other evidence showed that Rotax purposefully availed itself of the privilege of doing business in Texas. Thus, the Supreme Court rendered judgment dismissing the Shaiks' claims against Rotax for lack of personal jurisdiction.

Justice Busby filed a concurring opinion, urging the U.S Supreme Court to reconsider its current approach to personal jurisdiction, which yields unpredictable and inconsistent outcomes in factually similar cases and is unmoored from the federal Constitution's text and history.

***City of Houston v. Gomez***, ___ S.W.3d ___, 2025 WL ___ (Tex. June 20, 2025) (per curiam) [23-0858]

This case concerns the circumstances in which a city's immunity is waived under the Texas Tort Claims Act when a police officer is responding to an emergency call.

A Houston police officer responding to an armed robbery in progress collided with another vehicle. The other driver sued the City of Houston for negligence. The City filed a plea to the jurisdiction, arguing the Act's waiver of immunity did not apply because the officer was responding to an emergency call. The trial court originally granted the plea, but the court of appeals reversed, concluding there was a disputed fact question as to whether the officer acted with conscious indifference or reckless disregard for the safety of others. On remand, the trial court denied the City's renewed plea to the jurisdiction, and the court of appeals affirmed. As to the officer's alleged recklessness, the court of appeals concluded that its original decision controlled as the law of the case.

The Supreme Court reversed and dismissed the claim. The Court held that the officer's actions amounted to no more than ordinary negligence, so there was no fact issue as to whether the officer acted with conscious indifference or reckless disregard. The Court also concluded that the court of appeals should have analyzed the evidence under this Court's more recent controlling precedents rather than relying on the law of the case doctrine.

***Lozada v. Posada***, ___ S.W.3d ___, 2025 WL ___ (Tex. June 20, 2025) (per curiam) [23-1015]

The issue in this case is whether the court of appeals erred in reversing the trial court's grants of no-evidence motions for summary judgment.

Cesar Posada sued Osvanis Lozada and Lozada's employer, TELS, Inc., following a collision between two tractor trailers. He brought negligence and negligence per se claims against Lozada and sought to hold TELS vicariously liable. After Lozada and TELS filed no-evidence motions for summary judgment, Posada submitted evidence that Lozada was traveling under the speed limit when a tire on his tractor trailer suddenly and unexpectedly lost air, causing him to lose control and jackknife before Posada crashed into him. The trial court granted the motions, but in a divided decision, the court of appeals reversed. It held that from the evidence Posada submitted, a reasonable jury could conclude that Lozada breached his duty of care and that Lozada's negligence was a proximate cause of Posada's injuries. Because Posada's claims against Lozada survived, the court of appeals concluded that Posada's vicarious-liability claim against TELS survived as well.

The Supreme Court reversed. On a limited summary-judgment record consisting solely of Lozada's deposition testimony and two photographs of the accident scene, the Court concluded that Posada failed to produce more than a scintilla of evidence that Lozada breached his duty of care. Accidents happen when something has gone wrong, but not all accidents are evidence of negligence. Here, no evidence suggested that Lozada acted negligently in trying to control the tractor trailer in response to a rapid, unforeseen tire failure. Because summary judgment for Lozada was appropriate based on the uncontroverted testimonial evidence that Posada put in the record, summary judgment for TELS was appropriate as well. Thus, the Supreme Court reinstated the trial court's judgment, dismissing Posada's claims against Lozada and TELS with prejudice.

***Hyundam Indus. Co. v. Swacina***, ___ S.W.3d ___, 2025 WL ___ (Tex. June 20, 2025) (per curiam) [24-0207]

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

Johari Powell was injured when her 2009 Hyundai Elantra stalled in the center lane of traffic and another car rear-ended her. Powell alleges that her Elantra stalled because its fuel pump failed.

Paul Swacina, on behalf of Powell and her minor children, sued multiple defendants for various causes of action, including Hyundam Industrial Company, Ltd., the manufacturer of the Elantra's fuel pump. Hyundam filed a special appearance requesting that the trial court dismiss the case against it for lack of personal jurisdiction. In support, it attached an affidavit by Jinwook Chang, a Hyundam director, detailing the fuel pump's manufacturing and sales processes. Swacina responded with evidence purporting to show that Hyundam was subject to personal jurisdiction in Texas and objected to Chang's affidavit for lack of personal

knowledge. The trial court overruled Swacina's objection and denied Hyundam's special appearance. The court of appeals affirmed.

The Supreme Court reversed and dismissed the case against Hyundam for lack of personal jurisdiction. The Court held that the affidavit was sufficiently based on Chang's personal knowledge because Chang detailed his experience at Hyundam, the knowledge he obtained in his roles, and the documents he reviewed to prepare his affidavit. The Court further held there was no evidence Hyundam targeted Texas, so it did not purposefully avail itself of the Texas market. Hyundam designing the fuel pump for North American specifications did not constitute additional conduct targeting Texas. Nor did Swacina's evidence that a replacement fuel pump was purchased in Texas, Hyundam maintained a website in English, and Hyundai Motor Company sold Elantras in the United States show that Hyundam targeted Texas.

## RECENTLY GRANTED CASES

***NuStar Energy, L.P. v. Hegar***, 683 S.W.3d 831 (Tex. App.—Austin 2023), *pet. granted* (June 13, 2025) [24-0037]

At issue in this case is the facial validity of Comptroller Rule 3.591(e)(29), which defines Texas receipts by a place-of-delivery test for the purpose of calculating franchise taxes.

NuStar Energy sells bunker fuel oil, a high sulfur fuel, to foreign-owned ships. The fuel is loaded onto ships in Texas waters, but a variety of laws prevent the ships from using the fuel until they are in international waters and from returning to Texas waters with the fuel. The franchise tax calculation is based on, in part, what percentage of sales are classified as Texas receipts. The Comptroller treated NuStar's bunker-fuel-oil sales as Texas receipts because NuStar delivered the fuel in Texas waters. NuStar paid the taxes, but requested a refund, based on a calculation that excluded these sales from its Texas receipts because the fuel is never used in Texas.

After an administrative proceeding, the Comptroller denied NuStar's requested refund, relying on the Rule's place-of-delivery test for determining Texas receipts. NuStar then sued the Comptroller, challenging the Rule as inconsistent with Section 171.103(a)(1) of the Tax Code, which provides that sales of tangible personal property are considered Texas receipts "if the property is delivered or shipped to a buyer in this state." The parties filed cross-motions for partial summary judgment on this issue, and the trial court determined that the Rule is valid. On permissive interlocutory appeal, the court of appeals affirmed, concluding that the statute unambiguously requires that the place of delivery controls even if the buyer is located out of state.

NuStar petitioned the Supreme Court for review. NuStar argues that the statutory phrase "in this state" modifies only "buyer," which dictates an ultimate-destination test. The Comptroller argues that the only reasonable interpretation of the statute is a place-of-delivery test: whether tangible personal property is delivered or shipped in Texas to a buyer.

The Court granted NuStar's petition.

***Gonzalez v. Tex. Med. Bd.***, ___ S.W.3d ___, 2023 WL 7134982 (Tex. App.—Austin 2023), *pet. granted* (June 13, 2025) [24-0340]

The principal issue in this case is whether there is a statutory right to judicial review of a cease-and-desist order issued by the Texas Medical Board.

Reynaldo Gonzalez, Jr. holds a Medical Degree and a Juris Doctor, but he is only licensed to practice law. In 2020, Gonzalez ran for the U.S. House of Representatives and referred to himself as a "physician and attorney" in campaign materials. After receiving an anonymous complaint, TMB held a cease-and-desist hearing, which Gonzalez attended. TMB issued a cease-and-desist order prohibiting Gonzalez from holding himself out as a licensed physician without designating the authority giving rise to his use of that title.

Gonzalez filed a suit for judicial review in district court, alleging the order was unlawful, unconstitutional, and not supported by the evidence. He sought various declarations related to these allegations. TMB filed a plea to the jurisdiction, arguing that the suit was untimely under the Administrative Procedure Act and that Gonzalez's declaratory judgment requests were redundant of his request for judicial review. The trial court granted TMB's plea.

The court of appeals affirmed in part and reversed in part. It concluded that Gonzalez's suit was untimely under the APA. But it reversed the trial court's dismissal of his facial constitutional challenge to a statute, concluding it was not redundant of his untimely suit.

Gonzalez filed a petition for review. He argues that the APA does not apply to TMB's cease-and-desist hearings, and TMB rules establish an independent right to judicial review. He also argues that the court of appeals should have remanded his "as-applied" constitutional challenge in addition to his facial constitutional challenge and that the court erroneously reached the merits on TMB's statutory authority. Finally, Gonzalez argues that the trial court improperly excluded certain testimony made by TMB's counsel during the cease-and-desist hearing.

The Supreme Court granted the petition.

***Bauer v. Braxton Mins. III, LLC***, 689 S.W.3d 633 (Tex. App.—Fort Worth 2024), *pet. granted* (June 13, 2025) [24-0438]

This case involves a Texas court's subject-matter jurisdiction over claims relating to mineral interests in West Virginia.

Braxton Minerals III sued Bauer and Braxton Minerals II for deed reformation, breach of contract, declaratory judgment, fraud, and other causes of action. The trial court granted summary judgment for Braxton Minerals III. It ordered Bauer and Braxton Minerals II to specifically perform their obligations by conveying West Virginian mineral interests to Braxton Minerals III, enjoined Bauer and Braxton Minerals II from encumbering the mineral interests, and awarded Braxton Minerals III actual damages, fees, and costs. The court of appeals reversed and dismissed the case. The court held that because the gist or gravamen of Braxton

Minerals III's claims concern the adjudication of title to real property outside of Texas, the Texas court lacked subject-matter jurisdiction.

Braxton Minerals III petitioned the Supreme Court for review. It argues that Texas courts may enforce the legal obligations of the parties, even if they relate to real property outside of Texas, and that the court has jurisdiction over the claims because they sound *in personam*, not *in rem*. It further argues that the Texas courts of appeals' rule for determining when courts have jurisdiction over claims relating to property outside of Texas is contrary to the Supreme Court's precedent. The Supreme Court granted the petition.

***In re Brenham Nursing & Rehab. Ctr.***, ___ S.W.3d ___, 2024 WL 924436 (Tex. App.—Houston [1st Dist.] 2024), *argument granted on pet. for writ of mandamus* (June 13, 2025) [24-0494]

In this case, the parties dispute the effect of missing a deadline to provide "specific facts" as required to raise a defense under the Pandemic Liability Protection Act and whether Brenham Nursing provided sufficient facts to assert that defense.

Shortly after Harold Herrin was admitted to Brenham Nursing's nursing home facility, COVID-19 became a global pandemic. Herrin ultimately contracted and died from COVID-19 while at the facility. Members of his family sued Brenham Nursing. They alleged Brenham Nursing negligently caused Herrin to contract COVID-19, leading to his death. Brenham Nursing asserted a statutory defense to ordinary negligence liability, applicable in certain cases involving a pandemic disease. After a statutory deadline passed, the plaintiffs filed a motion to bar Brenham Nursing from relying on the defense, arguing Brenham Nursing failed to timely provide specific facts as the statute requires. Subsequently, Brenham Nursing twice amended its Answer to plead additional facts to support the defense.

The trial court granted the plaintiffs' motion, barring Brenham Nursing from raising the defense. The court of appeals denied mandamus relief without substantive opinion.

Brenham Nursing filed a petition for writ of mandamus in the Supreme Court, arguing that missing the statutory deadline should not bar the defense and that its Original Answer and Amended Answers provided the necessary "specific facts." The Supreme Court granted argument on the petition for writ of mandamus.

***Copper Creek Distribs., Inc. v. Valk***, ___ S.W.3d ___, 2024 WL 2513312 (Tex. App.—Dallas 2024), *pet. granted* (June 13, 2025) [24-0516]

This case concerns the propriety of a trial court's jury instruction on spoliation of evidence.

Ron Valk owns Platinum Construction. Don Triplett, a friend of Ron's son, convinced Ron to use Copper Creek Distributors, Inc. as a vendor for Platinum's construction projects. Triplett did not disclose that he owned the business. Platinum hired Triplett to be the superintendent on two projects, where he was responsible for managing the workers on the job sites. Ron alleges that Triplett diverted Platinum's

workers from the project sites to his own residential construction projects, leading to this lawsuit.

Prior to trial, Ron requested the trial court give the jury a spoliation instruction, arguing that CCDI and Triplett's husband, Doni Escoffie, destroyed pertinent email and accounting evidence. The court granted the request but instructed the jury only as to CCDI's spoliation. The jury found CCDI committed theft of services, intentionally interfered with the contract between Platinum and its contractors, and was unjustly enriched by using Platinum's services. The jury also found Escoffie responsible for the conduct of CCDI. The trial court rendered judgment in accordance with the jury's verdict.

Escoffie and CCDI appealed, and the court of appeals reversed, holding the trial court abused its discretion by giving the spoliation instruction because it failed to consider the availability of lesser sanctions and the instruction probably caused the rendition of an improper judgment.

Ron petitioned the Supreme Court for review, arguing that the instruction was proper, but even if was improper, it did not constitute harmful error. The Supreme Court granted the petition.

***S&B Eng'rs & Constructors, Ltd. v. Scallon Controls, Inc.***, ___ S.W.3d ___, 2024 WL 2340790 (Tex. App.—Beaumont 2024), *pet. granted* (June 13, 2025) [24-0525]

An issue in this case is whether a defendant can settle tort claims and then seek recovery under a contractual comparative-indemnity provision.

Loss of power at a refinery triggered the release of a fire-suppression chemical from a fire-suppression system installed by an independent contractor. Workers injured while fleeing sued both the refinery and the contractor. The defendants then sued a subcontractor for contribution and indemnity, asserting the contractor had instructed the subcontractor to program the system so that the chemical would *not* be released if the system lost power. The subcontractor contends that no such instruction was given. The defendants subsequently settled with the injured workers but not the subcontractor. When the refinery nonsuited its claims against the subcontractor, its insurer intervened as subrogee.

On cross-motions for summary judgment, the trial court rendered judgment for the subcontractor. The court of appeals affirmed, holding that (1) the insurer's claims were barred by the statute of limitations; (2) the contractor was not entitled to indemnification because it settled for its own negligence and the indemnification contract did not satisfy the express negligence rule; and (3) the contractor failed to adequately brief any complaint about the adverse judgment on its breach-of-contract and breach-of-warranty claims.

In separate petitions for review, the contractor and insurer assert that the express negligence rule is inapplicable because their indemnification claims are based on the subcontractor's negligence. The insurer further argues that the limitations period did not commence on its indemnification claim until the settlement was finalized, and the contractor additionally challenges the court of appeals' waiver holding. The Supreme Court granted the petitions for review.

***JLMH Invs., LLC v. Fam. Dollar Stores of Tex., LLC***, ___ S.W.3d ___, 2024 WL 2971684 (Tex. App.—Fort Worth 2024), *pet. granted* (June 13, 2025) [24-0543]

At issue in this case is whether a real property owner may be granted injunctive relief to abate a nuisance even though the relevant statute of limitations has expired for each of its claims for monetary relief.

JLMH is the owner of a plot of real property in Fort Worth. Sometime in 2014 or 2015, the adjacent property owner entered into a contract for the construction and operation of a Family Dollar Store. After the Store's construction was complete, the owners of JLMH noticed its property began to flood heavily each time it rained, leading to the accumulation of silt and trash around the property and the development of new cracks in the parking lot resulting from standing water. JLMH sought aid from the City to no avail, and eventually brought claims for monetary and injunctive relief against Family Dollar (among others) for nuisance, trespass, negligent and intentional diversion of water, and violations of the Water Code. Family Dollar moved for summary judgment, arguing the statute of limitations barred each of JLMH's claims. The trial court granted the motion. The court of appeals affirmed in part and reversed in part, holding that although the statute of limitations barred JLMH from any monetary recovery, it maintained a standalone right to injunctive relief in order to abate the nuisance.

Family Dollar and its co-defendants filed a petition for review. They argue that JLMH is not eligible for injunctive relief because each of its underlying causes of action has been dismissed, and that in any event, the expiration of the statute of limitations bars all recovery. The Supreme Court granted the petition for review.

***City of San Antonio v. Realme***, ___ S.W.3d ___, 2024 WL 3954217 (Tex. App.—San Antonio 2024), *pet. granted* (June 13, 2025) [24-0864]

The issue in this case is whether participating in an organized 5K race constitutes "recreation" under the Recreational Use Statute.

On Thanksgiving Day 2017, Nadine Realme participated in a Turkey Trot 5K in downtown San Antonio. During the race, she attempted to pass slower participants by deviating from the sidewalk into a grassy area, where she tripped over a protruding metal object and fell into a utility pole, breaking her arm.

Realme sued the City for premises liability. The City moved for summary judgment under the Recreational Use Statute, arguing that because Realme was engaged in "recreation," the City could only be liable for gross negligence. The trial court denied the motion. The court of appeals affirmed, holding that participating in an organized 5K race did not constitute "recreation" under the Recreational Use Statute. The court concluded that organized, competitive footraces are "a celebration of organized human activity" rather than activities "associated with enjoying nature or the outdoors" under the Recreational Use Statute's catch-all provision.

The City petitioned the Supreme Court for review, arguing that outdoor running, regardless of its competitive nature, falls within the Recreational Use Statute's definition of recreation. The City contends the court of appeals erred by

focusing on the competitive aspect of the 5k race rather than recognizing that running is inherently associated with enjoying the outdoors. The Supreme Court granted the petition.