



Case Summaries October 3, 2025

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RECENTLY GRANTED CASES

Carden v. Minton, Bassett, Flores & Carsey, P.C., __ S.W.3d __, 2024 WL 3880035 (Tex. App.—Austin 2024), *pet. granted* (Sept. 26, 2025) [24-0834]

This case concerns an attorney’s liability for civil wrongs committed during his representation of a criminal defendant.

When Amber Carden’s son William McGee was arrested in August 2014, she contacted John Carsey to represent McGee. The parties did not execute a formal written agreement. Carsey requested \$300,000 to cover his fees and expenses, which he claimed included a private investigator, a couple of experts, and adding another partner from his firm. Although Carsey was retained to represent McGee, Carsey communicated almost exclusively with Carden. The case resulted in McGee’s conviction. Carden and McGee thereafter repeatedly requested the firm’s accounting but did not receive it. Only after Carden retained another attorney over three years later did Carsey finally turn over the case file, which revealed that he failed to use the funds for any of the purposes he represented. Carden and McGee sued Carsey and his firm for negligence, gross negligence, breach of fiduciary duty, fraud, and breach of contract. In a motion to dismiss, the firm argued that the claims are improperly fractured legal-malpractice claims, that Carden lacks standing to bring any claim against Carsey, and that McGee’s claims are barred by *Peeler v. Hughes & Luce*. The trial court granted the motion, and the court of appeals affirmed.

Carden and McGee filed a petition for review. They argue their fraud, fiduciary duty, and contract claims are not improperly fractured malpractice claims; that the *Peeler* doctrine does not bar their claims; and that Carden has standing because she was also Carsey’s client. The Supreme Court granted the petition.

In re LaPuerta, __ S.W.3d __, 2024 WL 3762489 (Tex. App.—Houston [1st Dist.] 2024), *argument granted on pet. for writ of mandamus* (Sep. 26, 2025) [24-0879]

This original proceeding challenges a trial court order granting a new trial based on error in a proximate-cause jury instruction.

Dr. Leo LaPuerta performed several surgeries to repair a severe injury to a patient's index finger. The surgeries were unsuccessful, and the patient's finger was eventually amputated by a different doctor. The patient sued LaPuerta and his practice for negligence. At trial, opposing experts testified that the patient's finger had less than a fifty percent chance of being restored following the precipitating accident. Based on this evidence, the jury was instructed that LaPuerta's alleged negligence could be a proximate cause of the amputation only if the patient's finger had greater than a fifty percent chance of survival with reasonable medical care. The jury returned a take-nothing verdict in LaPuerta's favor, but the trial court ordered a new trial because the loss-of-chance instruction was legally invalid, should not have been included in the charge, and caused juror confusion. The court of appeals denied mandamus relief.

In the Supreme Court, LaPuerta argues that (1) the patient failed to preserve his objections to the loss-of-chance instruction, (2) the instruction applies in non-death cases, and (3) the charge accurately stated a plaintiff's burden of proof when a preexisting medical condition may supersede a doctor's negligence. The Supreme Court granted oral argument on the mandamus petition.

Diamond Hydraulics, Inc. v. GAC Equip., LLC, __ S.W.3d __, 2024 WL 4629168 (Tex. App.—Austin 2024), *pet. granted* (Sept. 26, 2025) [24-1049]

At issue in this case is whether Diamond may offer testimony from an untimely identified expert when its original expert moved and refused to testify shortly before trial.

Austin Crane hired Diamond Hydraulics to repair one of its cranes. About six months later, the repaired crane bent, and Austin Crane sued Diamond for breach of contract and breach of warranty. Diamond retained an engineering firm to study the repaired crane and designated one of its engineers as an expert witness. Shortly before trial, that witness changed jobs, moved out of state, and refused to testify.

Diamond filed a motion to substitute its new testifying expert. The trial court denied Diamond's motion and Diamond presented no expert testimony on causation during trial. The court of appeals affirmed.

Diamond filed a petition for review, arguing that the trial court abused its discretion in denying Diamond's motion. It argues that there was good cause for its failure to timely identify the expert and that the late disclosure would not unfairly surprise or prejudice Austin Crane. Diamond also argues that the expert's exclusion violated its constitutional rights by preventing it from arguing the merits of its case. The Court granted the petition.