



Texas Supreme Court Update *Opinions Issued March 16, 2018*

By Stephen Gibson¹

(c) 2018

In today's orders, the court granted petitions for review in the following cases. Oral arguments have not yet been scheduled.

Tort Claims Act: Applicability of the Discretionary Function Exception

The central issue in [*Tarrant Regional Water Dist. v. Johnson*](#) is whether the discretionary function exception to the Tort Claims Act applies so that the water district is insulated from liability for teenager's drowning when she attempted to cross the Trinity Park dam that traversed a kayak run. The plaintiffs maintained and the court of appeals held that the water district was liable for failing to fill in a hole that created a hydraulic boil that contributed to the teenager's drowning. The petition also asserts in an unbriefed issue that the hazard created by the fast moving water was open and obvious and could not, therefore, be a basis of liability.

Health Care Liability: When Does the Willful and Wanton Departure Applicable to Emergency Care Apply?

[*Texas Health Presbyterian Hospital of Denton v. D. A.*](#) involves the applicability of [Texas Civil Practice & Remedies Code §74.153](#). Section 74.153 requires the health care liability claimant to show by a preponderance of the evidence that health care provider deviated from the standard of care reasonably expected of an ordinarily prudent physician or health care provider in the same or similar circumstances with willful and wanton negligence if the injury "arises out of the provision of emergency medical care in a hospital emergency department or obstetrical unit or in a surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department." The parties dispute whether "evaluation or treatment of a patient in a hospital emergency department" applies only to care provided in a "surgical suite" or whether it also applies to treatment in an emergency room or obstetrical unit.

¹ The opinions expressed are solely those of the author. They do not necessarily represent the views of Munsch, Hardt Kopf & Harr, P.C. or its clients.