



# Texas Supreme Court Update

## *Orders Issued January 18, 2019*

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Last Friday, the Texas Supreme Court released orders granting petitions for review and scheduling oral arguments in February and March for nine cases. The following is a brief overview of the cases for which review was granted today.

***Defamation: Does the substantial truth defense apply to accurate reports of a third party's allegations that are not substantially true?***

A publisher is protected from liability for defamation if the gist of the article is substantially true. However, the Texas Supreme Court has previously reserved decision on whether this protection applies to the accurate repetition of allegations by others that prove to be untrue. In [Scripps NP Operating LLC v. Carter](#), the court is being asked to resolve this question after a series of newspaper articles accurately reported the allegations of the treasurer of the local Chamber of Commerce against the president of that organization. The court of appeals ruled that the publisher could have liability because a fact issue existed, not over whether the allegations were accurately reported, but over whether the allegations were substantially true. Incidental issues involve whether there can be a fact issue over the substantial truth of a series of articles when each article standing alone was accurate or substantially true.

***Insurance – Extra-contractual Liability: Can policy proceeds be actual damages for delayed claims payment in violation of the prompt pay statute?***

[Barbara Technologies Corp. v. State Farm Lloyds](#) is a rare rehearing of the denial of a petition for review. This case asks whether policy benefits can be considered actual damages for violation of Insurance Code chapter 542's prompt claims payment requirements. The insurer initially denied a hail damage claim, but paid it years later after invoking the appraisal process under the policy. The insured was permitted to treat the sums due under the policy as damages for purposes of the prompt pay statute. The argument will center on application of the rules in [USAA Texas Lloyds Co. v. Menchaca](#) (discussed in the April 7, 2017 edition of *the Update*) for deciding when policy proceeds may be considered as actual damages for purposes of extra-contractual liability. The same issue is presented in [Ortiz v. State Farm Lloyds](#), which arises from the flip side of the same coin. In [Ortiz](#), the insured's suit for violation of the prompt pay statute was dismissed where the insurer paid the appraisal award.

***Employment Law: Can a notation in an employee's performance evaluation concerning compensation support an employee's breach-of-contract claim?***

In [McAllen Hospitals, L. P. v. Lopez](#), a performance evaluation contained a note that nurses who were at-will employees should be compensated according to an annual salary instead of the hourly wage they were then receiving. The hospital petitions to overturn the lower court judgments awarding the nurses damages for breach of an implied contract based on the compensation mentioned in the evaluation.

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<sup>1</sup> 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.

***Jury Charge Submission: What is the effect of a stipulation limiting the issues to be submitted?***

In [\*Pathfinder Oil & Gas, Inc. v. Great Western Drilling, Ltd.\*](#), the parties stipulated to the submission of only three jury questions concerning their contract dispute over whether the agreement was enforceable, whether it had been breached, and the validity of certain affirmative defenses. The court of appeals reversed based on charge submission according to the stipulation because there was an additional issue that the jury had to decide for the judgment to be supportable. The petitioner challenges the failure of the court of appeals to adhere to the parties' stipulation as well as its decision to render judgment instead of remanding for retrial – the usual remedy for charge error.

***Real Property: Can the interests of a grantor's spouse be treated as if it were the interest of the grantor for purposes of fulfilling a warranty deed for a mineral interest that failed to disclose the interest previously granted to the wife?***

[\*Trial v. Dragon\*](#) questions the application of the *Duhig* rule under which the granted interest is given priority over a grantor's reserved interest in a warranty deed if both interests cannot be fully satisfied due, for example, to a previous undisclosed conveyance. The situation most commonly arises when the grantor conveys an interest by general or special warranty deed that is subject to a reserved interest without disclosing that the interest conveyed is subject to reduction by more than the interest explicitly reserved.

In *Trial*, the *Duhig* rule was applied to the interest of a wife to honor a warranty made by her spouse under a 1940 deed that the wife did not sign. Petitioners urge that the wife's separate property interest cannot be treated as part of her husband's interest to satisfy a later conveyance by the husband alone. Petitioners also urge that grantees cannot assert estoppel by deed against persons who are strangers to the deed.

***Sovereign Immunity: Does actual notice require acknowledgement of disputed legal responsibility for the injury?***

In [\*Worsdale v. City of Killeen\*](#), the petitioners challenge the determination on interlocutory appeal that the city did not have actual notice as required for suit under the Tort Claims Act when there was an ongoing dispute between the city and the county over who owned the road and who was responsible for its maintenance. The city allegedly knew of the accident and that failure to properly warn of conditions resulting from road maintenance contributed to the deaths that were the subject of the plaintiff's suit, the court of appeals ruled that unless the city actually accepted responsibility of maintaining the road, it did not have sufficient actual notice required for waiver of immunity under the Torts Claim Act. One of the issues to be resolved is whether the court of appeals correctly applied the actual notice standard of *Cathey v. Booth*, 900 S.W.2d 339 (Tex. 1995), which only requires some evidence sufficient to raise a fact issue on actual notice.

***Sovereign Immunity: Does "in connection with" a specified activity require that the activity do more than provide the circumstance out of which the injury arose?***

Governmental entities are immune from liability under Texas Code of Criminal Procedure art. 42.20 and Texas Government Code § 497.096 for mere negligence "in connection" with medical treatment of inmates and other activities. In [\*Tarrant County v. Bonner\*](#), an inmate who was being treated for diabetes was injured when a broken chair collapsed beneath him. The chair was known to have been broken and had been temporarily placed in the treatment room to keep it from being used. The inmate alleged the county had been negligent in failing to remove the defective chair and failing to warn of its defective condition. The court of appeals held that the circumstances of the plaintiff's injury were not alleged to have been "in connection with" his medical treatment and, therefore, the statutory immunities did not apply.

***Stay Pending Certain Interlocutory Appeals: Whether the court of appeals is granted discretion to lift or modify the statutory stay of trial proceedings under Texas Civil Practice & Remedies Code §51.014(b)?***

[\*In re Geomet\*](#) is an original mandamus proceeding that arises in a trade secrets dispute from the interlocutory appeal of a ruling on a motion to dismiss under the Texas Citizen's Participation Act. [Texas Civil Practice & Remedies Code §51.014\(b\)](#) provides that such an appeal "stays the commencement of a trial in the trial court pending resolution of the appeal" and "all other proceedings in the trial court pending resolution of that appeal." In this case

the court of appeals lifted the stay to permit a hearings on a temporary injunction and a motion for contempt pending before the interlocutory appeal commenced. At issue is whether, and to what extent, the appellate court may modify the statutory stay. If the merits of this issue are reached, the decision will resolve a conflict among the court of appeals over whether 51.014 is amenable to a judge-made exception to permit modifications of the stay for a “limited purpose” and, if so, what constitutes such a “limited purpose.”

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