



## Case Summaries December 1, 2023

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### OPINIONS

#### PROCEDURE—PRETRIAL

##### Statute of Limitations

*Sanders v. Boeing Co.*, \_\_\_ S.W.3.d \_\_\_, 2023 WL \_\_\_ (Tex. Dec. 1, 2023) [[23-0388](#)]

This certified question concerns the interpretation of Section 16.064 of the Texas Civil Practice and Remedies Code, which tolls limitations when a prior action is dismissed “because of lack of jurisdiction” and then is refiled in a court of “proper jurisdiction” within sixty days after the date the dismissal “becomes final.”

Two flight attendants sustained injuries on the job. They sued the Boeing Company and other defendants in federal district court, which later dismissed their suit for failure to adequately plead diversity jurisdiction. The flight attendants filed this suit shortly after the Fifth Circuit affirmed the dismissal, but the district court dismissed it as barred by the statute of limitations.

On appeal to the Fifth Circuit, the flight attendants argued that Section 16.064 tolled the statute of limitations while they pursued their prior suit because that case was dismissed for lack of jurisdiction and they filed this suit less than sixty days after the Fifth Circuit affirmed. The Fifth Circuit certified two questions to the Supreme Court: (1) Does Section 16.064 apply to this lawsuit where the flight attendants could have invoked the prior district court’s subject-matter jurisdiction with proper pleadings?; and (2) Did the flight attendants file this lawsuit within sixty days of when the prior judgment became “final” for purposes of Section 16.064?

The Supreme Court answered both questions “Yes.” First, the Court concluded that Section 16.064 applies whenever the prior action was dismissed “because of lack of jurisdiction,” even if the court could have had jurisdiction. The statute does not require that the prior court be a “court of improper jurisdiction.” Second, the Court held that a dismissal “becomes final” under the statute only after the parties have exhausted their appellate remedies and the appellate court’s power to alter the judgment ends.