Case Summaries
May 23, 2025

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DECIDED CASES

Am. Midstream (Ala. Intrastate), LLC v. Rainbow Energy Mktg. Corp., ___ S.W.3d ___, 2025 WL ___ (Tex. May 23, 2025) [23-0384]

This case involves contract interpretation, repudiation, and lost-profits damages.

American Midstream owns the Magnolia natural gas pipeline. Rainbow, a natural gas trading company, contracted with American Midstream to transport natural gas on the Magnolia. The parties' contract required American Midstream to provide "firm" transportation and balancing services except where the contract excused its performance. American Midstream limited its balancing services on various occasions and claims that it was excused from performing under the contract. The parties' representatives spoke on a conference call in which Rainbow claimed American Midstream repudiated the contract. A month later, after continuing to ship gas under the contract, Rainbow terminated the contract, citing American Midstream's breach and repudiation.

Rainbow sued American Midstream for breach of contract, repudiation, fraud, fraudulent inducement, and negligent misrepresentation. After a bench trial, the court found for Rainbow on all its claims, and Rainbow elected to recover on its breach-of-contract claim. The court of appeals affirmed. It held that the trial court properly interpreted the contract, and that sufficient evidence supported the trial court's findings of breach and lost profits.

The Supreme Court reversed. The Court held that the trial court improperly interpreted the contract by inserting language that the parties did not include themselves. Three consequences flowed from correcting the trial court's interpretation of the contract. First, the Court remanded the parties' breach-of-contract claims for the trial court to determine whether, on any day that American Midstream failed to provide balancing services, the contract excused its performance. Second, the Court rendered judgment for American Midstream on Rainbow's repudiation claim because American Midstream's communication of its interpretation of the contract, standing alone, was not repudiation. And third, the

Court rendered judgment for American Midstream on Rainbow's tort claims because, under a correct interpretation of the contract, there was no falsity in American Midstream's representations that it could provide firm balancing services unless the contract excused its performance. The Court further held that Rainbow did not prove its lost-profits damages with reasonable certainty because it sought recovery for a new and untested enterprise.

Bush v. Columbia Med. Ctr., ___ S.W.3d ___, 2025 WL ___ (Tex. May 23, 2025) [23-0460]

This case concerns the sufficiency of an expert report supporting a health care liability claim against a hospital.

Jared Bush sued Columbia Medical Center and others for medical negligence after his wife, Ireille Williams-Bush, died from an undiagnosed pulmonary embolism. Williams-Bush had presented to the hospital's emergency department with chest pain, shortness of breath, and fainting, but she was never screened for pulmonary embolism. She died a few days after her discharge.

Bush served the hospital with an expert report as required by the Texas Medical Liability Act. The expert opined that the hospital failed to have policies that would have required certain tests be run based on Williams-Bush's symptoms, without which her doctors lacked sufficient information to rule out a pulmonary embolism. The hospital asserted that the report was deficient and moved to dismiss. The trial court denied the hospital's motion, but the court of appeals reversed. It held that the expert's opinions on causation were conclusory because the report failed to explain how the hospital's policies could have overridden the doctors' treatment decisions without engaging in prohibited corporate practice of medicine. Bush petitioned for review.

The Supreme Court reversed. It held that the expert report adequately explained how and why the hospital's alleged breach—its failure to adopt certain testing policies for patients presenting with particular symptoms—was a cause of the doctors' failure to identify Williams-Bush's condition at a time when it could have been treated. The Court also rejected the court of appeals' conclusion that the report was deficient because it did not affirmatively refute a potential defense: that implementing the policies would run afoul of the prohibition on the corporate practice of medicine. The Court held that, at this preliminary stage, the expert's report need only provide a fair summary of the expert's opinions regarding the essential elements of a plaintiff's claim.

Justice Bland filed a dissenting opinion. She would have held that the report was conclusory as to causation because it failed to identify any conduct by a hospital employee, as opposed to the non-employee treating doctors, that caused the injury.

Renaissance Med. Found. v. Lugo, ___ S.W.3d ___, 2025 WL ___ (Tex. May 23, 2025) [23-0607]

The issue in this case is whether a nonprofit health organization certified under Section 162.001 of the Occupations Code may be held vicariously liable for the negligence of its employee–physician.

Renaissance Medical Foundation, a certified nonprofit health organization, entered into a contract for employment with Dr. Michael Burke, a neurosurgeon. At a hospital owned and operated by Renaissance, Dr. Burke performed brain surgery on I.B., Rebecca Lugo's then-minor daughter. The procedure left I.B. with permanent neurological damage.

Lugo sued Dr. Burke and Renaissance, alleging Dr. Burke's negligence caused the retractor to migrate, and that Renaissance was vicariously liable as his employer. Renaissance moved for summary judgment, arguing it could not—and did not—exercise the requisite amount of control over Dr. Burke's medical practice because doing so would violate Texas law. The trial court denied the motion, concluding the employment agreement granted Renaissance sufficient control over Dr. Burke to trigger vicarious liability even though he retained the right to exercise independent medical judgment. Renaissance filed a permissive interlocutory appeal, arguing the unique statutory scheme governing nonprofit health organizations deprives it of any right to control its employed physicians, thus precluding vicarious liability. The court of appeals affirmed, holding Renaissance had a right to control Dr. Burke sufficient to trigger vicarious liability based on traditional common-law factors.

The Supreme Court also affirmed. In an opinion by Justice Busby, the Court held that nonprofit health organizations retain a narrow right to control their employee–physicians that may support vicarious liability in certain cases. Considering the statutory scheme, the Court observed that nonprofit health organizations are charged with adopting and enforcing policies related to medical care that ensure its employee–physicians retain independent medical judgment. Because Renaissance failed to conclusively prove it could not exercise control over Dr. Burke without violating his independent medical judgment, summary judgment was correctly denied.

Justice Bland concurred, contending direct liability claims connected to organizational policies should not be viable when physician negligence causes the injury. And, in her view, the summary judgment burden should shift once a qualifying organization invokes the statute and shows the pleadings allege an injury attributable to physician negligence.

Tenaris Bay City Inc. v. Ellisor, ___ S.W.3d ___, 2025 WL ___ (Tex. May 23, 2025) [23-0808]

This case concerns whether the plaintiffs established the actual causation element of their negligence claims.

Plaintiffs were thirty homeowners in Matagorda County. Their homes flooded during Hurricane Harvey in 2017. They sued Tenaris, a pipe manufacturer who operated a fabrication plant in Bay City. Tenaris built its facility on land previously

used as a sod farm. To prevent flooding, Tenaris hired Fluor Enterprises to design and build a drainage system on Tenaris's property. The system included detention ponds and a berm to minimize flooding of other properties.

Plaintiffs' expert, an engineer, testified that the design of the drainage system was flawed. Plaintiffs also offered evidence that the drainage system was not built to design specifications and had not been properly maintained. The jury found for plaintiffs on theories of negligence, negligence per se, and negligent nuisance. The trial court rendered a money judgment for plaintiffs. The court of appeals affirmed.

The Supreme Court reversed and rendered judgment for Tenaris. The Court held that all of plaintiffs' negligence theories required proof of but-for causation. There was legally insufficient evidence supporting this element. Plaintiffs' expert conceded that he had not determined whether the Tenaris facility had caused plaintiffs' individual homes to flood. He testified that he could have made this determination by conducting a multi-step analysis that traced runoff from Tenaris's property to each plaintiff's property, but that he had not done so. The Court further held that expert testimony was required to prove causation in this case, and that there was no applicable exception to the ordinary requirement under Texas law that the plaintiff prove but-for causation in a negligence case.

Cromwell v. Anadarko E&P Onshore, LLC, ___ S.W.3d ___, 2025 WL ___ (Tex. May 23, 2025) [23-0927]

This case involves the interpretation of two oil-and-gas leases' habendum clauses.

Cromwell and Anadarko are oil-and-gas co-tenants, both owning fractional shares of the working interest on the same acreage in Loving County. The habendum clauses of Cromwell's leases maintained his interests for "as long thereafter as" oil, gas or other minerals are produced from the land. Cromwell submitted his leases to Anadarko, the operating tenant, and requested to participate in its production, but Anadarko never responded. After one well reached payout, Anadarko sent Cromwell monthly "Joint Interest Invoices" that allocated production revenues and expenses to Cromwell. Years after the expiration of the leases' primary terms, Anadarko informed Cromwell that it believed his leases terminated at the end of their primary terms because he failed to enter a joint operating agreement.

Cromwell sued Anadarko for declaratory relief, trespass to try title, and other causes of action. Both sides moved for summary judgment. After concluding the leases had terminated, the trial court granted Anadarko's motion and denied Cromwell's. The court of appeals affirmed. The court held that Cromwell's leases terminated because he did not cause the production of oil or gas on the land.

The Supreme Court reversed. It held that the plain language of the two habendum clauses did not require Cromwell to personally produce to maintain his interests. Because at all relevant times production in commercial paying quantities occurred on the land, Cromwell's leases had not terminated. Accordingly, the Court remanded the case to the trial court to address the parties' remaining arguments.

In re Greyhound Lines, Inc., ___ S.W.3d ___, 2025 WL ___ (Tex. May 23, 2025) (per curiam) [23-1035]

The issue in this case, which arose out of a motor vehicle accident in Mexico, is whether the trial court should have dismissed the suit based on statutory forum non conveniens.

Maria Granados was traveling by bus from her home in Alabama to Salvatierra, Mexico. On her trip's last leg, which was entirely in Mexico, the bus crashed and Maria died. Maria's son had purchased her ticket from Greyhound, a company headquartered in Dallas. But Estrella Blanca, a Mexican bus company, owned and operated the bus that crashed. Members of the Granados family sued Greyhound, Estrella Blanca, and the bus driver, bringing claims that included breach of contract, fraudulent misrepresentation, and negligence. Greyhound—the only defendant who has appeared—filed a motion to dismiss based on forum non conveniens. The trial court denied the motion, and the court of appeals denied mandamus relief.

The Supreme Court granted conditional mandamus relief and ordered the trial court to dismiss the case. The Court held that each forum non conveniens factor favored dismissal. The Mexican forum is available and provides an adequate remedy. Greyhound stipulated that it would submit to the jurisdiction of Mexican courts and waive limitations in Mexico. The bulk of the evidence and witnesses relevant to the case are in Mexico, and Mexican law will apply to most of the claims. Finally, the Court held that Greyhound did not judicially admit to a proper forum in Dallas or waive its forum non conveniens argument by filing a crossclaim against Estrella Blanca for contractual indemnification for this litigation.

Cerna v. Pearland Urban Air, LLC, ___ S.W.3d ___, 2025 WL ___ (Tex. May 23, 2025) [24-0273]

At issue in this case is whether a challenge to an arbitration agreement's applicability is one for an arbitrator or a court to decide when the agreement itself delegates questions about its scope to the arbitrator.

Abigail Cerna signed a release containing an arbitration provision upon entering Urban Air Trampoline Park for herself and on behalf of her child. The agreement did not expressly state its duration. They returned to Urban Air for a second visit about three months later and did not sign another release. Her child was injured during the second visit, and Cerna sued Urban Air for negligence. Urban Air moved to compel arbitration under the release she signed during the first visit. Cerna challenged the applicability of the agreement to the second visit and requested that the trial court determine the issue. The trial court denied the motion to compel. The court of appeals reversed, holding that whether the release applied to Cerna's second visit was a challenge to the release's scope that Cerna had agreed an arbitrator would decide.

The Supreme Court affirmed. While courts must decide challenges contesting the existence of arbitration agreements, a challenge that disputes an agreement's existence as to a particular claim is a challenge to the scope of the agreement, not its

existence. Cerna's challenge—which conceded the existence of an agreement for her first visit but not the second—was one contesting the scope of the release to a particular claim. Because the release clearly and unmistakably delegated such questions to the arbitrator, the Court held that the arbitrator must decide Cerna's challenge to the agreement's duration.

City of Houston v. Manning, ___ S.W.3d ___, 2025 WL ___ (Tex. May 23, 2025) (per curiam) [24-0428]

The main issue in this case is whether the Texas Tort Claims Act waived the City of Houston's governmental immunity against claims based on negligence per se.

After a city fire engine operated by William Schmidt struck Chelsea Manning's vehicle, Manning sued the City, asserting various claims including negligence per se under the TTCA's waiver of immunity. To prove that Schmidt was negligent per se, Manning relied on various statutory standards of care under the Transportation Code. The City moved for summary judgment, asserting governmental immunity, but the trial court denied the City's motion. The City filed an interlocutory appeal, and the court of appeals affirmed in relevant part. Viewing negligence per se, like simple negligence, as just one method of proving a breach of duty, the court held that the TTCA's waiver included claims based on negligence per se.

The Supreme Court affirmed in part. Citing Section 101.021(1) of the TTCA, which, among other things, waives governmental immunity for harm resulting from "negligence," the Court held that Manning's negligence per se claims were within the scope of the TTCA's waiver. When the statutory standard of care providing the basis for a negligence per se claim functions merely to define more precisely what conduct breaches the common law duty, the claim remains one for negligence and falls within the scope of the waiver. With respect to the other issues raised in the City's petition, the Court granted the City's petition for review, vacated the court of appeals' judgment, and remanded the case to that court for its reconsideration of those issues in light of the Court's recent decisions.

Butler v. Collins, ___ S.W.3d ___, 2025 WL ___ (Tex. May 23, 2025) [24-0616]

This certified question concerns whether Chapter 21 of the Texas Labor Code, which governs causes of action arising out of various forms of discrimination, harassment, and retaliation in the workplace, abrogates certain common law tort claims against individual coworkers.

After Southern Methodist University denied Professor Cheryl Butler's application for tenure, Butler filed suit against SMU and various SMU employees, alleging she was subjected to a racially discriminatory tenure process. Butler asserted various statutory and common law claims, including Chapter 21 claims against SMU and common law claims of fraud, defamation, and conspiracy to defame against the employee defendants. The defamation claims stemmed from allegedly false statements the employee defendants made about Butler during the tenure process. The federal district court granted a motion to dismiss the common law claims brought against the employee defendants, holding the claims were abrogated by Chapter 21.

The Fifth Circuit certified the question whether Chapter 21 abrogates "a plaintiff-employee's common-law defamation and/or fraud claims against another employee to the extent that the claims are based on the same course of conduct as discrimination and/or retaliation claims asserted against the plaintiff's employer."

The Supreme Court answered the question "no." In *Waffle House, Inc. v. Williams*, the Court held that Chapter 21 provides the exclusive remedy against an employer when the "gravamen of a plaintiff's case" is Chapter 21-covered discrimination. 313 S.W.3d 796, 799 (Tex. 2010). However, Chapter 21 does not subject individual employees to liability, and the Court concluded that nothing in Chapter 21 indicates legislative intent to immunize a non-employer from recognized common law claims based on that individual's own tortious conduct. In so holding, the Court emphasized that to the extent the employer's and employee's conduct caused the same injury, the plaintiff is not entitled to a double recovery. The Court further noted that Butler's Chapter 21 and defamation claims are premised on alternative causation theories with respect to any employment-related damages.

Am. Pearl Grp., L.L.C. v. Nat'l Payment Sys., L.L.C., ___ S.W.3d ___, 2025 WL ___ (Tex. May 23, 2025) [24-0759]

This certified question asks the Supreme Court to construe statutory language governing the computation of interest to determine whether a loan agreement is usurious.

American Pearl Group, L.L.C., John Sarkissian, and Andrei Wirth entered into a loan agreement with National Payment Systems, L.L.C., which included a specified total amount to be repaid over forty-two months of payments and a payment schedule listing each individual payment's allocation towards principal and interest. But the agreement did not list an exact percentage interest rate.

Pearl sued NPS seeking a declaration that the loan agreement and a related option agreement violated Texas usury law because the total amount of interest under the agreement was more than the maximum allowable amount. The federal district court granted NPS's motion to dismiss, utilizing the "spreading" method for calculating interest and determining that, based on that calculation, the total amount of interest was less than the statutorily maximum allowable amount.

The Fifth Circuit reversed the dismissal of Pearl's usury claim relating to the option agreement but, as to the loan agreement, recognized that the "spreading" method derived from two Texas Supreme Court decisions involving distinguishable interest-only loans and that there was a lack of clear guidance for computing the maximum allowable interest for the loan. The Fifth Circuit therefore certified a question to the Supreme Court, asking whether calculating the maximum allowable interest rate "by amortizing or spreading, using the actuarial method" requires courts to base interest calculations on the declining principal balance for each payment period, rather than the total principal amount of the loan proceeds.

The Supreme Court answered in the affirmative and held that when a loan provides for periodic principal payments, the mandate to use the "actuarial method" in Section 306.004(a) of the Texas Finance Code requires courts to calculate the

maximum permissible interest based on the declining principal balance for each payment period. The Court emphasized that the Legislature changed the statutory text from requiring the "equal parts" approach to requiring the "actuarial method," a term with a well-established meaning in financial and legal contexts. The Legislature's changing of statutory text is presumed to be deliberate and therefore must be respected.