



Texas Supreme Court Update

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33rd Annual Insurance Symposium
May 8, 2026

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New Things



2026 Texas Supreme Court

New Chief Justice

Jan. 2025: Jimmy
Blacklock

Chief Justice
Hecht retired
after 36 years

New Associate Justices:

James Sullivan
(Jan. 2025)

Kyle Hawkins
(Oct. 2025)

New Appellate Review Framework

- Effective January 1, 2026, the Court has a new petition for review system.
 - Used to be two stages: file petition first (4,500 words), and if Court interested in the case, would request full briefs on merits (15,000 words) before deciding whether to grant review.
- New appellate rules combine the two stages for most cases.
 - File petition for review (6,500 words) addressing reasons to grant review, error preservation, and merits/why petitioner should prevail.
 - Court no longer has to request briefs on the merits before granting review. But it can.
 - Petition must include an up-to-1,000-word Introduction that explains enough about the case, its importance, and the merits to illustrate why it should be included on the Court's merits docket.

New Court of Appeals

- Fifteenth Court of Appeals – limited subject-matter jurisdiction
- Sits in Houston, Texas. Three Justices. First term began Sept. 1, 2024.
- Although covers whole state, jurisdiction extends ONLY to:
 - Civil appeals brought by or against the state or a board, commission, department, office, or other agency in the executive branch of the state government, and/or its employees; and
 - Civil appeals from Texas Business Courts, involving cases with business disputes valued at more than \$10 million.
- Texas Supreme Court already addressed jurisdictional questions half a dozen times.
- Fifteenth Court already issued roughly 235 opinions.



Insurance

In re State Farm Mut. Auto Ins. Co.

- Mandamus proceeding, arising out of UIM lawsuit
- Opinion issued April 2025
- In Texas UIM cases, the insured can sue its insurer for UIM benefits without having to first sue the tortfeasor defendant. Only if the insured obtains a favorable judgment in the “car crash trial” (i.e., finding the defendant liable for the accident and that insured is legally entitled to damages) can the insured pursue extracontractual claims.
- As a result, extracontractual claims usually are litigated after the car crash trial in a bifurcated (split) proceeding, or severed and abated while the car crash case is pending.

- The issue the Court addressed in the case is whether, in the “car crash” phase of a bifurcated UIM lawsuit, the insured is entitled to conduct discovery on the extracontractual claims and depose the insurer’s corporate representative.
- Held: the trial court abused its discretion by denying the insurer’s motion to quash the deposition while the insured’s car crash claim is pending. Inquiry into extracontractual matters is improper before the insured has established her entitlement to UIM benefits (proving defendant liable/entitlement to damages).

- And, because the outcome of the car crash trial may moot the extracontractual claims, an insurer has a substantial right to defer discovery and litigation costs in the interim.
- The Court held State Farm's proof in support of quashing the deposition (it had turned over all non-privileged claim file docs, established deponent's lack of knowledge about car crash case, and the unfair burden of the depo) supported granting of the motion.

Privilege Underwriters v. Mankoff

- Feb. 2026 opinion. Insureds' home damaged in 2019 Dallas tornado
- Carrier made partial payment but determined tornado was a "windstorm" and, thus, their Windstorm/Hail Deductible applied
- Policy did not define "windstorm"
- Insureds sued; trial court granted summary judgment to carrier. Court of Appeals reversed. Then TSC reversed.
- Court looked for plain and ordinary meaning of "windstorm."
- Considered dictionary definitions, statutes, and case law

- Court found them “markedly consistent” and having a “common thread”: a windstorm is a storm marked by high or violent winds but with little or no precipitation.
- A tornado is a windstorm in and of itself; this is true regardless of whether it is a subset of a broader storm involving precipitation.
- Conclusion: Not all windstorms contain tornadoes, but all tornadoes are windstorms, regardless of whether the broader weather event includes precipitation.
- Thus, common, ordinary meaning of “windstorm” in an insurance policy unambiguously includes a tornado. Reinstated summary judgment for carrier. (Motion for Rehearing filed 3-30-26)



Medical Malpractice

Leibman v. Waldroup

- Is claim a health care liability claim (HCLC)? June 2025 opinion.
- Dog admitted to restaurant because defendant placed dog in “service dog” vest. While there, dog attacked Plaintiffs’ child.
- Plaintiffs sued physician, who had written a letter for defendant stating she needed a service dog to help her with her anxiety conditions.
- But plaintiffs complained that physician did not investigate whether the specific dog (Kingston) actually was a service animal appropriately trained to behave in public settings.

- Plaintiffs were not suing over physician's diagnosis, negligent medical care, or recommendation that dog could help defendant.
- Thus, claim was not HCLC and no expert report required.

Bush v. Columbia Med. Ctr.

- Adequacy of a 74.351 expert report. May 2025 opinion.
- Court rejected defense arguments that expert's report under CPRC Ch. 74 was deficient for opining against a hospital based only on acts/omissions that nurses and hospitals could not perform under Texas law (e.g., diagnosing patients, ordering tests, discharging patients, etc.).
- These acts were part of a hospital policy that expert said hospital should have had to diagnose decedent's condition.
- Held: expert report sufficiently addressed plaintiff's policy & procedure claim and HCLC could proceed.

In re Lapuerta

- Mandamus proceeding challenging grant of new trial after defense verdict in HCLC involving treatment of worker's finger damaged by band saw. Apr. 2026 opinion.
- Trial court purported to grant new trial based on erroneous jury instruction that it previously had approved and included in the jury charge. Based on “loss of chance” doctrine—it stated:
 - You are instructed that JOSE TORRES' finger must have had a greater than fifty percent (50%) chance of survival if reasonable medical care had been provided on or around July 11, 2016 for the negligence of LEO LAPUERTA, M.D., F.A.C.S. to be a proximate cause of the injury to Jose Torres.

- “Loss of chance” applies to proof of causation—the plaintiff must prove defendant’s negligence more likely than not caused the plaintiff’s injury. More likely than not = > greater than 50%.
- The Court recognized that the instruction previously had only been used in wrongful death cases but, based on the language in those cases, the instruction was equally applicable in injury cases as in death cases.
- TSC went through the order with the trial court’s reasons for granting a new trial. It held none of them supported a new trial.



Premises Liability

H-E-B v. Peterson

- Issued April 10. Involved premises liability claim, where the plaintiff slipped on a clear liquid and fell in the toy aisle of the store. She and her friend did not know where the liquid came from or how long it had been there.
- A premises liability claim, in part, requires plaintiff to prove the store had actual knowledge or constructive knowledge of the dangerous condition (here, the clear liquid).
- This plaintiff contended only that H-E-B had constructive knowledge. To prove that, plaintiff had to show how long the liquid had been there, how conspicuous it was, and that an employee was in close proximity to it.

- The plaintiff contended H-E-B had constructive knowledge because there had been numerous roof leaks from a remodeling project for the store in the years before her fall.
- H-E-B, however, presented evidence of roof repairs that showed the leaks were only on one side of the store and not on the toy aisle.
- Trial court granted H-E-B's MSJ. Court of appeals reversed, stating leaks elsewhere in the store were enough to show constructive knowledge.
- TSC reversed COA.

- First, TSC said evidence of leaks outside the vicinity of the toy aisle did not show constructive knowledge. For a roof leak to give constructive knowledge, it must be in the vicinity of the subject liquid. Plaintiff had no evidence of this.
- Second, even if H-E-B knew about a leak, plaintiff had to prove the leak existed at the time and place of the fall. She did not.
- Third, plaintiff offered no evidence of how long the puddle had been there. A jury cannot assess whether an owner had an opportunity to discover a dangerous condition without some temporal evidence indicating the condition existed long enough for a reasonable owner to have discovered it.



Appraisal

Burke v. Houston PT BAC Office LP

- Houston commercial lease dispute. Opinion issued Dec. 2025.
- This is a rare case where the Court vacated an appraisal valuation for the appraiser's evident partiality—meaning, favoring one party over the other.
- Landlord/tenant dispute over rental rate went to appraisal process. Tenant consulted with appraiser A but did not hire him.
- When the two sides' appraisers later could not agree, they were to select third appraiser. Tenant suggested appraiser A but did not disclose to landlord that it already had consulted with him.

- In discovery, landlord learned of tenant's prior consult with appraiser A. Landlord added claims for fraud and breach of contract for tenant's failure to disclose the consult.
- Landlord lost in trial court but appealed. Landlord argued arbitration standards in CPRC Chapter 171 applied to the appraisal process. That statute requires courts to vacate arbitration awards prejudiced by "evident partiality" of arbitrator.
- TSC agreed with landlord—communications with appraiser A discussed facts and issues affecting the valuation, even without mentioning exact numbers. Held: this should have been disclosed, it is material, and it creates an impression of partiality.
- Court vacated order confirming the tenant's (much higher) appraisal valuation.



Responsible Third Parties

In re East Texas Med. Ctr. Athens

- Mandamus proceeding challenging trial court's striking of responsible third party (RTP) designation in a non-subscriber case. April 2025 opinion.
- Court recognized that some rules that bar actions by employers who subscribe to worker's compensation do not apply in non-subscriber cases.
- CPRC Chapter 33, which authorizes designation of RTPs, expressly states it does not apply to an action to "collect worker's compensation benefits."

- But the Court explained that a claim against a non-subscriber employer is not a claim to collect WC *benefits*.
- It is a common-law action to recover *damages* based on negligence, which a non-subscriber's employee may bring.
- Therefore, Chapter 33 applies in a non-subscriber lawsuit. And, in turn, the non-subscriber can designate responsible third parties under CPRC 33.004.



In Brief

Other Opinions of Interest

- *In re Zaidi* (Apr. 10, 2026): Legal secretary worked on the other side of a lawsuit during prior employment. Her new firm did not take measures to segregate her from lawsuit and, in fact, a lawyer at the new firm directed her to work on the lawsuit (including clerical work). Held: new firm had to be disqualified.
- *S&B Eng'rs v. Scallon Controls* (Mar. 13, 2026): Settlement of injured workers' tort claims did not automatically extinguish owner's and GC's right to contractual indemnification from subcontractor, as long as the indemnity provision satisfied the express negligence rule (and it did).

- *Kuo v. Regions Bank* (Oct. 2025): Summary judgment evidence does not have to be physically attached to a summary judgment motion as long as it is “on file” in the case so it can be considered by the trial court. Lower courts erred in holding missing evidence required granting of summary judgment.
- *Pitts v. Rivas* (Feb. 2025): Applies “anti-fracturing rule” to professional accounting malpractice claim—meaning, a claim that the accountants failed to provide competent accounting services was a claim for negligence, and it could not be “recast” as or “fractured” into a fraud claim to avoid two-year negligence statute of limitations.



Cases to Watch

Petitions Granted, Opinions to Issue

- *In re Ace Am. Ins. Co.*, No. 25-0641 (multi-carrier mandamus involving mold claim and right to appraisal) (argued 2-10-26)
- *JMI Contractors v. Medellin*, No. 24-0846 (premises liability versus negligent activity, whether duty owed, necessary use exception) (argued 1-15-26)
- *Studio E Architecture v. Lehmberg*, No. 24-0286 (remedies available to plaintiff after certificate of merit dismissal) (argued 11-5-25)

- *K&K Inez Properties v. Kolle*, No. 24-0045 (propriety of striking responsible third party designation, applying punitive damages cap) (argued 12-2-25)
- *Champion Food Service v. ProAlamo Foods*, No. 25-0297 (dispute over existence of contract and right to recover under quantum meruit, plus whether attorney fees recoverable) (argued 3-4-26)
- *Aldaco v. Wood*, No. 24-1069 (whether proper application of statute of limitations for health care liability claim) (argued 2-11-26)
- *Maya Walnut LLC v. Ly*, No. 24-0171 (fraud claim and propriety of “red flag” defense to justifiable reliance) (argued 12-2-25)

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Thank you!

Questions? michelle.robberson@cooperscully.com