Texas Supreme Court Update

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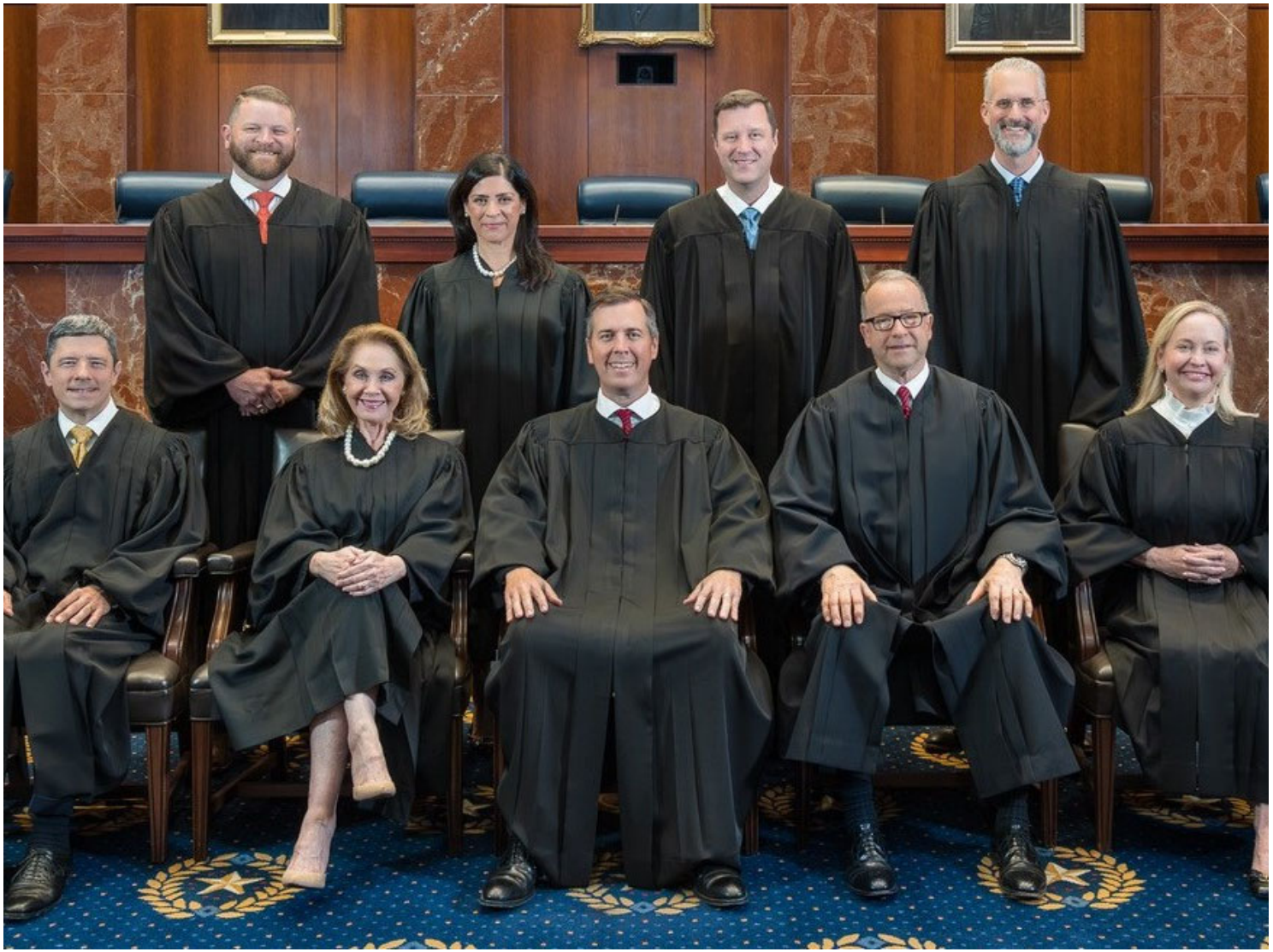

2026 Texas Supreme Court

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)

A Few Statistics

- Disposition Time is Decreasing - Average time from filing petition for review to issuance of opinion is roughly 414 days, which is about three months faster than prior years.
- Opinions this Term – The Court's term is September 1 to August 31. The Court has issued opinions in 16 cases since Sept. 1, 2025.
- Court's Workload – The Court heard argument in more than 35 cases in the fall and has 18 more arguments set for the spring. More opinions coming.

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 nearly 200 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.
- The Court rejected numerous arguments from the insured, including that delaying the discovery would unduly delay the extracontractual claims trial. There would be some delay, the court said, but plaintiff would not have to wait until all appeals are exhausted:
  - In a bifurcated trial, the ruling in the car crash case is interlocutory and not appealable as of right before a successful insured can litigate the extracontractual claims.
  - In a severed trial, a court has discretion to not abate the extracontractual claims until all appeals from the car crash ruling are exhausted (thus allowing appeal and trial of the second phase at the same time).

Causation

Werner Enterprises v. Blake

- 5-3 Opinion, June 2025
- Court re-examined the proof requirements for proximate cause in a trucking accident case, ultimately reversing a $90 million verdict from Harris County.
- Long story, but this is becoming a favored topic for the Court (causation).
- On icy Interstate 20 near Odessa, Salinas was driving a Ford F-150 with the Blakes as his passengers. Ali was driving a Werner tractor-trailer rig heading the opposite direction.
- Roads were hazardous, several wrecks had occurred. Weather warning had been issued about below-freezing temps and freezing rain.

- Without warning, Salinas lost control of the pickup truck, left the road, crossed the 42-foot grassy median, and slammed into Ali's 18-wheeler. Only took about two seconds, per expert testimony.
- One death and serious injuries to the Blakes. They sued Ali and Werner.
- Salinas was going 50-60 mph. Ali was averaging 60 mph but slammed on his brakes when he saw the Ford and was going about 45 mph at impact.
- Jury held Salinas, Ali, and Werner liable. Salinas 16%, Ali 14%, and Werner employees 70% (on a failure to train theory).
- Awarded $16 million to mother for son's death, $5 million to other son, and $68 million to daughter rendered a quadriplegic.
- Houston 14th Court of Appeals, sitting en banc, affirmed.

- Texas Supreme Court reversed on failure to prove proximate cause.
- Proximate cause has two elements: cause-in-fact and foreseeability.
- Focus is on cause-in-fact, which has two elements: but-for causation and substantial factor causation.
- The defendant's negligence is the "but-for" cause of an injury if, without the act or omission, the harm would not have occurred. Proving but-for cause is not enough.
- The plaintiff also must prove that the negligent act or omission was a substantial factor in bringing about the injury.
- "Substantial" connotes responsibility.

- The question is whether, given the nature of the defendant's causal connection to the accident, it is reasonable to conclude that he is "actually responsible for the ultimate harm."
- If, on the other hand, the defendant's conduct "merely creates the condition that makes the harm possible, it is not a substantial factor in causing the harm, as a matter of law."
- Held: "No reasonable juror could assign responsibility for these injuries to anyone other than the driver who lost control of his vehicle and hurtled across a 42-foot median into oncoming highway traffic, thereby causing this accident and these injuries in every legally relevant sense of the word."

- Court acknowledged that Ali's speeding during the icy road conditions was a but-for cause of the accident.
- If he had been going slower, or even faster, the Ford may not have impacted the truck at all.
- But substantial factor causation as to Ali was lacking, as a matter of law.
- The sole substantial factor causing the accident was Salinas's losing control of the Ford, crossing the median, and heading into oncoming traffic before Ali had a chance to react.
- Ali's speeding merely created the condition that allowed the accident to occur, and that is not good enough for cause-in-fact.
- Neither Ali nor Werner could be held responsible.

Tenaris Bay City v. Ellisor

- Another causation decision, this one involving lawsuit over whether drainage system at Tenaris's pipe fabrication facility caused flooding of thirty homes in nearby subdivision in connection with Hurricane Harvey.
- Opinion issued Sept. 2025.
- Tenaris argued plaintiffs' expert testimony was legally insufficient to prove that, but for the presence of its facility, the plaintiffs' houses would not have flooded during Hurricane Harvey. Court agreed.
- Plaintiffs' expert did not and could not say whether, for any of the thirty properties, the flood damage they suffered would not have occurred <u>but for</u> the additional flooding he attributed to Tenaris. Expert could have done that analysis; but he did not. Expert also failed to exclude the hurricane as a cause. Court reversed $2.8M jury verdict and rendered $0 judgment.

Breach of Duty

Lozada v. Posado

- A few days before *Werner*, Court issued this per curiam opinion upholding a trial court's summary judgment in a truck accident case—but this time on grounds that the plaintiff did not produce any evidence to raise a fact issue on whether the defendant truck driver breached any standard of care(negligence).
- The truck driver was driving on the highway when his tire separated from the rim and began losing air quickly, and, despite the driver's corrective measures, the truck jacknifed and ended up across two lanes—where the plaintiff ran into the truck.
- This was a summary judgment setting, and the ruling turns largely on lack of evidence.

- There was no evidence from plaintiff that the truck driver was negligent for speeding or what a prudent speed would have been.
- No evidence from plaintiff that the truck driver should have moved the truck out of the road faster.
- Plaintiff cannot rely solely on the fact that an accident occurred.
- Court: "Accidents happen when something has gone wrong, but not all accidents are evidence of negligence."
- Without any evidence defendant breached a duty of care, defendant entitled to summary judgment.

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
- Employee nurse suffering back injury sued her employer, a non-subscriber to worker's compensation insurance.
- Employer moved to designate RTPs, which trial court granted. But later trial court granted employee's motion to strike RTPs.
- Employer sought review.

- Court recognized that some rules that bar actions by employers subject to the Worker's Compensation Act 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." The Court held, however, that a claim against a non-subscriber employer is not a claim to collect WC benefits.
- The WC Act distinguishes between a statutory "action to collect workers' compensation *benefits*," which a subscriber's employee may bring, and a common-law action to recover *damages* based on negligence, which a nonsubscriber's employee may bring.
- "Benefits" under the WC Act include medical benefits, income benefits, death benefits, and burial benefits. These are distinct from "damages" for negligence (pain, anguish, impairment, etc.).

- Therefore, Chapter 33 applies in a non-subscriber lawsuit.
- The Court also held that the WC Act does not prohibit the designation of RTPs because the WC Act and case law only prohibit the employer from asserting the contributory negligence of the plaintiff, or a fellow employee, to reduce the employer's liability. RTPs are *third parties* whose negligence is alleged to have been a cause of the injury.
- Accordingly, a non-subscriber employer may designate RTPs.
- Finally, the Court held that the evidence of the third parties' negligence was sufficient to support the RTP designation. Thus, the trial court erred in striking it.

Contractor Liability/TxDOT

Third Coast Services v. Castañeda

- Opinion issued Dec. 2025
- CPRC Sec. 97.002 extinguishes liability of contractors who repair a highway, street, or road for Tex. Dep't of Transportation (TxDOT) under certain circumstances. Castaneda was injured in an intersection collision on SH 249, allegedly because traffic lights were not yet operational. Sued the subs installing the traffic lights, and subs raised 97.002 defense.
- Court of Appeals held 97.002 did not apply because subs did not contract directly with TxDOT (did not have contractual "privity"). Instead, Montgomery County contracted with TxDOT to build the toll road and hired the subs/defendants.

- Court held that statute did not require contractors to be hired directly by TxDOT and, thus, Court of Appeals erred by adding a contractual privity requirement to the statute.
- Section 97.002 applied to the subs' work because the County contracted to construct a toll road "for" TxDOT, and subs it hires to do the work also are performing that work "for" TxDOT.
- Statute applied even though the County (and not TxDOT) exercised control over the subs' operations because County and TxDOT agreed in their contract that TxDOT ultimately would have responsibility for operation and maintenance of frontage roads where accident occurred.
- Thus, subs were working "for" both the County and TxDOT and were entitled to 97.002's protection from liability.

Appraisal/Arbitration

Burke v. Houston PT BAC Office LP

- Houston commercial lease dispute that ended up in appraisal process.
- Opinion issued Dec. 2025
- Lease permitted periodic adjustments of rent based on fair market value of property. If landlord and tenant disagreed on the value, lease provided for appraisal process. Parties here did not agree.
- Appraisal process required each side to select an appraiser. If the two appraisers did not agree on the value, then appraisers selected a third "competent and impartial person."
- Landlord chose Little as its appraiser, and tenant interviewed Rando but ultimately chose Podlewski as its appraiser.

- In communicating to Rando, tenant said if appraisal process reachedan impasse, Rando “will be at the top of our list for that third appraiser designation.”
- The two appraisers did not agree, and they chose Rando as the “neutral” appraiser. Landlord’s value was $14.4M while Rando and Podlewski’s value was $8.4M. Still with no agreement, landlord sued for declaratory judgment, and tenant counterclaimed.
- During discovery, tenant revealed communications with Rando. Landlord added breach of contract and fraud claims, complaining tenant should have disclosed its communications with Rando before he became the third appraiser. Landlord would not have accepted Rando as third appraiser if it knew of the communications.

- Trial court granted tenant summary judgment on contract and fraud claims and declared tenant's lower value to be controlling.
- Landlord challenged these rulings, in part, asserting the 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.
- This is met if arbitrator fails to disclose facts that "might, to an objective observer, create a reasonable impression of the arbitrator's partiality."
- Court: Communications with Rando met this standard—they discussed facts and issues affecting the valuation, even without mentioning exact numbers. Held: this should have been disclosed, it's material, and it creates an impression of partiality.
- Court vacated order confirming the tenant's appraisal valuation.

Cerna v. Pearland Urban Air, LLC

- Opinion issued May 2025. Addresses scope of arbitration agreement between trampoline park and parent of injured child.
- Language in arbitration agreement sent disputes arising out of activity at the park to arbitration, including disputes over the scope, validity, and arbitrability of the provision.
- Court held that dispute over whether arbitration agreement signed at first visit covered claims arising out of injury suffered during second visit three months later were for the arbitrator.
- Thus, trial court erred in denying motion to compel arbitration.

Quick Hits

Other Opinions of Interest

- *In re Newkirk Logistics* (Sept. 2025): reversing "death penalty" sanction striking all pleadings where record not clear that defendant violated any discovery order and trial court (Tarrant Co.) did not first consider any lesser sanctions.
- *Kuo v. Regions Bank* (Oct. 2025): Summary judgment evidence does not have to be physically attached to 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 SJ.
- *Pitts v. Rivas* (Feb. 2025): Applies anti-fracturing rule to professional accounting malpractice claim—meaning, claim that accountants failed to provide competent accounting services was for negligence and could not be "recast" as fraud claim to avoid two-year statute of limitations.

- *Bush v. Columbia Med. Ctr.* (May 2025): rejecting arguments that expert's report under CPRC Ch. 74 was deficient for opining against hospital based only on acts/omissions that nurses and hospitals could not perform under Texas law (diagnosing, ordering tests, discharging patient, etc.); and holding expert report sufficiently addressed policies/procedures claim and HCLC could proceed.
- *Leibman v. Waldroup* (June 2025): claim against physician, who wrote letter for patient stating service dog was needed to help with patient's conditions, but who did not confirm that *the* specific dog was a service animal appropriately trained to behave in public (after dog injured plaintiffs' child), was not a health care liability claim so no expert report required.

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)
- *Privilege Underwriters v. Mankoff*, No. 24-0132 (dispute over meaning of "windstorm" in homeowners' policy)
- *S&B Engineers & Zurich v. Scallon Controls*, No. 24-0525 (dispute over contractual indemnity)
- *JMI Contractors v. Medellin*, No. 24-0846 (premises liability versus negligent activity, whether duty owed, necessary use exception)
- *Diamond Hydraulics v. GAC Equipment*, No. 24-1049 (propriety of sanctions)

- *Studio E Architecture v. Lehmberg*, No. 24-0286 (remedies available to plaintiff after certificate of merit dismissal)
- *K&K Inez Properties v. Kolle*, No. 24-0045 (propriety of striking responsible third party designation, applying punitive damages cap)
- *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)
- *Aldaco v. Wood*, No. 24-1069 (whether proper application of statute of limitations for health care liability claim)
- *Maya Walnut LLC v. Ly*, No. 24-0171 (fraud claim and propriety of "red flag" defense to justifiable reliance)

THE END
Thank you!

Questions? michelle.robberson@cooperscully.com