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2023 TEXAS LEGAL YEAR IN REVIEW

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SPEAKERS

Stephen Barrick

Partner

Hicks Thomas LLP

713-547-9167

sbarrick@hicks-thomas.com

Mariana Jantz

Associate

Hicks Thomas LLP

713-547-9172

mjantz@hicks-thomas.com

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TOPICS

- New Texas Courts
- Key Cases Decided by the Supreme Court of Texas affecting business

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NEW COURTS

(Beginning September 1, 2024)

- Business Court
  (Ch. 25A, Tex. Gov't Code)
- 15th Court of Appeals
  (Ch. 22, Subch.C, Tex. Gov't Code)

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BUSINESS COURT

Jurisdiction over certain types of business disputes:

- ✓ Corporate governance
- ✓ Shareholder derivative actions
- ✓ Breach of fiduciary duty
- ✓ Securities regulation
- ✓ Actions under Texas Business Organizations Code

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BUSINESS COURT

- ✓ No supplemental jurisdiction (unless agreed)

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BUSINESS COURT

Amount in controversy:

- ✓ Private companies: $5 million (or equivalent for injunctive and declaratory judgment actions)
- ✓ Public companies: no minimum

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BUSINESS COURT

Jurisdiction by agreement:

- ✓ Business transactions over $10 million

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BUSINESS COURT

Judicial selection:

- ✓ Not elected – appointed by the governor
- ✓ Two-year term
- ✓ Eligible for re-appointment every two years at the governor's discretion

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BUSINESS COURT

Judicial qualifications:

- ✓ At least 35 years old
- ✓ At least 10 years of experience as a lawyer with complex business matters or prior experience as a Texas civil court judge
- ✓ Resident in the division at least 5 years
- ✓ No disciplinary action

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BUSINESS COURT

Organization:

- ✓ One state-wide district
- ✓ State divided into 11 divisions
- ✓ Initially only 5 divisions covering major metropolitan areas (Houston, Dallas, Fort Worth, Austin, San Antonio)
- ✓ Two judges per division

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BUSINESS COURT

Procedures:

- ✓ Same rules as state district courts
- ✓ Special rules for filing in business court, removing cases to business court, and remanding or dismissing cases from business court
- ✓ Trials held in venues dictated by venue statutes and agreements

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15TH COURT OF APPEALS

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15th COURT OF APPEALS

- ✓ All new appellate court
- ✓ Justices elected in state-wide elections
- ✓ Initially, three justices appointed by the governor who must stand for election in 2026
- ✓ Two additional justices appointed by the governor in 2027 who must stand for election in 2028

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15th COURT OF APPEALS

Limited appellate jurisdiction:

- ✓ Appeals from business courts
- ✓ Appeals from actions by or against the state and state agencies (excluding routine litigation)
- ✓ Appeals from actions challenging the constitutionality of a state statute or action where the AG is a party

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CONTROVERSY OVER NEW COURTS

- ✓ Business court judges not elected
- ✓ Two-year terms
- ✓ Serve at the pleasure of the governor
- ✓ 15th Court of Appeals takes cases away from the Austin Court of Appeals
- ✓ Appellate judges elected state-wide

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CONTROVERSY OVER NEW COURTS

- ✓ Legal/constitutional challenges expected
- ✓ Both statutes direct legal challenges directly to the Texas Supreme Court
- ✓ Stay tuned

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NOTABLE TEXAS SUPREME COURT CASES IN 2023

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CASES ON ARBITRATION

Lennar Homes of Tex. Land & Constr., Ltd. v. Whiteley
672 S.W.3d 367 (Tex. 2023)

LENNAR HOMES OF TEX. LAND & CONSTR., LTD. V. WHITELEY

- **Key Issue**: Whether a subsequent purchaser of a home was required to arbitrate her claims against the builder for construction defects in a residential construction case.

- **Procedural Posture:** The trial court stayed the case for arbitration and the arbitrator found in favor of the builder. The trial court then vacated the award and the court of appeals affirmed.

LENNAR HOMES OF TEX. LAND & CONSTR., LTD. V. WHITELEY

- **The Court's Answer: Yes!**

➢ Whiteley's claims were premised on the existence of the purchase-and-sale agreement, which contained the arbitration agreement. Therefore, she was bound to arbitrate under the doctrine of direct-benefits estoppel.

LENNAR HOMES OF TEX. LAND & CONSTR., LTD. V. WHITELEY

Takeaways

- The Court will enforce arbitration agreements against non-parties through direct benefits estoppel.
- A non-signatory who sues for relief based on an agreement containing an arbitration provision must arbitrate.

LENNAR HOMES OF TEX. LAND & CONSTR., LTD. V. WHITELEY

- The rule in *Lennar* extends to factually related personal injury claims.

Taylor Morrison of Tex., Inc. v. Ha
660 S.W.3d 529 (Tex. 2023)
AND
Taylor Morrison of Tex. v. Skufca
660 S.W.3d 525 (Tex. 2023)

TAYLOR MORRISON OF TEX. V. SKUFCA; TAYLOR MORRISON OF TEX. V. HA

- **Key Issue**: Whether non-signatory parties asserting a breach-of-contract claim must arbitrate along with the signatory parties.

- **Procedural Posture:** The trial court denied the builders' motion to compel arbitration with respect to non-signatories to the home purchase agreement. The court of appeals affirmed.

- **The Court's Answer: Yes**

➢ Litigants who sue based on a contract subject themselves to its terms, including any arbitration clause within that contract.

TAYLOR MORRISON OF TEX. V. SKUFCA; TAYLOR MORRISON OF TEX. V. HA

- **Non-signatories may not avoid arbitration by amending their petition to allege only tort or other noncontractual claims.**

- The court explained that direct-benefits estoppel also applies when a nonsignatory seeks direct benefits from the contract outside of litigation. Because the non-signatories lived in the home at issue and sued for factually intertwined construction-defect claims, they were required to arbitrate all of their claims.

TAYLOR MORRISON OF TEX. V. SKUFCA; TAYLOR MORRISON OF TEX. V. HA

Takeaways

- Big wins for developers and builders seeking to enforce arbitration agreements
- In the past, plaintiffs' lawyers brought construction claims in arbitration under the purchase contract and separately filed suit in state court on behalf of a spouse and minor children, alleging personal injury from the conditions related to the alleged defects.
- The Court finally ended this practice.

Totalenergies E&P USA, Inc., v. MP Gulf of Mexico, LLC 667 S.W.3d 694 (Tex. 2023)

TOTALENERGIES V. MP GULF OF MEXICO

- **Key Issue**: Whether parties who incorporate the AAA rules into their arbitration agreement delegate the question of arbitrability to the arbitrator (case of first impression).

- **Procedural Posture:** The trial court granted Total E&P's motion to stay the arbitration, but the court of appeals reversed, holding that by agreeing to arbitrate before the AAA and in accordance with its rules, the parties delegated the arbitrability issue to the arbitrator.

- **The Court's Answer: Yes!**

➢ Incorporating AAA Commercial Rules into a contract constitutes a clear and unmistakable agreement that the arbitrator decides arbitrability.

TOTALENERGIES V. MP GULF OF MEXICO

Takeaways

- Parties can agree to delegate arbitrability however they wish, but incorporation of the AAA rules effectively delegates arbitrability to the arbitrator unless the agreement provides otherwise.

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ATTORNEY CLIENT PRIVILEGE:

Univ. of Tex. Sys. v. Franklin Ctr. for Gov't & Pub. Integrity
675 S.W.3d 273 (Tex. 2023)

UNIV. OF TEXAS V. FRANKLIN CENTER

The Agreement defined the scope of work as:

> The focus will be on an evaluation of the conduct of U.T. Austin, U.T. System, and U.T. System Board of Regents, (collectively "U.T.") officials and employees in performing admissions services, not on any external recommenders. U.T.'s responsibility to ensure integrity in the handling of admissions recommendations lies with the staff and officials within U.T., thus the charge is to determine if the conduct of U.T. officials is beyond reproach. Specifically, the investigation should determine if U.T. Austin's admissions decisions are made for any reason other than an applicant's individual merit as measured by academic achievement and officially established personal holistic attributes, and if not, why not.

The Agreement also required Kroll to submit a final report to the "U.T. Austin General Counsel" that "describes the investigation methods employed and reports the investigators' factual findings."

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UNIV. OF TEXAS V. FRANKLIN CENTER

- **Key Issue**: Whether a non-lawyer third-party investigator is a “lawyer’s representative” covered by attorney-client privilege.

- **Procedural Posture:** After reviewing disputed documents in camera, the trial court determined that the documents were privileged. The court of appeals reversed and ordered disclosure of all the documents.

UNIV. OF TEXAS V. FRANKLIN CENTER

- **The Court's Answer: In this case, yes!**

➢ The court rejected an argument that privilege did not apply simply because the engagement letter did not mention legal advice or legal services.

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UNIV. OF TEXAS V. FRANKLIN CENTER

- Significant Purpose Test: assisting in the rendition of professional legal services must be a significant purpose for which the representative was hired in the first instance.
- Applying this test, the court held that an investigation was privileged because the engagement letter provided:

(1) the investigation was to be conducted under the direction of the university's general counsel;

(2) the investigator's final report and all notices and communications were to be submitted to the general counsel; and

(3) the consultant was required to maintain confidentiality of investigatory materials unless otherwise authorized.

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UNIV. OF TEXAS V. FRANKLIN CENTER

Takeaways

- Substance governs over form when evaluating whether a third-party investigation is privileged.

- To ensure that a third-party investigation is privileged the engagement agreement should be clear that:

➢ The purpose of the engagement is to provide or support legal services for a particular purpose AND that the company's legal department or outside counsel will direct and oversee the consultant's work; and

➢ The consultant has been engaged by the company's legal department or outside counsel.

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LABOR AND EMPLOYMENT CASES

Cameron Int'l Corp. v. Martinez
662 S.W.3d 373 (Tex. 2022)

CAMERON INT'L CORP. V. MARTINEZ

- **Key Issue**: Whether an oilfield worker returning to the oilfield drilling site after completing personal errands was acting in the course and scope of his employment such that the employer is vicariously liable for the worker's alleged negligence in connection with a car accident en route.

- **Procedural Posture:** The trial court granted summary judgment for the employer on vicarious liability, but the court of appeals reversed because it found that a fact issued existed as to whether the employee was on a "special mission" for the employer.

CAMERON INT'L CORP. V. MARTINEZ

- **The Court's Answer: No!**

➢ The court of appeals interpreted the "special mission" doctrine too broadly by applying it to a personal errand.

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CAMERON INT'L CORP. V. MARTINEZ

Takeaways

- For vicarious liability, not every task that supports a worker's needs and indirectly benefits the employer is within the course and scope of employment.
- The scope of vicarious liability remains much narrower than for workers' compensation liability.

Tex. Tech Univ. Health Scis. Ctr.–El Paso v. Niehay 671 S.W.3d 929 (Tex. 2023)

TEX. TECH. V. NIEHAY

- **Key Issue**: Whether morbid obesity qualifies as an "impairment" under the Texas Commission on Human Rights Act without evidence that it is caused by an underlying physiological disorder or condition.

- **Procedural Posture:** Texas Tech filed a combined plea to the jurisdiction and motion for summary judgment, asserting that the plaintiff had not shown a disability. The trial court denied the plea and motion, and the Court of Appeals affirmed.

TEX. TECH. V. NIEHAY

- **The Court's Answer: NO!**

➢ The plain language of the TCHRA's definition of disability as "a mental or physical impairment" requires an impairment to have an underlying a physiological disorder or condition.

➢ Weight is not a physiological disorder or condition—it is a physical characteristic.

TEX. TECH. V. NIEHAY

Takeaways

- Obesity can be a disability under Texas law if it qualifies as an impairment (i.e., it is abnormal **and** it occurs because of an underlying condition)

- Whether the medical community generally considers a condition to be a medical disorder is not controlling.

Scott & White Mem'l Hosp. v. Thompson (Tex. December 22, 2023)

SCOTT & WHITE MEM'L HOSP. V. THOMPSON

- **Key Issue**: How causation should be evaluated in a retaliation claim.

- **Procedural Posture:** After receiving 2 previous written reprimands, the plaintiff nurse was terminated for a HIPAA violation.The trial court granted summary judgment on plaintiff's retaliation claim, but the court of appeals reversed.

SCOTT & WHITE MEM'L HOSP. V. THOMPSON

- **The Court's Answer: The court of appeals incorrectly reversed the entry of summary judgment.**

➢ Causation in a retaliation case requires proof of "but-for causation" requirement, meaning the adverse employment action would not have occurred but for the plaintiff's protected conduct

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SCOTT & WHITE MEM'L HOSP. V. THOMPSON

Takeaways

- Plaintiffs must prove "but-for" causation in retaliation cases.
- Employers cannot be liable for retaliation, even if the employee engaged in protected conduct, if the adverse employment action would have occurred anyways.

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FORCE MAJEURE:

Point Energy Partners Permian LLC v. MRC Permian Co.
669 S.W.3d 796 (Tex. 2023)

POINT ENERGY PARTNERS V. MRC PERMIAN

- **Key Issue**: Whether force majeure excused untimely performance of a contract when the delay resulted from a scheduling error.

- **Procedural Posture:** The trial court granted summary judgment for Point Energy, finding that the force majeure clause did not perpetuate MRC's lease. The court of appeals reversed, holding that a fact issue existed as to whether the lease should have been allowed to continue under the force majeure clause.

POINT ENERGY PARTNERS V. MRC PERMIAN

- **The Court's Answer: No!**

➢ "Lessee's operations are delayed by an event of force majeure" does not refer to the delay of a necessary drilling operation that had been scheduled to commence after the deadline for perpetuating the lease.

➢ There was no causal nexus between the force majeure event and the delay in drilling operations.

POINT ENERGY PARTNERS V. MRC PERMIAN

Takeaways

- Courts strictly construe force majeure clauses.
- Performance generally is not excused unless the force majeure event caused the default.
- This appears to be the first and only force majeure case the Texas Supreme Court has decided on the merits.

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PERSONAL JURISDICTION CASES

LG Chem Am., Inc. v. Morgan
670 S.W.3d 341 (Tex. 2023)

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LG CHEM AM., INC. V. MORGAN

- **Key Issue**: Whether nonresident defendants' purposeful contacts with Texas are sufficiently related to a plaintiff's products-liability claims to support the exercise of specific personal jurisdiction.

- **Procedural Posture:** Defendants filed special appearances arguing they only sold and distributed batteries to industrial manufacturers, not individual consumers like plaintiff, so their Texas contacts were insufficiently related to the plaintiff's claims to justify hailing them into Texas court. The trial court denied their special appearances and the court of appeals affirmed.

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LG CHEM AM., INC. V. MORGAN

- **The Court's Answer: Yes!**

➢ If a nonresident seeks a benefit, advantage, or profit from Texas, specific personal jurisdiction exists even if the plaintiff is not a member of the targeted consumer market, so long as the defendant intended to serve a Texas market.

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LG CHEM AM., INC. V. MORGAN

Takeaways

- Don’t mess with Texans- one of three cases finding personal jurisdiction over nonresidents
- Analyzing personal jurisdiction requires evaluation of a defendant’s contacts with the forum—Texas—as a whole, not a particular market segment within Texas that defendant may have targeted.

State v. Volkswagen Aktiengesellschaft
AND
State v. Audi Aktiengesellschaft
669 S.W.3d 399 (Tex. 2023)

STATE V. VOLKSWAGEN; STATE V. AUDI

Study: Volkswagen cheated on emissions standards — and made thousands of kids sick

A new study analyzes the effects of the "clean diesel" fraud. They're not good.

Volkswagen To Plead Guilty, Pay $4.3 Billion In Emissions Scheme Settlement

STATE V. VOLKSWAGEN; STATE V. AUDI

- **Key Issues**:
  - (1) Whether the manufacturers purposefully availed themselves of the privilege of conducting activities in Texas by deploying defeat-device software to Texas vehicles through intermediaries and instrumentalities under their contractual control, and
  - (2) whether purposeful availment is lacking because the manufacturers targeted vehicles nationwide.

- **Procedural Posture:** Texas sued German manufacturers and related American entities in response to the car companies' 2015 emissions cheating device scandal. On interlocutory appeal, a divided court of appeals dismissed the State's claims, holding that Texas lacked jurisdiction

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STATE V. VOLKSWAGEN; STATE V. AUDI

- **The Court's Answer: Yes and no!**

➢ The German manufacturers could reasonably anticipate being hailed into Texas court because they "effectively — and knowingly — dropped the tampering software down a chute that guaranteed it would land in Texas."

➢ The purposefulness of the forum contacts was not diminished by the pervasiveness of the tampering scheme because personal jurisdiction is a forum-specific inquiry. A defendant's contacts with other states do not affect the jurisdictional force of purposeful contacts with Texas.

STATE V. VOLKSWAGEN; STATE V. AUDI

Takeaways

- The Court observed that :

➢ controlling the distribution scheme that brought a product to the forum state is a recognized “plus factor” under a stream-of-commerce purposeful-availment analysis; and

➢ actions taken through a “distributor-intermediary” or an agent acting as the defendant’s “boots on the ground” “provides no haven from the jurisdiction of a Texas Court”.

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SETTLEMENT AND RELEASE:

Finley Res., Inc. v. Headington Royalty, Inc. 672 S.W.3d 332 (Tex. 2023)

FINLEY RES., INC. V. HEADINGTON ROYALTY

- The release in an acreage-swap agreement between Petro Canyon Energy and Headington said that "Headington [releases, etc.] Petro Canyon and its affiliates and their respective officers, directors, shareholders, employees, agents, **predecessors** and representatives… [for all claims, etc.]… related in any way to the Loving County Tract."

- **Key Issue**: Whether "predecessors" included predecessors-in-title or only predecessor entities.

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FINLEY RES., INC. V. HEADINGTON ROYALTY

- **Procedural Posture:** The trial court granted summary judgment for Finley that the release included predecessors-in-title, but the court of appeals reversed, holding that "predecessors" referred only to predecessor entities.

- **The Court's Answer:** Although "predecessors" has a potentially broad meaning, the grammatical and syntactic structure in which it was used limited the term to corporate predecessors

  - "Predecessors" grammatically refers back to the entities released—Petro Canyon and its affiliates. This is bolstered by the use of the term within a list including officers, directors, shareholders, and employees, each of whom exist within the corporate structure of the released corporate entities

FINLEY RES., INC. V. HEADINGTON ROYALTY

Takeaways

- Courts consider the context when construing the meaning of words in a contract.
- Context and circumstances cannot contradict, change, enlarge or supplement the contract language. They can only explain it.
- When dealing with titled assets, like real estate and oil and gas leases, it is important to make sure that predecessors are tied not only to the parties, but also the assets.

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TORTS- NEGLIGENT UNDERTAKING:

In re First Rsrv. Mgmt., L.P.
671 S.W.3d 653 (Tex. 2023)

IN RE FIRST RSRV. MGMT., L.P.

- **Key Issue**: Whether a parent company's appointment of an entity's board of managers constitutes control over that entity's operations sufficient to impose tort liability.

IN RE FIRST RSRV. MGMT., L.P.

- **Procedural Posture:** The defendant parent company moved to dismiss under Rule 91a, but the trial court denied it and the court of appeals denied mandamus relief.

- **The Court's Answer: Mandamus granted.**

➢ Mere appointment of an entity's board of managers is insufficient to support a negligence claim.

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IN RE FIRST RSRV. MGMT., L.P.

Takeaways

- Negligent undertaking liability requires proof that the defendant negligently undertook an affirmative course of action.
- Mere appointment of an entity's board of managers is insufficient to establish a negligent undertaking
- To establish a negligent undertaking claim, a plaintiff must plead that the defendant negligently undertook an affirmative course of action rather than simply an omission.

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TCPA:

McLane Champions, LLC v. Hous. Baseball Partners LLC
671 S.W.3d 907 (Tex. 2023)

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MCLANE CHAMPIONS, LLC V. HOUS. BASEBALL

- **Key Issue**: Whether the TCPA applies to a private business transaction between private parties that later generates public interest.

- **Procedural Posture:** The trial court denied defendant's motion to dismiss, and the court of appeals affirmed.

- **The Court's Answer: The TCPA does not apply.**

➢ Communications that are merely "related somehow to one of the broad categories set out in the statute but that otherwise have no relevance to a public audience are not communications made in connection with a matter of public concern."

MCLANE CHAMPIONS, LLC V. HOUS. BASEBALL

Takeaways

- Illustrates how recent amendments to the TCPA have narrowed its application

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INSURANCE COVERAGE:

ExxonMobil Corp. v. Nat'l Union Fire Ins. Co. 672 S.W.3d 415 (Tex. 2023)

EXXONMOBIL V. NAT'L UNION FIRE INS.

- **Key Issue**: Whether Exxon was covered under an umbrella policy procured by a contractor.

- **Facts:** A service provider agreed to procure at least $2 million in CGL coverage naming Exxon as an additional insured. The contactor obtained $4.5 million in primary coverage that named Exxon as an additional insured. It also obtained $25 million in umbrella coverage.

- **The Dispute:** Exxon was sued by injured employees of the contractor, but the insurer would only pay the policy limits of the primary coverage toward settlement. Exxon settled and sued the insurer for coverage, claiming it was an additional insured under the umbrella policy.

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EXXONMOBIL V. NAT'L UNION FIRE INS.

- **Procedural Posture:** The trial court granted summary judgment for Exxon, but the court of appeals reversed, holding that Exxon was limited to primary coverage only.

- **Supreme Court Answer:** Exxon was covered by the umbrella policy because it incorporated the underlying policy only to identify who is an "insured" and for no other purpose.

EXXONMOBIL. V. NAT'L UNION FIRE INS.

Takeaways

- Reaffirmed that insurance policies may incorporate a separate contract – no magic language is required.
- The court focuses on the language of the policy and will consider an extrinsic contract only for the purposes required by the policy.
- Because the umbrella policy only referenced the underlying services agreement to identify who was an insured, no other terms or conditions of that agreement could be used to limit the coverage afforded to Exxon as an insured.

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OIL AND GAS CASES

Devon Energy Prod. Co. v. Sheppard
668 S.W.3d 332 (Tex. 2023)

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DEVON ENERGY PROD. CO. V. SHEPPARD

- **Key Issue**: Whether the producer under a "gross proceeds" oil royalty had to pay royalty on more than its gross proceeds when the lease specified that any post-production costs factored into the sale price must be added to those proceeds for royalty purposes.

- The lease contained a "unconventional" provision:

> (c) If any disposition, contract or sale of oil or gas shall include *any reduction or charge for the expenses or costs* of production, treatment, transportation, manufacturing, process[ing] or marketing of the oil or gas, *then such deduction, expense or cost shall be added to . . . gross proceeds* so that Lessor's royalty shall *never be chargeable directly or indirectly with any costs or expenses* other than its pro rata share of severance or production taxes.

DEVON ENERGY PROD. CO. V. SHEPPARD

- **Procedural Posture:** The trial court granted summary judgment for the royalty owner that the producer improperly calculated the landowner's royalty without adding post-production costs factored into its sales proceeds.

- **The Supreme Court's Answer:** Though unconventional, the parties are free to define the royalty however they like, and the lease unambiguously required the producer to pay royalty on more than its gross proceeds.

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DEVON ENERGY PROD. CO. V. SHEPPARD

Takeaways

- Case law helps establish the meaning of commonly used terms and phrases in oil and gas leases, but the parties may deviate from those meanings with unambiguous language.

Van Dyke v. Navigator Group
668 S.W.3d 353 (Tex. 2023)

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VAN DYKE V. NAVIGATOR GROUP

- **Key Issue**: Whether a reservation of "one-half of one-eighth" of the minerals in a 1924 deed means 1/16 or one-half.

- The deed reserved an interest in the minerals with the language:

> It is understood and agreed that one-half of one-eighth of all minerals and mineral rights in said land are reserved in grantors, Geo. H. Mulkey and Frances E. Mulkey, and are not conveyed herein.

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VAN DYKE V. NAVIGATOR GROUP

- **The Dispute:** Successors-in-interest to the original grantee argued that the successors-in-interest to the original grantor were only entitled to 1/16 of the royalty under an existing oil and gas lease (half of 1/8).

- **Procedural Posture:** The trial court and the court of appeals held that the 1924 deed only retained 1/16.

VAN DYKE V. NAVIGATOR GROUP

- **The Supreme Court's Answer:** The 1924 deed reserved one-half of the minerals, not 1/16.
- Where an old deed contains a double fraction that uses one-eighth, the one-eighth is presumed to refer to 100% of the minerals. But the presumption is rebuttable if the deed itself suggests it means something else.
- Builds on a prior decision, *Hysaw v. Dawkins,* 438 S.W.3d 1 (Tex. 2016), which held that a royalty defined as "one-third of one-eighth" uses "one-eighth" as a term of art to refer to the entire royalty.

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HONORABLE MENTIONS

Decisions from the Fifth Circuit and the U.S. Supreme Court

EMPLOYMENT LAW

Hamilton v. Dallas County, No. 21-60771 (5th Cir. 2023)

Employees no longer have to satisfy the higher burden of showing an adverse employment decision, but the Court did not provide guidance regarding the types of adverse decisions effecting terms, conditions, or privileges of employment that could constitute actionable claims. Because the standard has been lowered, there may be more cases brought under Title VII and more Title VII cases may survive summary judgment.

EMPLOYMENT LAW

Rahman v. Exxon Mobil Corp., 56 F.4th 1041 (5th Cir. 2023)

Failure to train can constitute an adverse employment action if it is directly tied to the decision to terminate. An employment decision, even if not apparently “ultimate,” can meet the standard if it is so significant and material that it rises to the level of an adverse employment decision. An inadequate training claim must be based on the failure to provide comparable training.

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PERSONAL JURISDICTION

Mallory v. Norfolk S. Ry. CO., 600 US 122 (2023)

The Court upheld Pennsylvania's corporate-registration statute, under which out-of-state corporations that register to do business in the state thereby consent to general personal jurisdiction in Pennsylvania.

Companies should expect plaintiffs to engage in forum shopping in any state where the company is registered to do business under a statute similar to the one in Pennsylvania.

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QUESTIONS

COMING UP NEXT MONTH

THINGS I LEARNED IN TRIAL

PRESENTED BY: RYAN CORDELL

FEBRUARY 15, 2024

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CLE ACCREDITATION

- **COURSE NUMBER: 174224922**
- **ACCREDITED HOURS: 1.00**
- **ETHICS HOURS: 0.00**

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