

## D. Todd Smith

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**From:** Osler McCarthy [Osler.McCarthy@courts.state.tx.us]  
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## TEXAS SUPREME COURT ADVISORY

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### ORDERS AND OPINIONS ISSUED JUNE 20, 2008

LINKS TO FULL-TEXT OPINIONS FOLLOW SUMMARIES.

NOTE: *Summaries are prepared by the Court's staff attorney for public information and reflect his judgment alone on facts and legal issues. These summaries are not part of the Court's opinion in the case.* Links are to Adobe's PDF format (duplication of the document) and to HTML documents (rendition). [Click here to download a free Adobe Reader.](#)

[JUNE 20 ORDERS](#) (in HTML)

[Decisions in cases \(motions, requests, etc.\) from June 12 through Wednesday](#) (PDF)

### OPINIONS

06-0943

In re Fleetwood Homes of Texas, L.P., and Fleetwood Enterprises Inc.

from Walker County and the 10th District Court of Appeals, Waco

MANDAMUS RELIEF CONDITIONALLY GRANTED, per curiam opinion:

The issue is whether discussing a potential trial setting and a day before moving to compel arbitration posing written discovery questions waived arbitration rights. The trial court said yes and the appeals court denied mandamus. The Supreme Court HOLDS that (1) email discussion of the trial setting neither expressly nor impliedly waived arbitration and (2) that streamlined discovery was not unconscionable when discovery was limited for both parties.

[Opinion in HTML](#)

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[Briefs](#)

07-0486

In re Lyon Financial Services Inc.

from Hidalgo County and the 13th District Court of Appeals, Corpus Christi/Edinburg

MANDAMUS RELIEF CONDITIONALLY GRANTED, per curiam opinion:

The issue is whether the trial court abused its discretion by denying dismissal based on a forum-selection clause. In this case a McAllen company sued in Hidalgo County over billing according to three related schedules all incorporating by reference an equipment lease and a subsequent restructuring agreement incorporating the previous agreement. The company claimed usury and unjust enrichment and sought to declare the venue and jurisdiction provisions invalid as unconscionable. Both the original agreement and the later one specified that Pennsylvania law would be used for interpretation and that jurisdiction would lie in Pennsylvania

state or federal courts. The trial court denied a motion to dismiss for the wrong forum and the court of appeals denied mandamus relief. The Supreme Court HOLDS that mandamus is proper to enforce a forum-selection clause, that agreement to Pennsylvania as the forum was not a result of misrepresentation or fraud, that it was not a result of unfairness or overreaching and that Pennsylvania was not an inconvenient forum that would lead to an unjust result. The McAllen company's president testified that he signed a confession of judgment based on a representation that the forum-selection clause applied to a schedule that was not subject of the suit, but he did not aver that he would not have signed the restructuring agreement absent the alleged misrepresentation and is presumed to know its contents. His claim of disparate bargaining power – that he did not have legal advice and had no formal business school training – does not show unfairness or overreaching because it did not result in unfair surprise or oppression when the forum-selection provision was in all capital letters in the restructuring agreement. Nor is the clause unconscionable because Pennsylvania does not allow a corporation to sue for usury. The Court cites [In re AutoNation](#) for the proposition that Texas law in an area does not establish public policy that would negate a contractual forum-selection clause, absent a statute requiring suit to be brought in Texas.

[Opinion in HTML](#)

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## **ISSUES SUMMARIES ON MANDAMUS PETITION GRANTED ORAL ARGUMENT IN TODAY'S ORDERS**

07-0737

In Re Lester Collins, M.D.

from Smith County and the 12th District Court of Appeals, Tyler

Oral argument date pending

The principal issues in the medical-malpractice case are (1) whether the trial court abused its discretion by prohibiting ex parte communication with non-party physicians and health-care providers who treated the plaintiff and listed by her on the statutory schedule for disclosure and release; (2) whether Civil Practices and Remedies Code section 74.052 prohibits ex parte communications with the med-mal plaintiff's physicians and health-care providers; and (3) whether federal law (HIPAA) prohibits ex parte communications and preempts section 74.052.

[Briefs](#)

[Court of appeals opinion](#)