

**Texas Supreme Court Docket Analysis:
September 1, 2008**

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Chapter 15

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SELECTED PUBLICATIONS

Texas Supreme Court Docket Analysis: September 1, 2007, State Bar of Texas, Advanced Civil Appellate
 Practice Course, Sept. 2007.
Guide to Practice Before the Supreme Court of Texas, Supreme Court Pro Bono Pilot Program (2007).
Happy Fiscal New Year! Out With The Old, In With The New, State Bar of Texas, Advanced Civil
 Appellate Practice Course, Sept. 2006.
Certified Questions To and From the Texas Supreme Court, 17 APPELLATE ADVOCATE 6 (Winter 2005).
Chutes and Ladders: Unusual Paths In and Out of the Appellate Courts, State Bar of Texas, Advanced
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Help! The Other Side Has Filed a Petition for Review — What Do I Do Now? State Bar of Texas, Practice
 Before the Supreme Court of Texas, April 2003.
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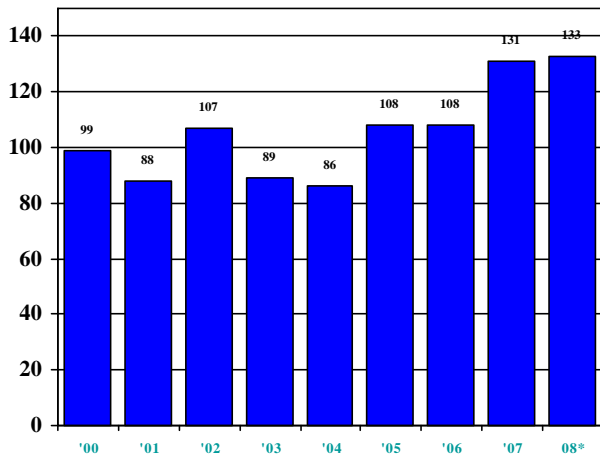
I. SCOPE

This paper examines the Court’s docket as of September 1, 2008. It presents unofficial statistical information about the fiscal year ended August 31, 2008 and also looks at cases pending on the Court’s docket as of September 1.

II. OPINIONS

A. Output

In the term just ended, the Court issued 133 deciding opinions. By comparison, the Court issued 131 deciding opinions in the prior year.



The 133 opinions issued in the term just ended consisted of 71 signed opinions and 62 per curiam opinions. The Court also issued 4 opinions on rehearing.

B. Subject matter

The predominant issues in opinions handed down in the term just ended related to: (1) trial and appellate procedure, with 30 cases (16 cases relating to various aspects of jurisdiction and trial procedure, 7 cases focusing on appellate procedure issues, and 7 arbitration cases); (2) health care liability, with 26 cases; (3) government, 16 cases (sovereign immunity, zoning and land use, and condemnation); (4) insurance, 16 decisions; and (5) products liability

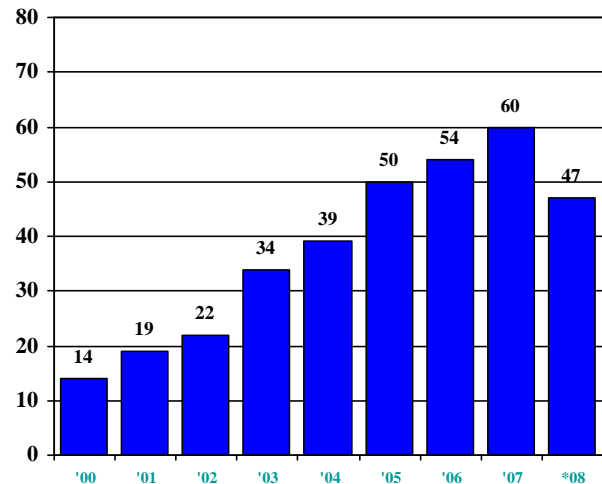
and non-health care torts, 10 opinions. These five areas accounted for 74% of the opinions issued in the term.

C. Agreement/disagreement

Of the 71 signed opinions issued in the term just ended, 29, or 41%, were unanimous and 42 drew a separate concurring or dissenting opinion. Overall, when per curiam opinions are considered, the justices disagreed in 32% of all cases.

D. Backlog

The Court had 75 causes pending on its docket on September 1, 2008, according to the author’s unofficial count. Of these, 47 have been argued and submitted and 28 have been set for argument in the fall. The Court is making progress on its backlog of cases, and has reversed the eight-year trend of ending the term with more argued cases awaiting decision than the prior term. The last three terms have ended with 50, 54, and 60 argued cases pending, again according to an unofficial count by the author.



Of the 47 argued cases pending on September 1, 2008, 6 were argued in fiscal year 2006, 7 were argued in fiscal year 2007, and the remaining 34 were argued in the term just ended.

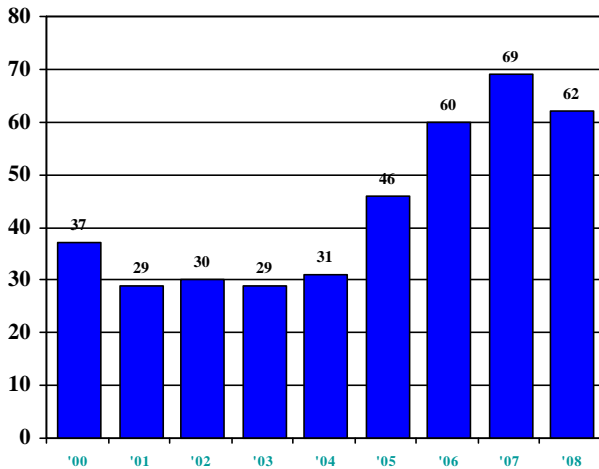
The ten oldest cases by argument date are:

1. *In re John G. & Marie Stella Kenedy Mem. Found.*, No. 04-06-7, argued September 29, 2005 (abated).

2. *In re Frost Nat'l Bank*, No. 04-0608, argued September 29, 2005 (abated).
3. *DiGiuseppe v. Laoler*, No. 04-0641, argued October 20, 2005.
4. *TXI Operations LP v. Perry*, No. 05-0030, argued January 26, 2006.
5. *Graber v. Fuqua*, No. 05-0303, argued January 26, 2006.
6. *SWB v. Mitchell*, No. 05-0171, argued March 23, 2006.
7. *City of San Antonio v. Pollock*, No. 04-1118, argued October 18, 2006.
8. *Exxon Corp. v. Emerald Oil & Gas Co., L.P.*, No. 05-0729, argued February 13, 2007.
9. *Exxon Corp. v. Emerald Oil & Gas Co., L.P.*, No. 05-1076, argued February 13, 2007.
10. *SSP Ptrs. v. Gladstrong Invs. (USA) Corp.*, No. 05-0721, argued March 20, 2007.

E. Per curiams

Per curiam activity has continued at a high rate in the term just ended. The Court issued 62 per curiam opinions, which constituted 47% of deciding opinions for the term.

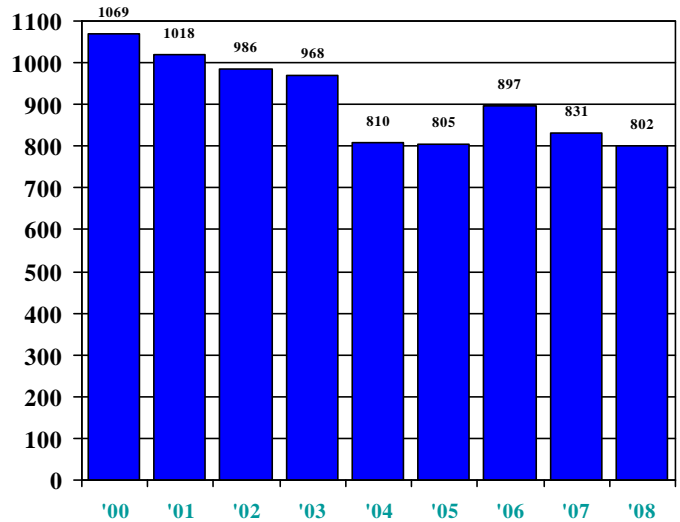


Twenty-one, or 34%, of the 62 per curiam opinions issued in the term just ended were reversed “in light of” (ILO) another decision from the Court; 14 of these were health care cases (most involving health care expert reports) and 3 were sovereign immunity cases.

III. PETITIONS FOR REVIEW

A. Filings

The five-year trend of substantially reduced filings continued in the term just ended. In the term just ended, 823 petitions were filed. In the 2007 fiscal year term ended August 31, 2007, 831 petitions for review were filed. Prior to 2003, the average number of petitions exceeded 1,000.



B. What are the odds?

With the decrease in filings, the grant rate has increased. In the three terms ended August 31, 2007, the grant rate on petitions has been 14%. Preliminary numbers show a slightly lower grant rate of about 13% for the term just ended. This means that there is a 1 in 8 chance of a grant when the petition arrives in the clerk’s office. The author estimates that, in cases where a response is filed (either voluntarily or at the request of the Court), the grant increases to 25%, or 1 in 4.

The grant rate nearly doubles in cases in which the Court requests full briefing on the merits. In a series of studies over the years, the author has calculated the grant rate in cases in which full briefs are requested. The most recent study showed a grant rate of 45-49%. Stacy R. Obenhaus and Pamela Stanton Baron, *The Texas Supreme Court by the Numbers: A Statistical Survey*, University of Texas School of Law, 11th Annual Conference on State and Federal Appeals, May 2001 (35%); Pamela Stanton Baron, *The Chair’s Report: The Texas Supreme Court by the*

Numbers Redux, 18 APPELLATE ADVOCATE 2 (Summer 2005) (38-42%); Pamela Stanton Baron, Texas Supreme court Docket Analysis: May 15, 2008, University of Texas School of Law, 18th Annual Conference on State and Federal Appeals, May 2008 (45-49%).

The grant rate on cases pending on the shadow docket (*i.e.*, petitions on file for a year or more without action) is even higher. For those cases on the shadow docket on July 31, 2006, the grant rate was 62%, for those pending on July 31, 2007, the grant rate was 53%.

In the term just ended, 188 motions for rehearing on petitions were filed, and 5 were granted. Assuming filings and dispositions are roughly equal, this would yield a grant rate of under 3%.

Summary of Odds of a Grant

PFR	13 %
PFR after response	~ 25 %
PFR after full briefs	45+ %
PFR on shadow docket	55+ %
PFR on rehearing	< 3 %

C. Subject matter of granted petitions

The Court had 75 causes pending on its docket on September 1, 2008, according to an unofficial count by the author. Of these, 47 have been argued and submitted and 28 have been set for argument in the fall. Four of the pending argued cases have been abated.

Of the 75 pending cases, 19 involved procedural issues (trial, appellate, and arbitration), comprising 25% of the docket. The next four areas of significant docket impact are: insurance issues, 9 cases (12%); government issues, 9 cases (12%); non-health care torts and products liability, 7 cases (9%); and health care, 7 cases (9%). These five areas comprise 68% of the Court’s docket.

The docket continues to consist predominantly of cases in which the defendant is the petitioner. Corporations, businesses, government entities, insurance companies, and health care providers are the petitioner in about 60, or 80% of pending cases.

D. Petition backlog: the shadow docket

For the past three years, the author has studied cases that remain pending on the Court’s docket for more than 12 months without being granted or denied. This “shadow docket” produces about half of the Court’s opinions – those that are decided per curiam.

In the past year, the Court has substantially reduced the size of the shadow docket. As of July 31, 2008, there were 28 cases that had been pending a year without action, in contrast to 62 cases as of July 31, 2007, and 69 cases as of July 31, 2006.

Appendix B lists the cases pending on the shadow docket as of July 31, 2008. As of September 1, the ten oldest cases remaining on the shadow docket without action are:

1. *Harris County MUD No. 170 v. Harris County*, No. 05-0755 (sovereign immunity)
2. *Kerlin v. Arias*, No. 06-0097 (res judicata)
3. *In re Watkins MD*, No. 06-0653 (health care expert report)
4. *Nealon MD v. Williams*, No. 06-0752 (health care liability and sovereign immunity)
5. *Great Am. Lloyds Ins. Co. v. Summit Custom Homes, Inc.*, No. 06-1017 (insurance)
6. *D.R. Horton-Texas Ltd. v. Markel Int’l Ins. Co.*, No. 06-1018 (insurance)
7. *Tejada v. Rowe MD*, No. 07-0061 (health care liability and sovereign immunity)
8. *Hawkins v. El Paso First Health Plans, Inc.*, No. 07-0145 (sovereign immunity)
9. *Waffle House, Inc. v. Williams*, NO. 07-0205 (negligent supervision; sexual harassment)
10. *In re Ashley, Humphries & Sanchez*, No. 07-0219 (arbitration)

IV. SPEED: HOW LONG DOES IT TAKE?

All clients want to know how long a Supreme Court appeal will take. According to statistics kept by the Court, it takes on average 166 days, or about 5 and one-half months, for a decision on a petition for review. Mandamus petitions average 123 days, or about 4 months. It is important to bear in mind these are averages; as the shadow docket illustrates, some cases take much longer to get to a ruling.

Time to Disposition: PFRs and Mandamus

	Average Time to Disposition
PFRs	166 days (5.5 mos.)
Mandamus	123 days (4 mos.)

The speed of opinion is slow. Based on the docket sheets in the 65 cases decided after oral argument in the term just ended, the average time from initial filing to issuance of an opinion in an argued case was 28 months, ranging from a low of 11 months to a high of 54 months (4 and one-half years). These cases took on average 14 months from initial filing to oral argument, ranging from 3-29 months, and averaged more than 13 months from oral argument to issuance of an opinion, with a range of 3 to 40 months.

Time to Disposition: Argued Cases

	Initial filing to Submission	Submission to Issuance	Initial Filing to Issuance
Average	14+ mos.	13+ mos.	28 mos.
Range	3-29 mos.	3-40 mos.	11-54 mos.

The average time to disposition in argued cases in the term just ended is nearly identical to the average for the prior term.

For non-argued cases, the time from filing to issuance averaged 16 months, ranging from a low of less than 1 week (in the Yearning for Zion cases and an election case) to a high of 47 months (four years). The average is similar to the prior term.

Time to Disposition: Cases Without Argument

	Initial Filing to Issuance
Average	16 mos.
Range	0-47 mos.

V. ISSUES CURRENTLY PENDING BEFORE THE TEXAS SUPREME COURT

Below is a brief summary of the issues raised in cases granted and pending in the Texas Supreme Court as of September 1, 2008, organized by subject matter. This list is not intended to be a comprehensive discussion of pending cases, but is designed to alert the reader to pending issues the determination of which is likely to affect other cases. Additional information can be obtained by reference to the court of appeals' opinion (cited when available), by reference to briefs on the merits posted on the Court's website: <http://www.supreme.courts.state.tx.us/ebriefs>, and by watching the oral argument video available at <http://www.stmarytx.edu/law/webcasts>.

A. Pre-trial procedure

1. Arbitration

Unenforceability based on lack of mental capacity. *In re Morgan Stanley & Co.*, No. 07-0665, argument October 15, 2008. At issue is whether the trial court or the arbitrator decides whether an arbitration agreement is unenforceable based on lack of mental capacity of the signatory. Court of appeals' opinion: 2007 WL 2035128 (Tex. App.—Dallas 2007) (mem. op.).

Enforceability against non-signatory wrongful death beneficiaries. *In re Labatt Food Serv., L.P.*, No. 07-0419, argument September 9, 2008. The Court will decide whether an employee's wrongful death beneficiaries, including his minor children, are bound by the employee's agreement to arbitrate all claims relating to occupational injury or death. Also at issue is whether a statutory prohibition against pre-injury waivers of injury or

death claims defeats the arbitration agreement. Court of appeals' opinion: 2007 WL 1424092 (Tex. App.—San Antonio 2007) (mem. op.).

Mandamus review of stay order. *In re Gulf Exploration, L.L.C.*, No. 07-0055, argument January 17, 2008. The Court will decide the question left open in *Palacios* – whether the court of appeals here properly reviewed by mandamus an order staying litigation in favor of arbitration under the federal act. The court of appeals looked to the scope of the parties' joint operating agreement (arguably, the merits of the case) and held the trial court lacked discretion to stay the trial. Court of appeals' opinion: 211 S.W.3d 828 (Tex. App.—Eastland 2006).

Appealability when award vacated and rehearing ordered. *East Tex. Salt Water Disp. Co. v. Werline*, No. 07-0135, argument January 16, 2008. The Court will determine whether the court of appeals has jurisdiction over a trial court order vacating an arbitration award, denying confirmation, and ordering a rehearing. Court of appeals' opinion: 209 S.W.3d 888 (Tex. App.—Texarkana 2006).

Appealability when award vacated and no remand ordered. *Bison Bldg. Materials Ltd. v. Aldridge*, No. 06-1084, argument January 16, 2008. At issue is whether a trial court order vacating in part an arbitration award but not directing a remand is appealable. Also at issue is whether a post-injury release is subject to the fair notice requirements. Court of appeals' opinion: 2006 WL 2641280 (Tex. App.—Houston [1st Dist.] 2006).

2. Jurisdiction

Personal jurisdiction over non-resident corporation receiving Texas assets. *Retamco Operating, Inc. v. Republic Drilling Co.*, No. 07-0599, argument September 11, 2008. In this case in which a Texas defendant transferred substantial assets to an out-of-state affiliate prior to entry of an adverse judgment, the Court will decide whether Texas courts may exercise jurisdiction over a non-resident corporation that is a recipient of property subject to a claim under the Uniform Fraudulent Transfer Act. Court of appeals'

opinion: 2007 WL 913206 (Tex. App.—San Antonio Mar. 28, 2007).

3. Venue and forum selection

Forum non conveniens: conditions on right to dismissal. *In re Gen. Elec. Co.*, No. 07-0195, argument November 14, 2007. At issue is whether a trial court can condition a dismissal under the forum non conveniens statute on the defendant's agreement not to remove the case to federal court in the other forum. Court of appeals' opinion: 2007 WL 625010 (Tex. App.—Houston [1st Dist.] Mar. 2, 2007).

4. MDL

Federal preemption of MDL removal. *In re GlobalSantaFe Corp.*, No. 07-0040, argument January 17, 2008. The Court will decide whether the federal Jones Act pre-empts state law permitting removal of a silicosis case to a state MDL pre-trial court when the plaintiff fails to file a report documenting a substantial impairment when the Jones Act does not require substantial impairment, only injury. Court of appeals' opinion: 2006 WL 3716495 (Tex. App.—Houston [14th Dist.] 2006).

5. Discovery

Protective order prohibiting ex parte communications with treating physician. *In re Collins M.D.*, No. 07-0737, argument November 12, 2008. At issue in this health care liability suit is whether a trial court abuses its discretion by prohibiting ex parte communications with a claimant's nonparty treating physicians when the claimant has signed a statutorily required authorization for release of health information and filed a medical malpractice suit against a treating physician. Court of appeals' opinion: 224 S.W.3d 798 (Tex. App.—Tyler 2007).

B. Trial procedure

1. Jury selection and deliberations

Post-settlement discovery of influences leading to jury note. *Ford Motor Co. v. Castillo*, No. 06-0875, argument February 5, 2008. At issue is whether a party who enters into a

settlement because of an adverse jury note is entitled to discovery on whether the note was a result of improper outside influence. Court of appeals' opinion: 200 S.W.3d 217 (Tex. App.—Corpus Christi 2006).

Batson challenge: proof of non-racial motive. *Davis v. Fisk Elec. Co.*, No. 06-0162, argued April 10, 2007. At issue is whether the trial court abused its discretion in overruling a *Batson* challenges to peremptory strikes of five of six African-American jurors when counsel asserted that the strikes were based on non-verbal occurrences in the courtroom. Court of appeals' opinion: 187 S.W.3d 570 (Tex. App.—Houston [14th Dist.] 2006).

2. Class actions

Corporation taking claims by assignment as class rep. *Southwestern Bell Tel. Co. v. Marketing on Hold, Inc.*, No. 05-0748, argued March 22, 2007. The Court will examine whether a corporation may serve as a class rep when the corporation has suffered no individual injury but has taken by assignment claims relating to Southwestern Bell's charges for municipal fees. Court of appeals' opinion: 170 S.W.3d 814 (Tex. App.—Corpus Christi 2005).

3. Evidence

Evidence of illegal immigrant status, DPS report, and cell phone use. *TXI Transport. Co. v. Hughes*, No. 07-0541, argument October 16, 2008. At issue is whether the trial court properly allowed evidence that the driver in a crash was an illegal immigrant and whether the court properly excluded the DPS accident report and a cell phone report that showed a call to the other driver at time of accident. Court of appeals' opinion: 224 S.W.3d 870 (Tex. App.—Fort Worth 2007).

Evidence of gross sales. *Reliance Steel & Alum. Co. v. Sevcik*, No. 06-0422, argument December 4, 2007. The Court will decide whether the trial court erred in admitting evidence of a company's annual gross sales in the absence of a request for punitive damages and whether any such error was harmful. Court of appeals' opinion: 2006 WL 563044 (Tex. App.—Corpus Christi Mar. 9, 2006).

4. Experts

Toxic tort causation. *City of San Antonio v. Pollock*, No. 04-1118, oral argument October 18, 2006. At issue is whether an expert provided reliable evidence that exposure to benzene caused childhood leukemia. Court of appeals' opinion: 155 S.W.3d 322 (Tex. App.—San Antonio 2004).

5. Jury charge

Jury instructions on new and independent cause and loss chance of survival. *Columbia Rio Grande Healthcare L.P. v. Hawley*, No. 06-0372, argument January 17, 2008. The Court will determine whether the trial court erred in refusing to instruct the jury in a health care liability case on: (1) new and independent cause when the treating doctor failed to review the pathologist's report; and (2) lost chance of survival, *i.e.*, that plaintiff must have had a greater than 50% chance of survival as of the date of the negligent act. Court of appeals' opinion: 188 S.W.3d 838 (Tex. App.—Corpus Christi 2006).

Romero charge error. *Missouri Pacific Railroad Co. v. Limmer*, No. 06-0023, argument November 13, 2007. This case presents a number of issues arising from a death at a railroad crossing, including whether there was proof that the warning signals were federally funded, thus preempting the action, and whether the railroad had a duty to keep the sightlines clear of obstruction. There is also a charge issue: whether the railroad levied an adequate objection to the submission of a single apportionment question that combine two grounds for liability. Court of appeals' opinion: 180 S.W.3d 803 (Tex. App.—Houston [14th Dist.] 2005).

Specific performance. *DiGiuseppe v. Laoler*, No. 04-0641, argument October 20, 2005. The Court will decide whether a question must be submitted to the jury asking whether the plaintiff is ready, willing, and able to perform the contract in order to award specific performance. Court of appeals' opinion: 2004 WL 1209569 (Tex. App.—Dallas 2004).

6. New trial; plenary power

New trial “in the interest of justice and fairness.” *In re Columbia Med. Ctr. of Las*

Colinas, No. 06-0416, argument September 27, 2007, but subsequently abated. At issue is whether the trial court abused its discretion in granting a new trial “in the interest of justice and fairness” and whether mandamus will issue to correct any abuse. Court of appeals’ opinion: 2006 WL 1309583 (Tex. App.—Dallas May 12, 2006) (mem. op.).

New trial based on post-trial juror affidavits. *In re Baylor Med. Ctr. at Garland*, No. 06-0491, argument September 27, 2007, but subsequently abated by opinion issued August 29, 2008. At issue is whether the trial court abused its discretion in granting a new trial based on post-trial juror affidavits stating that they applied the wrong standard in deciding whether the defendant hospital was negligent. Also at issue is whether mandamus will issue to correct any abuse. Court of appeals’ opinion: 2006 WL 14278 (Tex. App.—Dallas Jan. 4, 2006) (mem. op.).

D. Appellate jurisdiction and procedure

Restitution of moneys paid to satisfy a judgment under a Rule 11 agreement. *Miga v. Jensen*, No. 07-0123, argument October 14, 2008. At issue is whether restitution is appropriate when a party tenders payment under a Rule 11 agreement and the judgment leading to the agreement is later reversed on appeal. Court of appeals’ opinion: 214 S.W.3d 81 (Tex. App.—Fort Worth 2006).

Appealability of order refusing to dismiss for untimely expert report after extension request granted. *Badiga M.D. v. Lopez*, No. 05-0801, argument September 9, 2008. The Court will determine whether the court of appeals correctly held that it lacked jurisdiction over an interlocutory appeal from a trial court order extending the time for filing an expert report in a health care liability case and also refusing to dismiss. Court of appeals’ opinion: 2005 WL 1572273 (Tex. App.—Corpus Christi 2005).

Effective date of Court opinion and judgment. *Edwards Aquifer Auth. v. Chem. Lime, Ltd.*, No. 06-0911, argument April 1, 2008. In this case involving an agency’s refusal to process an application because it was late, at issue is whether the Edwards Aquifer Act became effective when

the Court issued its 1996 opinion declaring the act constitutional in *Barshop v. Medina County Underground Water Conservation District* or when it issued the *Barshop* mandate. Court of appeals’ opinion: 212 S.W.3d 683 (Tex. App.—Austin 2006).

Alternative ground for relief; need to perfect. *DiGiuseppe v. Laoler*, No. 04-0641, argument October 20, 2005. The Court will decide whether the plaintiff can obtain relief on alternative grounds without perfecting a separate appeal. Court of appeals’ opinion: 2004 WL 1209569 (Tex. App.—Dallas 2004).

E. Areas of substantive law

1. Administrative law

Agency authority – effective date of Court opinion and judgment. *Edwards Aquifer Auth. v. Chem. Lime, Ltd.*, No. 06-0911, argument April 1, 2008. In this case involving an agency’s refusal to process an application because it was late, at issue is whether the Edwards Aquifer Act became effective when the Court issued its 1996 opinion declaring the act constitutional in *Barshop v. Medina County Underground Water Conservation District* or when it issued the *Barshop* mandate. Court of appeals’ opinion: 212 S.W.3d 683 (Tex. App.—Austin 2006).

2. Attorneys

Attorney’s fees and proof of damages in legal malpractice case. *Akin, Gump, Strauss, Hauer & Feld, L.L.P. v. Nat’l Dev. & Research. Corp.*, No. 07-0818, argument November 9, 2008. At issue in this legal malpractice case is whether attorney’s fees spent on the appeal of the underlying suit can be recovered as an element of damages; whether proof of damages requires a showing that the damages in the underlying suit were collectible; and whether any damage award should be reduced by the contingent fee percentage. Court of appeals’ opinion: 232 S.W.3d 883 (Tex. App.—Dallas 2007).

Reasonableness of attorney’s fees equal to 70% of actual damages. *Smith v. Patrick W. Y. Tam Trust*, No. 07-0970, argument November 13, 2008. The Court will consider whether an award

of \$47,000 in attorney's fees, constituting 70% of the actual damages awarded of \$65,000, was reasonable under the *Arthur Anderson* factors. Court of appeals' opinion: 235 S.W.3d 819 (Tex. App.—Dallas 2007).

Disbarment when sentence fully probated. *In the Matter of Rolando Caballero*, No. 07-0484, argument April 1, 2008. This disciplinary appeal presents the question whether the Board of Disciplinary Appeal has discretion whether to disbar or suspend an attorney who has been convicted of an intentional crime but whose sentence has been probated.

3. Commercial and corporate law

Auditor's liability to potential investors and holders of stock. *Grant Thornton LLP v. Prospect High Income Fund*, No. 06-0975, argument December 9, 2008. In this case involving claims of fraud and negligence against an auditor, the court will decide whether the auditor owes a duty to potential investors, whether holders of stock can prove reliance in taking no action, and whether there is evidence of causation when investors state what actions they might have taken with the correct information. Court of appeals' opinion: 203 S.W.3d 602 (Tex. App.—Dallas 2006).

Sufficiency of demand letter in shareholder derivative suit. *In re Schmitz*, No. 07-0581, argument April 2, 2008. At issue is whether a letter sent to the corporation three days before a derivative suit was filed satisfied the statutory requirements of demand 90-days prior to suit and rejection of the demand. Court of appeals' opinion: 2007 WL 1987721 (Tex. App.—San Antonio 2007) (mem. op.).

Choice of law for indemnity contract. *Sonat Expl. Co. v. Cudd Pressure Control, Inc.*, No. 06-0979, argument February 6, 2008. In this indemnity action arising after an oilfield accident, the Court will decide a choice-of-law issue: whether the indemnity contract is governed by the place of performance of the indemnity or the place of the underlying activity. Other issues include whether the contract meets the requirements of the Texas oil field indemnity statute and whether a party that agrees under a Rule 11 agreement to forego a defense can benefit from a judgment

based on that defense raised by its insured on intervention on appeal. Court of appeals' opinion: 202 S.W.3d 901 (Tex. App.—Texarkana 2006).

Oral partnership agreement. *Ingram v. Deere*, No. 06-0815, argument February 5, 2008. The Court will decide whether a doctor and a psychiatrist entered into a valid oral partnership agreement and, if so, whether the partnership had terminated; the Court will also determine whether the individuals owe a fiduciary duty to each other as a matter of law. Court of appeals' opinion: 198 S.W.3d 96 (Tex. App.—Dallas 2006).

Entitlement of general contractor to statutory retainage. *Solar Applications Engineers Inc. v. T.A. Operating Corp.*, No. 06-0243, argument October 16, 2007. At issue is whether a general contractor's substantial performance excuses performance of a condition to provide lien releases before it is entitled to final payment of the 10% retainage the owner was statutorily required to retain for the benefit of unpaid subcontractors. Court of appeals' opinion: 191 S.W.3d 173 (Tex. App.—San Antonio 2006).

4. Constitutional law

Prior restraint on speech in divorce action. *In re Coppock*, No. 08-0093, argument December 10, 2008. In this habeas proceeding, the Court will decide whether the inclusion in a divorce decree of an injunction against communications between ex-spouses that are vulgar, profane, or offensive is a prior restraint on speech. Court of appeals' opinion: 2008 WL 902770 (Tex. App.—Fort Worth 2008).

Inmate trust account withdrawal. *Harrell v. State of Texas*, No. 07-0806, argument November 13, 2008. The Court will decide whether an inmate was deprived of due process when the trial court ordered funds withdrawn from his inmate trust account to pay for court costs and attorney's fees without notice and an opportunity to be heard. Court of appeals' opinion: 2007 WL 2301350 (Tex. App.—Amarillo 2007).

Statement of points and effective assistance of counsel. *In the Interest of J.O.A.*, No. 08-0379, argument October 14, 2008. The Court will decide whether Section 263.405 of the Family Code, requiring filing of a statement of points

within 15 days in parental termination cases, unconstitutionally deprived a parent of a due process right to appeal when the party's counsel withdrew and appellate counsel was not appointed until after the 15-day period had expired. Court of appeals' opinion: 2008 WL 495324 (Tex. App.—Amarillo 2008).

Constitutionality of limitation on successor liability for asbestos claims. *Robinson v. Crown Cork & Seal Co.*, No. 06-0714, argument February 7, 2008. The Court will address a challenge to the constitutionality of a provision in House Bill 4 that created a new affirmative defense to successor liability for asbestos claims by limiting the cumulative successor liability of certain corporations to the fair market value of the predecessor company as of the time of the merger or consolidation. Court of appeals' opinion: 2006 WL 1168782 (Tex. App.—Houston [14th Dist.] 2006).

Zoning ordinance as burden on exercise of religion. *Pastor Barr v. City of Sinton*, No. 06-0074, argued March 22, 2007. At issue is whether a zoning ordinance that requires a 1000 foot set off for correctional facilities was a burden on religion under the constitution and the Texas RFRA when it would require relocation of a halfway house run by a church. Court of appeals' opinion: 2005 WL 3117209 (Tex. App.—Corpus Christi Nov. 23, 2005) (mem. op.).

5. Employment

Time for filing discrimination suit. *In re United Servs. Auto. Ass'n*, No. 07-0871, argument December 9, 2008. The Court will decide whether compliance with the time for filing an employment discrimination suit is jurisdictional and whether the wrong-court tolling provision applies. Court of appeals' opinion: 2007 WL 3003131 (Tex. App.—San Antonio 2007).

Appealability of hearing examiner's decision in civil-service disciplinary proceeding. *City of Pasadena v. Smith*, No. 06-0948, argument September 10, 2008. The Court will decide whether the city has a right to appeal a hearing examiner's decision dismissing a civil-service disciplinary proceeding when the decision is based on a mistake of law. Court of appeals' opinion:

2006 WL 2640410 (Tex. App.—Houston [1st Dist.] Sept. 14, 2006).

Enforceability of oral bonus agreement. *Vanegas v. American Energy Services*, No. 07-0520, argument October 15, 2008. The Court will decide whether an oral promise to at-will employees to pay a 5% bonus on sale or merger of a start-up company is enforceable and whether an illusory promise can be made enforceable by performance. Court of appeals' opinion: 224 S.W.3d 544 (Tex. App.—Eastland 2007).

Civil service: statutory authority to reinstate. *City of Waco v. Kelley*, No. 07-0485, argument April 2, 2008. The Court will decide whether a hearing examiner exceeded statutory authority by overturning the dismissal of an assistant police chief arrested for drunken driving. Court of appeals' opinion: 226 S.W.3d 672 (Tex. App.—Waco 2007).

6. Family law

Prior restraint on speech in divorce action. *In re Coppock*, No. 08-0093, argument December 10, 2008. In this habeas proceeding, the Court will decide whether the inclusion in a divorce decree of an injunction against communications between ex-spouses that are vulgar, profane, or offensive is a prior restraint on speech. Court of appeals' opinion: 2008 WL 902770 (Tex. App.—Fort Worth 2008).

Statement of points and effective assistance of counsel. *In the Interest of J.O.A.*, No. 08-0379, argument October 14, 2008. The Court will decide whether Section 263.405 of the Family Code, requiring filing of a statement of points within 15 days in parental termination cases, unconstitutionally deprived a parent of a due process right to appeal when the party's counsel withdrew and appellate counsel was not appointed until after the 15-day period had expired. Court of appeals' opinion: 2008 WL 495324 (Tex. App.—Amarillo 2008).

7. Government

a. Sovereign immunity

Sufficiency of pleading to establish waiver of sovereign immunity in whistleblower suit. *State*

of *Texas v. Lueck*, argument November 12, 2008. At issue is whether the mention of the whistleblower statute is sufficient to establish a waiver of sovereign immunity or whether the elements must be pleaded with specificity; the Court will also decide whether a report to a supervisor constitutes a report to a law enforcement authority. Court of appeals' opinion: 212 S.W.3d 630 (Tex. App.—Austin 2006).

Election of remedies: suit against governmental employees. *Franka, M.D. v. Velasquez*, No. 07-0131, argument September 10, 2008. The Court will examine 2003 amendments to the Tort Claims Act to determine whether suit against a doctor and a resident must be dismissed because suit “could have been brought” against their employer UT Health Sciences Center. Court of appeals' opinion: 216 S.W.3d 409 (Tex. App.—San Antonio 2006).

Suit for reimbursement for indigent care. *Harris County Hosp. Dist. v. Tomball Regional Hosp.*, No. 05-0986, argument December 4, 2007. This is a sovereign immunity case. At issue is whether, when the Harris County Hospital District fails to fulfill its statutory and constitutional obligation to provide free indigent care, another hospital district that provides the services can sue for reimbursement. Court of appeals' opinion: 178 S.W.3d 244 (Tex. App.—Houston [14th Dist.] 2005).

Federal preemption of sovereign immunity for transit authority. *Dallas Area Rapid Transit v. Amalgamated Transit Union No. 1338*, No. 06-0034, argument November 14, 2007. The Court will decide whether sovereign immunity bars a suit for damages by a trade union against a regional transit authority or whether the Federal Transit Act overrides any immunity bar. Court of appeals' opinion: 173 S.W.3d 896 (Tex. App.—Dallas 2006).

Declaratory judgment of right to pension benefits. *City of El Paso v. Heinrich*, No. 06-0778, argument November 13, 2007. At issue is whether sovereign immunity bars a claim seeking a declaration that survivor benefits paid by a government pension fund were improperly terminated. Court of appeals' opinion: 198 S.W.3d 400 (Tex. App.—El Paso 2006).

b. Zoning and land use

Zoning ordinance as burden on exercise of religion. *Pastor Barr v. City of Sinton*, No. 06-0074, argued March 22, 2007. At issue is whether a zoning ordinance that requires a 1000 foot set off for correctional facilities was a burden on religion under the constitution and the Texas RFRA when it would require relocation of a halfway house run by a church. Court of appeals' opinion: 2005 WL 3117209 (Tex. App.—Corpus Christi Nov. 23, 2005) (mem. op.).

c. Condemnation; takings

Utility's rights in existing location. *Southwestern Bell Tel. L.P. v. Harris County Toll Rd. Auth.*, No. 06-0933, argument January 15, 2008. At issue is whether the county is required by statute to reimburse a utility for relocation costs necessitated by county road construction and whether the utility has a property right protected by Takings Clause. Court of appeals' opinion: 2006 WL 2641204 (Tex. App.—Houston [1st Dist.] 2006).

Personal injury damages under the Takings Clause. *City of San Antonio v. Pollock*, No. 04-1118, oral argument October 18, 2006. At issue is whether personal injury damages are recoverable under the Takings Clause, which relates only to a taking of property. Court of appeals' opinion: 155 S.W.3d 322 (Tex. App.—San Antonio 2004).

d. Open records

Time for filing request for open records decision from attorney general; attorney-client privilege protection. *City of Dallas v. Abbott*, argument October 16, 2008. In this open records case, the Court will decide whether the time for seeking an attorney general's decision runs from the time of the request or the time of a clarification of the request. Also at issue is, if the city did not timely request a decision, whether the attorney-client privilege is a “compelling reason” to withhold the requested materials. Court of appeals' opinion: 2007 WL 2301345 (Tex. App.—Amarillo Aug. 13, 2007).

8. Health care liability

Protective order prohibiting ex parte communications with treating physician. *In re Collins M.D.*, No. 07-0737, argument November 12, 2008. At issue in this health care liability suit is whether a trial court abuses its discretion by prohibiting ex parte communications with a claimant's nonparty treating physicians when the claimant has signed a statutorily required authorization for release of health information and filed a medical malpractice suit against a treating physician. Court of appeals' opinion: 224 S.W.3d 798 (Tex. App.—Tyler 2007).

Effect of nonsuit with prejudice on subsequent appeal of decision on health care expert report. *Hernandez M.D. v. Ebrom*, No. 07-0240, argument October 15, 2008. At issue is whether the court of appeals correctly dismissed a traditional appeal in a health care liability suit brought after the parties agreed to a nonsuit with prejudice and after the time had passed for an interlocutory appeal of the trial court's order denying the doctor's dismissal motion based on the expert report requirement. Court of appeals' opinion: 2007 WL 416538 (Tex. App.—Corpus Christi Feb. 7, 2007).

Docket control order as extension of time to file expert report. *Spectrum Health Care Res., Inc. v. McDaniel*, No. 07-0787, argument September 11, 2008. In this health-care liability case, the Court will decide whether an agreed docket control order extended the 120-day time period for the plaintiffs to file their statutorily-required expert report. Court of appeals' opinion: 238 S.W.3d 788 (Tex. App.—San Antonio 2007).

Grant of extension after hearing on dismissal for late expert report. *Marks v. St. Luke's Episcopal Hosp.*, No. 07-0783, argument September 11, 2008. The Court will decide whether the time for filing an expert health care report can be extended after the court has held a hearing on the defendant's dismissal motion. Court of appeals' opinion: 229 S.W.3d 396 (Tex. App.—Houston [1st Dist.] 2007).

Appealability of order refusing to dismiss for untimely expert report after extension request granted. *Badiga M.D. v. Lopez*, No. 05-0801, argument September 9, 2008. The Court will

determine whether the court of appeals correctly held that it lacked jurisdiction over an interlocutory appeal from a trial court order extending the time for filing an expert report in a health care liability case and also refusing to dismiss. Court of appeals' opinion: 2005 WL 1572273 (Tex. App.—Corpus Christi July 7, 2005).

Election of remedies: suit against governmental employees. *Franka, M.D. v. Velasquez*, No. 07-0131, argument September 10, 2008. The Court will examine 2003 amendments to the Tort Claims Act to determine whether suit against a doctor and a resident must be dismissed because suit "could have been brought" against their employer UT Health Sciences Center. Court of appeals' opinion: 216 S.W.3d 409 (Tex. App.—San Antonio 2006).

Stowers exception to damages cap under 4590i. *Phillips M.D. v. Bramlett*, No. 07-0522, argument April 22, 2008. In this health care liability action under former art. 4590i, the Court will determine whether the *Stowers* exception to the damages cap applies in rendering judgment against a physician. Court of appeals' opinion: 2007 WL 1245839 (Tex. App.—Amarillo 2007).

Jury instructions on new and independent cause and loss chance of survival. *Columbia Rio Grande Healthcare L.P. v. Hawley*, No. 06-0372, argument January 17, 2008. The Court will determine whether the trial court erred in refusing to instruct the jury in a health care liability case on: (1) new and independent cause when the treating doctor failed to review the pathologist's report; and (2) lost chance of survival, *i.e.*, that plaintiff must have had a greater than 50% chance of survival as of the date of the negligent act. Court of appeals' opinion: 188 S.W.3d 838 (Tex. App.—Corpus Christi 2006).

9. Insurance

Worker's comp protection for premises owner. *Entergy Gulf States, Inc. v. Summers*, No. 05-0272, first argued September 27, 2006; rehearing granted; re-argument October 16, 2008. The Court granted rehearing in this case involving whether a premises owner, who hires an independent contractor but provides workers comp

insurance for the contractor's employees, is entitled to the benefits of the workers comp statute applicable to general contractors who provide coverage for their subcontractor's employees. On first hearing, the Court held that the premises owner was protected. Supreme Court opinion on first hearing: 50 Tex. Sup. Ct. J. 1140 (Aug. 31, 2007). Court of appeals' opinion: 2004 WL 3021178 (Tex. App.—Beaumont 2004).

Duty to defend and indemnify insured in police chase. *Tanner v. Nationwide Mut. Fire Ins. Co.*, No. 07-0760, argument October 14, 2008. The Court will decide whether the intentional acts exclusion in a motor vehicle policy excludes coverage for an accident caused when the insured driver collided with another vehicle after being chased by the police. Court of appeals' opinion: 232 S.W.3d 330 (Tex. App.—Eastland 2007).

Late notice of claim. *Financial Indus. Corp. v. XL Specialty Ins. Co.*, No. 07-1059, argued April 1, 2008. The Court will answer the following question certified by the Fifth Circuit: "Must an insurer show prejudice to deny payment on a claims-made policy, when the denial is based upon the insured's breach of the policy's prompt-notice provision, but the notice is nevertheless given within the policy's coverage period?" Certified question.

Stowers exception to damages cap under 4590i. *Phillips M.D. v. Bramlett*, No. 07-0522, argument April 22, 2008. In this health care liability action under former art. 4590i, the Court will determine whether the *Stowers* exception to the damages cap applies in rendering judgment against a physician. Court of appeals' opinion: 2007 WL 1245839 (Tex. App.—Amarillo 2007).

Late notice of claim. *Prodigy Comms. Corp. v. Agricultural Excess & Surplus Ins. Co.*, No. 06-0598, argument April 1, 2008. The Court will consider whether late notice of a claim under a director and officer liability policy may serve as grounds for refusing coverage when the insurer is not prejudiced by the late notice. Court of appeals' opinion: 195 S.W.3d 764 (Tex. App.—Dallas 2006).

Time of "occurrence" of non-manifest property damage. *Pine Oak Builders, Inc. v. Great Am. Lloyds Ins. Co.*, No. 06-0867, argued

February 7, 2008 (2006 WL 1892669 (Tex. App.—Houston [14th Dist.] July 6, 2006). The issue presented was decided in *Don's Bldg. Supp., Inc. v. Onebeacon Ins. Co.*, No. 07-0639, a certified question, opinion issued August 29, 2008, in which the Court held that property damage occurs for purposes of an occurrence-based liability policy at the time it occurs, even though not manifest.

Scope of appraisal provision. *State Farm Lloyds v. Johnson*, No. 06-1071, argument January 15, 2008. The Court will decide whether, under an appraisal provision in an insurance policy, the appraiser can determine not just the amount, but also the cause of a loss. Court of appeals' opinion: 204 S.W.3d 897 (Tex. App.—Dallas 2006).

Coverage while out of vehicle. *U.S. Fidelity & Guar. Co. v. Gordeau*, No. 06-0987, argument December 6, 2007. The Court will decide whether an insured injured in an accident on the side of the road while out of the vehicle can recover under an under-insured policy. Court of appeals' opinion: 243 S.W.3d 1 (Tex. App.—Houston [1st Dist.] 2006).

Workers' comp protection for general contractor paying subcontractors' premiums. *Hbeck, Ltd. v. Rice*, No. 06-0418, argument October 18, 2007. The Court will decide whether a general contractor is protected by the workers' compensation statutes when it contractually requires its subcontractors to maintain workers' compensation insurance and pays the subcontractors' premiums. Court of appeals' opinion: 2006 WL 908761 (Tex. App.—Fort Worth, Apr. 6, 2006) (mem. op.).

Waiver of challenge to worker's comp claim. *Southwestern Bell Tel. Co v. Mitchell*, No. 05-0171, argued March 23, 2006. At issue is whether the Court should overrule *Continental Cas. Co. v. Downs*, holding that an employer waives a challenge to a worker's comp claim if not made within 7 days, or should apply that decision only prospectively. The lower courts had held the employer responsible for payment of the claim because of waiver even in the absence of proof that the injury was work-related. Court of

appeals' opinion: 2005 WL 154203 (Tex. App.—San Antonio 2005).

10. Juveniles

Appointment of habeas counsel. *In re Hall*, No. 07-0322, argument November 12, 2008. The Court will decide whether a juvenile is entitled to appointed counsel in a habeas proceeding. Court of appeals' opinion: __ S.W.3d __ (Tex. App.—San Antonio Feb. 14, 2007).

10. Non-health care torts

Constitutionality of limitation on successor liability for asbestos claims. *Robinson v. Crown Cork & Seal Co.*, No. 06-0714, argument February 7, 2008. The Court will address a challenge to the constitutionality of a provision in House Bill 4 that created a new affirmative defense to successor liability for asbestos claims by limiting the cumulative successor liability of certain corporations to the fair market value of the predecessor company as of the time of the merger or consolidation. Court of appeals' opinion: 2006 WL 1168782 (Tex. App.—Houston [14th Dist.] 2006).

Foreseeability of criminal conduct. *Del Lago Ptrs., Inc. v. Smith*, No. 06-1022, argument December 6, 2007. At issue is whether a resort owner is liable under *Timberwalk* for aggravated assault in a bar on the premises. Court of appeals' opinion: 206 S.W.3d 146 (Tex. App.—Waco 2006).

Enforceability of post-injury release. *Bison Bldg. Materials Ltd. v. Aldridge*, No. 06-1084, argument January 16, 2008. At issue is whether a trial court order vacating in part an arbitration award but not directing a remand is appealable. Also at issue is whether a post-injury release is subject to the fair notice requirements. Court of appeals' opinion: 2006 WL 2641280 (Tex. App.—Houston [1st Dist.] 2006).

Duty of employer to prevent accidents after long shifts. *Nabors Drilling, U.S.A. Inc. v. Escot*, No. 06-0890, argument February 5, 2008. The Court will decide whether a company had a duty to prevent an accident caused by an employee just leaving a 12-hour shift. Court of appeals' opinion:

200 S.W.3d 716 (Tex. App.—Corpus Christi 2006).

Federal preemption. *Missouri Pacific Railroad Co. v. Limmer*, No. 06-0023, argument November 13, 2007. This case presents a number of issues arising from a death at a railroad crossing, including whether there was proof that the warning signals were federally funded, thus preempting the action, and whether the railroad had a duty to keep the sightlines clear of obstruction. Court of appeals' opinion: 180 S.W.3d 803 (Tex. App.—Houston [14th Dist.] 2005).

Premises liability; adequacy of warning. *TXI Operations LP v. Perry*, No. 05-0030, argued January 26, 2006. The Court will decide whether a 15 mph speed limit sign adequately warned a business invitee of a large hole in the road when the driver saw the sign, slowed down, and navigated the hole successfully on prior occasions. Court of appeals' opinion: 2004 WL 2610451 (Tex. App.—Beaumont 2004) (per curiam).

Preemption of state claims by federal bankruptcy laws. *Graber v. Fuqua*, No. 05-0303, argued January 26, 2006. The Court will decide whether federal bankruptcy laws preempt a debtor's state-court action for malicious prosecution when the action is based on an adversarial proceeding brought in the debtor's bankruptcy case. Court of appeals' opinion: 158 S.W.3d 635 (Tex. App.—Corpus Christi 2004).

11. Oil and gas; real property

Interpretation of gas purchase contract. *Dynegy Midstream Servs., L.P. v. Apache Corp.*, No. 07-0043, argument September 9, 2008. At issue is whether, under a gas purchase contract providing for payment based on the sale at the tailgate of the plant, the purchaser must pay for gas not sold but not accounted for after delivery. Court of appeals' opinion: 214 S.W.3d 554 (Tex. App.—Houston [14th Dist.] 2006).

Choice of law for indemnity contract. *Sonat Expl. Co. v. Cudd Pressure Control, Inc.*, No. 06-0979, argument February 6, 2008. In this indemnity action arising after an oilfield accident, the Court will decide a choice-of-law issue: whether the indemnity contract is governed by the

place of performance of the indemnity or the place of the underlying activity. Other issues include whether the contract meets the requirements of the Texas oil field indemnity statute and whether a party that agrees under a Rule 11 agreement to forego a defense can benefit from a judgment based on that defense raised by its insured on intervention on appeal. Court of appeals' opinion: 202 S.W.3d 901 (Tex. App.—Texarkana 2006).

Equitable ownership as sufficient to claim property tax exemption. *Galveston Cent. Appraisal Dist. v. TRQ Captain's Landing*, No. 07-0010, argument January 15, 2008. The Court will decide whether a community housing service organization, which is the equitable but not the legal owner of a property, qualifies for a property tax exemption. Court of appeals' opinion: 212 S.W.3d 726 (Tex. App.—Houston [1st Dist.] 2006).

Effect of lease termination on pooled well. *Wagner & Brown, Ltd. v. Sheppard*, No. 06-0845, argument Dec. 5, 2007. The Court will decide whether a pooling agreement validly entered into during the term of an oil and gas lease and while the lease was in effect remains in force after the lease is later terminated. Court of appeals' opinion: 198 S.W.3d 369 (Tex. App.—Texarkana 2006).

Applicability of discovery rule to cause of action for waste. *Exxon Corp. v. Emerald Oil & Gas Co, L.P.*, No. 05-1076, argued February 13, 2007. The Court will decide whether the discovery rule applies to a suit by royalty owners and their subsequent lessee in an action for waste based on the improper plugging of oil and gas wells by a prior lessee. Court of appeals' opinion: 180 S.W.3d 299 (Tex. App.—Corpus Christi 2005).

Statutory cause of action for waste. *Exxon Corp. v. Emerald Oil & Gas Co., L.P.*, No. 05-0729, argued February 13, 2007. The Court will decide whether, under Section 85.321 of the Natural Resources Code, a new oil and gas lessee has a cause of action for waste based on the improper plugging of a well on the lease by a prior lessee. Court of appeals' opinion: 2005 WL 3163157 (Tex. App.—Corpus Christi Nov. 29, 2005).

Specific performance. *DiGiuseppe v. Laoler*, No. 04-0641, argument October 20, 2005. The Court will decide whether a question must be submitted to the jury asking whether the plaintiff is ready, willing, and able to perform the contract in order to award specific performance. Court of appeals' opinion: 2004 WL 1209569 (Tex. App.—Dallas 2004).

12. Products liability

Common law indemnity against upstream supplier. *SSP Partners v. Gladstrong Investments (USA) Corp.*, No. 05-0721, argued March 20, 2007. The court will decide whether common-law indemnity is available against an upstream supplier without regard to whether that supplier is an "apparent manufacturer" or closely tied to the manufacturer in a case involving a U.S. affiliate supplying products made by a foreign lighter manufacturer. Court of appeals' opinion: 169 S.W.3d 27 (Tex. App.—Corpus Christi 2005).

13. Wills, estates, probate

Standing of executor to bring malpractice action. *Smith v. O'Donnell*, No. 07-0697, argument September 10, 2008. At issue is whether an executor of an estate can bring a malpractice action against the deceased's attorney that could have been brought during the deceased's lifetime. Court of appeals' opinion: 234 S.W.3d 135 (Tex. App.—San Antonio 2007).

Transfer of bill of review proceedings to probate court. *In re John G. & Marie Stella Kenedy Mem. Found.*, No. 04-0607, argued on September 29, 2005, and subsequently abated. The Court will decide whether a probate court may transfer to itself under Section 5B of the Probate Code proceedings for bills of review pending in other courts and whether an estate that was previously closed can constitute a pending estate under the statute. Court of appeals' opinion: 159 S.W.3d 133 (Tex. App.—Corpus Christi 2004).

Exhumation. *In re Frost National Bank*, No. 04-0608, consolidated with immediately preceding case for argument on September 29, 2005, and also subsequently abated. At issue is whether the probate court had jurisdiction to order the

exhumation and DNA testing of the King Ranch founder, and whether the elements of the exhumation statute had been met. Court of appeals' opinion: 2004 WL 1505527 (Tex. App.—Corpus Christi 2004).

VI. APPENDIX

Appendix A is a chart compiling published statistics on Texas Supreme Court docket activity for the period September 1, 1980 through August 31, 2008. Appendix B is the shadow docket list as of July 31, 2008.

Appendix A: Texas Supreme Court Statistics, 1980-2007

Term beginning Sept. 1:	Total deciding opinions	Total majority opinions	Number of per curiam dispositions	Percent Per curiam opinions (%)	Reversal rate (%)¹	Petitions or applications filed	Petitions or applications disposed of	Petitions or applications granted	Effective grant rate
1980	107	83	24	22	76	876	860	86	10
1981	107	84	23	21	77	765	777	113	15
1982	125	100	25	20	71	703	705	119	17
1983	106	91	15	14	75	987	885	87	10
1984	153	106	47	31	79	998	1018	141	14
1985	131	84	47	36	85	1044	982	113	12
1986	125	93	32	26	77	983	1066	159	15
1987	118	93	25	21	85	997	951	110	12
1988	110	68	42	38	87	821	781	76	10
1989	102	66	36	35	85	866	876	84	10
1990	119	82	37	31	n/a	1055	1051	130	12
1991	127	71	56	44	85	1096	1154	145	13
1992	145	94	51	35	87	1171	1243	167	13
1993	146	88	58	40	86	1054	1093	125	11
1994	146	80	66	45	81	1021	997	132	13
1995	133	63	70	53	91	989	1011	150	15
1996	118	56	62	53	93	983	936	104	11
1997	141	91	50	36	72	1004	1104	127	12
1998	118	70	48	43	87	1012	1006	113	11
1999	99	62	37	38	73	1069	1063	97	9
2000	88	59	29	33	69	1018	1020	111	11
2001	107	77	30	28	77	986	1001	116	12
2002	89	60	29	33	92	968	973	116	12
2003	86	55	31	36	80	810	791	82	10
2004	108	62	46	43	89	805	823	109	13
2005	108	48	60	56	94	897	822	119	14
2006	131	62	69	53	92	831	919	125	14
2007 ²	133	71	62	47	n/a	823	874	112	13

¹ Reversal rate is all cases in which the lower court's judgment was reversed in whole or in part.

² As of Sept. 1, 2008; all FY 2008 numbers estimated. This table is copyrighted by the author.

Appendix B

THE SHADOW DOCKET: CASES PENDING OVER 12 MONTHS AS OF JULY 31, 2008

Dkt. no.	Case name	Subject matter	Disposition
05-0236	<i>State of Texas v. Brown</i>	Condemnation	PC
05-0755	<i>Harris County MUD No. 170 v. Harris County</i>	Sovereign immunity	
06-0097	<i>Kerlin v. Arias</i>	Res judicata	
06-0611	<i>Martinez-Partido v. Meth. Spec. & Transplant Hosp.</i>	Health care expert report	
06-0653	<i>In re Watkins MD</i>	Health care expert report	
06-0752	<i>Nealon MD v. Williams</i>	Health care/sovereign immunity	
06-1017	<i>Great Am. Lloyds Ins. Co. v. Summit Custom Homes, Inc.</i>	Insurance	
06-1018	<i>D.R. Horton-Texas Ltd. v. Markel Int'l Ins. Co.</i>	Insurance	
07-0061	<i>Tejada v. Rowe MD</i>	Health care/sovereign immunity	
07-0085	<i>Brookshire Groc. Co. v. Goss</i>	Premises liability	PC
07-0145	<i>Hawkins v. El Paso First Health Plans, Inc.</i>	Sovereign immunity	
07-0205	<i>Waffle House, Inc. v. Williams</i>	Negligent supervision and sexual harassment	
07-0219	<i>In re Ashley, Humphries & Sanchez</i>	Arbitration	
07-0221	<i>Adams v. YMCA of San Antonio</i>	Mental anguish	
07-0284	<i>City of Dallas v. Albert</i>	Sovereign immunity	
07-0285	<i>City of Dallas v. Barber</i>	Sovereign immunity	
07-0286	<i>City of Dallas v. Arrendondo</i>	Sovereign immunity	
07-0287	<i>City of Dallas v. Willis</i>	Sovereign immunity	
07-0288	<i>City of Dallas v. Martin</i>	Sovereign immunity	
07-0289	<i>City of Dallas v. Parker</i>	Sovereign immunity	
07-0301	<i>Perry v. Cohen</i>	Appellate procedure	
07-0315	<i>Crites MD v. Collins</i>	Health care expert report	
07-0340	<i>Spir-Star Ag v. Kimich</i>	Personal jurisdiction	
07-0404	<i>Exxon Mobil Corp. v. Gill</i>	Class action	
07-0410	<i>Employees Retirement Sys. of Tex. v. Duenez</i>	Exclusive jurisdiction	
07-0482	<i>STP Nuclear Op. Co. v. Combs</i>	Tax	Pet. denied
07-0490	<i>Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding</i>	Covenant not to compete	Pet. granted
07-0572	<i>Ashley v. Hawkins</i>	Tolling statute	