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**Prejudgment Interest and
Other Judgment Battlegrounds**

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Jason has experience representing clients in all stages of complex litigation. He has prepared successful pre- and post-trial briefs on a variety of topics ranging from breach of contract, breach of fiduciary duty, and tort claims to claims for trademark infringement.

Jason is a member of the College of the State Bar of Texas, the Appellate and Litigation sections of the state bar, and the Texas Supreme Court Historical Society. Locally, Jason serves on the Bench-Bar Conference Committee of the Dallas Bar Association and the Judiciary Committee of the Dallas Young Lawyer's Association. He is also a member of the Appellate and Business Litigation sections of the Dallas Bar Association, and he was an Associate in the Higginbotham Inn of Court for 2014-2015.

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Jason grew up in rural Colorado and graduated *summa cum laude* from Colorado State University in 2006, as a University Honors Program Scholar with a Bachelor of Science in Animal Science and a minor in Agricultural and Resource Economics. Before attending law school, Jason worked for two years in Washington, DC, as Manager of Legislative Affairs for a national agricultural trade association.

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I. Introduction

You are the winning party in a lawsuit, and the judge asks you to prepare a proposed judgment. You turn to the rules. Judgments are generally governed by Rules 300 – 316 of the Texas Rules of Civil Procedure. TEX. R. CIV. P. 300-16. You soon discover the rules aren't much help, as only a handful address judgment formation. For example, Rule 300 provides that findings of fact should be separately stated from the judgment. TEX. R. CIV. P. 300. Rule 301 tells you that the judgment "should conform to the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity." TEX. R. CIV. P. 301. And Rule 306 says that the entry of the judgment shall contain the "full names of the parties, as stated in the pleadings, for and against whom the judgment is rendered." *Id.* 306. (You might have guessed that). Beyond those rules, you are left to common law requirements and custom in figuring out how to draft your judgment.

This paper addresses each of the items that are customarily included in a judgment, including (1) the opening recitals, (2) the decretal portions addressing the merits of the award, and (3) prejudgment interest, (4) postjudgment interest, (5) attorney's fees, (6) costs, (7) language of finality, and (8) signature lines. This paper generally assumes that your judgment is a final, appealable judgment, although interlocutory judgments are addressed briefly in section VIII.

II. The Opening Recitals

A. Description of the Proceedings

Although the Texas rules do not mandate any particular form of judgment, it is customary to open with the appropriate recitals. Give the date and state whether the case was tried to a jury or the bench, or whether the court granted summary judgment. For example:

- **Jury trial:** "On [date], this cause came to be heard and Plaintiffs [name as stated in pleadings] and Defendants [name as stated in pleadings] appeared in person and by attorney of record and announced ready for trial and, a jury having been previously demanded, a jury consisting of [six/twelve] qualified jurors was duly empanelled and the case proceeded to trial."
- **Bench trial:** "Trial in this action began on [date] before the Court and concluded with closing arguments on [date]. The issues having been duly tried, the Court issued Findings of Fact and Conclusions of Law on [date], which are incorporated in the Final Judgment for all purposes and by reference."
- **Summary judgment:** "On [date], the Court entered its order granting summary judgment on behalf of [party named as stated in pleadings], and therefore enters the following judgment."

Although accuracy is always the goal, an appellate court may look to the record to resolve a conflict in the recitals. *See Pike-Grant v. Grant*, 447 S.W.3d 884, 886–87 (Tex. 2014) (looking to the record to determine which of two conflicting recitals in a divorce decree was

correct when a party's right to bring a restricted appeal hinged on a resolution of the conflict); *see also Gardner v. Estate of Trader*, 333 S.W.3d 331, 334 (Tex. App.—El Paso 2010, no pet.) (concluding that a trial court's misrecital of the applicable statutory authority was a clerical error, such that the trial court had plenary power to correct it).

The judgment should also describe the proceedings following the jury verdict including any orders for judgment notwithstanding the verdict and jury findings. Notably, however, the portion of a judgment that grants or denies the remedy sought controls the validity of the judgment. *E.g.*, *Taylor v. Taylor*, 747 S.W.2d 940, 944 (Tex. App.—Amarillo 1988, writ denied). Accordingly, if a conflict exists between recitals and the decretal portion of a judgment, the decretal portion will control. *See, e.g.*, *In re Thompson*, 991 S.W.2d 527, 531–32 (Tex. App.—Beaumont 1999, no pet.) (concluding that a conflict between the amount stated in the recital section and that stated in the decretal portion did not render the judgment interlocutory); *Stevens v. Cain*, 735 S.W.2d 694, 695 (Tex. App.—Amarillo 1987, no writ) (holding that the recitations preceding the decretal portion of an order formed no part of the decree); *Roberson Farm Equip. Co. v. Hill*, 514 S.W.2d 796, 801 (Tex. Civ. App.—Texarkana 1973, writ ref'd n.r.e.) (concluding that recitals tending to show a mistake in the assessment of damages did not affect the validity of the judgment actually pronounced).

In a non-jury case, findings of fact should not be recited in the judgment. TEX. R. CIV. P. 299a. Instead, findings of fact should be filed with the clerk of the court as a separate document. If a conflict exists between findings of fact recited in a judgment and findings that were filed with the court separately, the latter findings will control for appellate purposes. *Id.*

It is usually a good idea to incorporate the jury verdict and/or the findings of fact and conclusions of law in the judgment, particularly if the judgment elects one recovery over various alternative recoveries. *See infra* § III.B.4.

B. Description of the Parties

The judgment should contain the full names of the parties, as stated in the pleadings, for and against whom the court rendered judgment. TEX. R. CIV. P. 306; *City of Austin v. Castillo*, 25 S.W.3d 309, 314 (Tex. App.—Austin 2000, pet. denied); *Schaeffer Homes, Inc. v. Esterak*, 792 S.W.2d 567, 569 (Tex. App.—El Paso 1990, no writ). A court may not grant judgment in favor of or against a party not named in the suit as a plaintiff or defendant. *Mapco, Inc. v. Carter*, 817 S.W.2d 686, 687 (Tex. 1991); *see, e.g.*, *Daca, Inc. v. Commonwealth Land Title Ins. Co.*, 822 S.W.2d 360, 363 (Tex. App.—Houston [1st Dist.] 1992, writ denied) (holding that a trial court could not render judgment against a registered corporation because the identification of a “d/b/a” entity was not sufficient to join the corporation as a named defendant); *Fuqua v. Taylor*, 683 S.W.2d 735, 738 (Tex. App.—Dallas 1984, writ ref'd n.r.e.) (recognizing that a “[j]udgment may not be granted in favor of a party not named in the suit as a plaintiff or a defendant” and modifying a judgment to include only the working-interest owners who were named as parties to the lawsuit).

The failure to name the parties in the body of the judgment is not fatal if the parties' identity can be established from the caption of the cause, the record, the pleadings, and the process. *Gomez v. Bryant*, 750 S.W.2d 810, 811 (Tex. App.—El Paso 1988, no writ). Similarly, a

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