SUPREME COURT OF TEXAS UPDATE

Phil Johnson
Justice
Supreme Court of Texas

Heather Holmes
Staff Attorney

Robert Brailas
Staff Attorney

Elizabeth Brabb
Law Clerk

Jordan Stevens
Law Clerk

Georgie Gonzales
Executive Assistant

Special thanks to all the Staff Attorneys and Law Clerks at the Supreme Court of Texas for their substantial contributions.

March 1, 2017 – February 28, 2018

TABLE OF CONTENTS

I. SCOPE OF THIS ARTICLE . . . 1

II. ADMINISTRATIVE LAW . . . 1
A. Judicial Review . . . 1
1. Shamrock Psychiatric Clinic, P.A. v. Tex. Dep't of Health and Human Servs., 540 S.W.3d 533 (Tex. Feb. 23, 2018) [16-0890]. . . . 1
B. Public Utility Commission . . . 2
1. City of Richardson v. Oncor Elec. Delivery Co., 539 S.W.3d 252 (Tex. Feb. 2, 2018) [15-1008]. . . . 2
C. Railroad Commission . . . 2
1. Forest Oil Corp. v. El Rucio Land & Cattle Co., 518 S.W.3d 422 (Tex. Apr. 28, 2017) [14-0979]. . . . 2
D. Texas Clean Air Act . . . 3
1. AC Interests, L.P. v. Tex. Comm'n on Envtl. Quality, 2016 WL 7335866 (Tex. App.—Austin 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 651 (Mar. 31, 2017) [16-0260]. . . . 3
E. Water Code . . . 3
1. State v. Morello, S.W.3d , 61 Tex. Sup. Ct. J. 381 (Tex. Feb. 23, 2018) [16-0457]. . . . 3

III. ARBITRATION . . . 4
A. Enforcement/Non-Signatories . . . 4
1. Jody James Farms, JV v. The Altman Grp., Inc., 506 S.W.3d 595 (Tex. App.—Amarillo 2016), *pet. granted*, 61 Tex. Sup. Ct. J. 332 (Feb. 16, 2018) [17-0062]. . . . 4
B. Waiver of Arbitration . . . 4
1. Henry v. Cash Biz, LP, S.W.3d , 61 Tex. Sup. Ct. J. 401 (Tex. Feb. 23, 2018) [16-0854]. . . . 4

IV. ATTORNEYS . . . 5
A. Disqualification . . . 5
1. In re Turner, 542 S.W.3d 553 (Tex. Dec. 22, 2017) [17-0099]. . . . 5
B. Fees . . . 6
1. Hill v. Shamoun & Norman, LLP, 483 S.W.3d 767 (Tex. App.—Dallas 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 1230 (June 16, 2017) [16-0107]. . . . 6
2. In re Davenport, 522 S.W.3d 452 (Tex. June 16, 2017) [15-0882]. . . . 6
C. Legal Malpractice . . . 7
1. Rogers v. Zanetti, 518 S.W.3d 394 (Tex. Apr. 28, 2017) [15-0557]. . . . 7
2. Starwood Mgmt., LLC v. Swaim, 530 S.W.3d 673 (Tex. Sept. 29, 2017) [16-0431]. . . . 7
D. Patent Agents . . . 8
1. In re Silver, 540 S.W.3d 530 (Tex. Feb. 23, 2018) [16-0682]. . . . 8
E. Tort Liability . . . 9
1. First United Pentecostal Church of Beaumont v. Parker, 514 S.W.3d 214 (Tex. Mar. 17, 2017) [15-0708]. . . . 9

V. CONSTITUTIONAL LAW.. 9
A. First Amendment Speech. 9
1. Dall. Morning News, Inc. v. Tatum, 493 S.W.3d 646 (Tex. App.—Dallas 2015), *pet. granted*, 60 Tex. Sup. Ct. J. 1607 (Sept. 1, 2017) [16-0098].. 9
B. Home Equity Loans.. 10
1. Kyle v. Strasburger, 522 S.W.3d 461 (Tex. June 16, 2017) [16-0046].. 10
C. Mental Anguish Damages.. 10
1. Nelson v. SCI Tex. Funeral Servs., Inc., 540 S.W.3d 539 (Tex. Feb. 23, 2018) [16-0297].. 10
D. Property Interests. 11
1. Honors Acad., Inc. v. Tex. Educ. Agency, 496 S.W.3d 244 (Tex. App.—Austin 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 1607 (Sept. 1, 2017) [16-0519].. 11
E. Same-sex Marriage. 11
1. Pidgeon v. Turner, 538 S.W.3d 73 (Tex. June 30, 2017) [15-0688].. 11
F. Settlement Credits. 12
1. Sky View at Las Palmas, LLC v. Mendez, 2017 WL 219122 (Tex. App.—Corpus Christi–Edinburg, 2017), *pet. granted*, 61 Tex. Sup. Ct. J. 332 (Feb. 16, 2018) [17-0140].. 12
G. Texas Elections Code. 13
1. King Street Patriots v. Tex. Democratic Party, 521 S.W.3d 729 (Tex. June 30, 2017) [15-0320].. 13

VI. CONTRACTS. 13
A. Breach of Contract. 13
1. Bartush-Schnitzius Foods Co. v. Cimco Refrigeration, Inc., 518 S.W.3d 432 (Tex. Apr. 28, 2017) [16-0054].. 13
B. Forum-Selection Clauses. 14
1. Pinto Tech. Ventures, L.P. v. Sheldon, 526 S.W.3d 428 (Tex. May 19, 2017) [16-0007].. 14
C. Interpretation. 14
1. Cmty. Health Sys. Prof'l Servs. Corp. v. Hansen, 525 S.W.3d 671 (Tex. June 16, 2017) [14-1033].. 14
2. URI, Inc. v. Kleberg Cnty., 2016 WL 363114 (Tex. App.—Corpus Christi–Edinburg 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 1352 (June 23, 2017) [16-0336].. 15
D. Third-Party Beneficiaries. 16
1. First Bank v. Brumitt, 519 S.W.3d 95 (Tex. May 12, 2017) [15-0844].. 16

VII. CORPORATIONS. 17
A. Breach of Fiduciary Duty.. 17
1. Longview Energy Co. v. Huff Energy Fund LP, 533 S.W.3d 866 (Tex. June 9, 2017) [15-0968].. 17

VIII. COUNTIES. 18
A. Commissioners Court Authority. 18
1. Henry v. Cox, 520 S.W.3d 28 (Tex. May 19, 2017) [15-0993].. 18

IX. DAMAGES 18
A. Lost Profits 18
1. Horizon Health Corp. v. Acadia Healthcare Co., 520 S.W.3d 848 (Tex. May 26, 2017) [15-0819]. 18
B. Punitive Damages 19
1. Bennett v. Grant, 525 S.W.3d 642 (Tex. Apr. 28, 2017) [15-0338]. 19
2. Rayner v. Dillon, 501 S.W.3d 143 (Tex. App.—Texarkana 2016), *pet. granted*, 61 Tex. Sup. Ct. J. 71 (Oct. 27, 2017) [16-0639]. 20

X. EMPLOYMENT LAW 20
A. Collective Bargaining 20
1. Jefferson County. v. Jefferson Cty. Constables Ass'n, 512 S.W.3d 434 (Tex. App.—Corpus Christi-Edinburg 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 651 (Mar. 31, 2017) [16-0498]. 20
B. Employment Discrimination 21
1. Exxon Mobil Corp. v. Rincones, 520 S.W.3d 572 (Tex. May 26, 2017) [15-0240]. 21
C. Sex Discrimination 21
1. Alamo Heights Indep. Sch. Dist. v. Clark, 2015 WL 6163252 (Tex. App.—San Antonio Oct. 2015), *pet. granted*, 60 Tex. Sup. Ct. J. 564 (Mar. 10, 2017) [16-0244]. . . . 21
D. Statutory Retaliation Claim 22
1. El Paso Healthcare, Ltd. v. Murphy, 518 S.W.3d 412 (Tex. Apr. 28, 2017) [15-0575]. 22
E. Texas Commission on Human Rights Act 23
1. Green v. Dall. Cty. Sch., 537 S.W.3d 501 (Tex. May 12, 2017) [16-0214]. 23
F. Unemployment Compensation 23
1. Harris Cnty. Appraisal Dist. v. Tex. Workforce Comm'n, 519 S.W.3d 113 (Tex. May 12, 2017) [16-0346]. 23
2. Tex. Workforce Comm'n v. Wichita County, 507 S.W.3d 919 (Tex. App.—Fort Worth 2016), *pet. granted*, 61 Tex. Sup. Ct. J. 254 (Jan. 19, 2018) [17-0130]. 23

XI. EVIDENCE 24
A. Surveillance Footage 24
1. Diamond Offshore Servs. Ltd. v. Williams, 510 S.W.3d 57 (Tex. App.—Houston [1st Dist.] 2015), *pet. granted*, 60 Tex. Sup. Ct. J. 1607 (Sept. 1, 2017) [16-0434]. . 24

XII. EXPUNCTION OF ARREST RECORDS 24
A. Statutory Requirements 24
1. State v. T.S.N., 523 S.W.3d 171 (Tex. App.—Dallas 2017), *pet. granted*, 61 Tex. Sup. Ct. J. 254 (Jan. 19, 2018) [17-0323]. 24

XIII. FAMILY LAW 25
A. Adult Disabled Child Support 25
1. In re C.J.N.-S., 540 S.W.3d 589 (Tex. Feb. 23, 2018) [16-0909]. 25
B. Conservatorship 26
1. Office of the Attorney Gen. of Tex. v. C.W.H., 531 S.W.3d 178 (Tex. Oct. 20, 2017) [15-0944]. 26

C. Division of Community Property. 26
1. Bradshaw v. Bradshaw, 487 S.W.3d 306 (Tex. App.—Texarkana 2016), *pet. granted*, 61 Tex. Sup. Ct. J. 254 (Jan. 19, 2018) [16-0328].. 26
D. Interference with Child Possession. 27
1. Bos v. Smith, 492 S.W.3d 361 (Tex. App.—Corpus Christi–Edinburg 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 1659 (Sept. 22, 2017) [16-0341].. 27
E. Mediated Settlement Agreements. 27
1. Loya v. Loya, 526 S.W.3d 448 (Tex. May 12, 2017) [15-0763].. 27
F. Nonparent Standing. 28
1. In re H.S., 2016 WL 4040497 (Tex. App.—Fort Worth 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 1607 (Sept. 1, 2017) [16-0715].. 28
G. Premarital Agreement. 28
1. In re S.C., 2016 WL 4371509 (Tex. App.—Dallas 2016), *pet. granted*, 61 Tex. Sup. Ct. J. 114 (Dec. 8, 2017) [16-0770].. 28
H. Spousal Support. 29
1. Dalton v. Dalton, 2017 WL 104639 (Tex. App.—Tyler 2017), *pet. granted*, 61 Tex. Sup. Ct. J. 114 (Dec. 8, 2017) [17-0155].. 29
I. Termination of Parental Rights. 30
1. In re K.S.L., 538 S.W.3d 107 (Tex. Dec. 22, 2017) [16-0558].. 30
2. In re M.M., 538 S.W.3d 540 (Tex. Dec. 22, 2017) [17-0044].. 31

XIV. FORFEITURES.. 31
A. Weapon Convictions.. 31
1. Tafel v. State, 536 S.W.3d 517 (Tex. Dec. 15, 2017) [16-1019, 16-1020].. 31

XV. GOVERNMENTAL IMMUNITY.. 32
A. Charter Schools.. 32
1. Neighborhood Ctrs., Inc. v. Walker, 499 S.W.3d 16 (Tex. App.—Houston [1st Dist.] 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 1659 (Sept. 22, 2017) [16-0897].. . . . 32
B. Contract Claims. 32
1. Wasson Interests, Ltd. v. City of Jacksonville, 513 S.W.3d 217 (Tex. App.—Tyler, 2016), *pet. granted*, 61 Tex. Sup. Ct. J. 114 (Dec. 8, 2017) [17-0198].. 32
C. Counterclaims. 33
1. C. Borunda Holdings Inc., v. Lake Proctor Irrigation Auth. of Comanche Cty., 540 S.W.3d 548 (Tex. Feb. 23, 2018) [17-0107].. 33
2. Nazari v. State, 497 S.W.3d 169 (Tex. App.—Austin 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 1659 (Sept. 22, 2017) [16-0549].. 33
D. Finality of Judgments.. 34
1. Engelman Irrigation Dist. v. Shields Bros., Inc., 514 S.W.3d. 746 (Tex. Mar. 17, 2017) [15-0188].. 34
E. Texas Tort Claims Act. 34
1. Fort Worth Transp. Auth. v. Rodriquez, 2016 WL 3453183 (Tex. App.—Fort Worth 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 1230 (June 16, 2017) [16-0542].. . . . 34
2. Harris County. v. Annab, 524 S.W.3d 793 (Tex. App.—Houston [14th Dist.] 2017), *pet. granted*, 61 Tex. Sup. Ct. J. 254 (Jan. 19, 2018) [17-0329].. 35
3. Laverie v. Wetherbe, 517 S.W.3d 748 (Tex. Apr. 7, 2017) [15-0217].. 35
4. Marino v. Lenoir, 526 S.W.3d 403 (Tex. Apr. 28, 2017) [15-0610].. 36
5. Univ. of Tex. Health Science Ctr. at Hous. v. Rios, 542 S.W.3d 530 (Tex. Dec. 15, 2017) [16-0836].. 36

F. Ultra Vires Claims.. 37
1. City of Houston v. Hous. Mun. Emps. Pension Sys., (Tex. App—Houston [14th Dist.] 2016) *pet. granted*, 61 Tex. Sup. Ct. J. 332 (Feb. 18, 2018) [17-0242].. 37
2. Meyers v. JDC/Firethorne, Ltd., 514 S.W.3d 279 (Tex. App.—Houston [14th Dist.] 2016), *pet. granted*, 61 Tex. Sup. Ct. J. 71 (Oct. 27, 2017) [17-0105].. 38

XVI. HEALTH AND SAFETY. 39
A. Involuntary Commitment. 39
1. In re State, 501 S.W.3d 116 (Tex. App.—Beaumont 2016), *argument granted on pet. for writ of mandamus*, 60 Tex. Sup. Ct. J. 1608 (Sept. 1, 2017) [16-0829].. 39

XVII. INSURANCE. 39
A. Assignment of Claims. 39
1. Great Am. Ins. Co. v. Hamel, 525 S.W.3d 655 (Tex. June 16, 2017) [14-1007].. . . 39
B. Insurance Code Liability. 40
1. USAA Tex. Lloyds Co. v. Menchaca, S.W.3d , 60 Tex. Sup. Ct. J. 672 (Tex. Apr. 7, 2017) [14-0721].. 40
C. Premium Finance Agreements. 41
1. BankDirect Capital Fin., LLC v. Plasma Fab, LLC, 519 S.W.3d 76 (Tex. May 12, 2017) [15-0635].. 41
D. Subrogation. 41
1. Wausau Underwriters Ins. Co. v. Wedel, 518 S.W.3d 615 (Tex. App.—El Paso 2017), *pet. granted*, 61 Tex. Sup. Ct. J. 255 (Jan. 19, 2018) [17-0462].. 41

XVIII. INTENTIONAL TORTS. 42
A. Defamation.. 42
1. D Magazine Partners, L.P. v. Rosenthal, 529 S.W.3d 429 (Tex. Mar. 17, 2017) [15-0790].. 42
B. Fraud. 43
1. Anderson v. Durant, 2016 WL 552034 (Tex. App.—Fort Worth 2016), *pet. granted*, 61 Tex. Sup. Ct. J. 138 (Dec. 15, 2017) [16-0842].. 43
2. JPMorgan Chase Bank, N.A. v. Orca Assets, G.P., LLC, 2015 WL 4736786 (Tex. App.—Dallas 2015), *pet. granted*, 60 Tex. Sup. Ct. J. 564 (Mar. 10, 2017) [15-0712].. 43

XIX. JURISDICTION. 44
A. Mootness. 44
1. City of Krum v. Rice, S.W.3d , 61 Tex. Sup. Ct. J. 193 (Tex. Dec. 15, 2017) [17-0081].. 44
B. Personal Jurisdiction. 44
1. M&F Worldwide Corp. v. Pepsi-Cola Metro. Bottling Co., 512 S.W.3d 878 (Tex. Mar. 3, 2017) [15-0083].. 44
2. Old Republic Nat'l Title Ins. Co. v. Goldsmith, 2016 WL 7245700 (Tex. App.—Fort Worth 2016), *pet. granted*, 61 Tex. Sup. Ct. J. 139 (Dec. 15, 2017) [17-0245].. 45
C. Subject Matter Jurisdiction. 45
1. Am. K-9 Detection Servs., LLC v. Freeman, 494 S.W.3d 393 (Tex. App.—Corpus Christi–Edinburg 2015), *pet. granted*, 60 Tex. Sup. Ct. J. 1606 (Sept. 1, 2017) [15-0932].. 45

XX. MARITIME LAW.. 46
A. Jones Act. 46
1. Helix Energy Solutions Grp., Inc. v. Gold, 522 S.W.3d 427 (Tex. June 16, 2017) [16-0075].. 46

XXI. MEDICAL LIABILITY. 46
A. Expert Reports. 46
1. Baty v. Futrell, S.W.3d , 61 Tex. Sup. Ct. J. 302 (Tex. Feb. 2, 2018) [16-0164].. 46
2. Colum. Valley Healthcare Sys., L.P. v. Zamarripa, 526 S.W.3d 453 (Tex. June 9, 2017) [15-0909].. 47
3. Miller v. JSC Lake Highlands Operations, LP, 536 S.W.3d 510 (Tex. Dec. 15, 2017) [16-0986].. 48
B. Sufficiency of the Evidence. 48
1. Gunn v. McCoy, 489 S.W.3d 75 (Tex. App.—Houston [14th Dist.] 2016), *pet. granted*, 61 Tex. Sup. Ct. J. 114 (Dec. 8, 2017) [16-0125].. 48

XXII. MUNICIPAL LAW. 49
A. State Law Preemption. 49
1. City of Laredo v. Laredo Merchs. Ass'n, 2016 WL 4376627 (Tex. App.—San Antonio 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 1607 (Sept. 1, 2017) [16-0748].. 49

XXIII. NEGLIGENCE.. 49
A. Causation.. 49
1. Bustamante v. Ponte, 529 S.W.3d 447 (Tex. Sept. 29, 2017) [15-0509].. 49
B. Designating Responsible Third Parties.. 49
1. Pagayon v. Exxon Mobil Corp., 536 S.W.3d 499 (Tex. June 23, 2017) [15-0642].. 49
C. Negligent Entrustment. 50
1. Allways Auto Grp., Ltd. v. Walters, 530 S.W.3d 147 (Tex. Sept. 27, 2017) [16-0134].. 50
D. Premises Liability. 50
1. United Scaffolding, Inc. v. Levine, 537 S.W.3d 463 (Tex. June 30, 2017) [15-0921].. 50
E. Vicarious Liability.. 51
1. Painter v. Amerimex Drilling I, Ltd., 511 S.W.3d 700 (Tex. App.—El Paso 2015), *pet. granted*, 60 Tex. Sup. Ct. J. 564 (Mar. 10, 2017) [16-0120].. 51

XXIV. OIL AND GAS. 51
A. Assignments.. 51
1. Davis v. Mueller, 528 S.W.3d 97 (Tex. May 26, 2017) [16-0155].. 51
2. Endeavor Energy Res., L.P. v. Discovery Operating, Inc., 448 S.W.3d 169 (Tex. App.—Eastland 2014, *pet. granted*, 60 Tex. Sup. Ct. J. 1606 (Sept. 1, 2017) [15-0155].. 52
3. TRO-X, L.P. v. Anadarko Petroleum Corp., 511 S.W.3d 778 (Tex. App.—El Paso 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 1659 (Sept. 22, 2017) [16-0412].. 53
4. XOG Operating, LLC v. Chesapeake Expl. Ltd. P'Ship, 480 S.W.3d 22 (Tex. App.—Amarillo 2015), *pet. granted*, 61 Tex. Sup. Ct. J. 71 (Oct. 27, 2017) [15-0935].. 53

B. Indemnification Agreements. 54
1. Noble Energy, Inc. v. ConocoPhillips Co., 532 S.W.3d 771 (Tex. June 23, 2017) [15-0502].. 54
C. Leases. 54
1. BP Am. Prod. Co. v. Laddex, Ltd., 513 S.W.3d 476 (Tex. Mar. 3, 2017) [15-0248].. 54
2. Murphy Expl. & Prod. Co.–USA v. Adams, 497 S.W.3d 510 (Tex. App.—San Antonio 2016), *pet. granted*, 61 Tex. Sup. Ct. J. 71 (Oct. 27, 2017) [16-0505].. 55
D. Pooling. 56
1. Samson Expl., LLC v. T.S. Reed Props., Inc., 521 S.W.3d 766 (Tex. June 23, 2017) [15-0886].. 56
E. Royalties. 57
1. U.S. Shale Energy II, LLC v. Laborde Properties, L.P., 2016 WL 5922404 (Tex. App.—San Antonio 2016), *pet. granted*, 61 Tex. Sup. Ct. J. 254 (Jan. 19, 2018) [17-0111].. 57
2. Wenske v. Ealy, 521 S.W.3d 791 (Tex. June 23, 2017) [16-0353].. 57
F. Rule Against Perpetuities. 58
1. ConocoPhillips Co. v. Koopmann, 2016 WL 2967689 (Tex. App.—Corpus Christi–Edinburg 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 1231 (June 16, 2017) [16-0662].. 58
G. Shut-In Royalty Provisions. 58
1. BP Am. Prod. Co. v. Red Deer Res., LLC, 526 S.W.3d 389 (Tex. Apr. 28, 2017) [15-0569].. 58
H. Subsurface Trespass. 59
1. Lightning Oil Co. v. Anadarko E&P Onshore, LLC, 520 S.W.3d 39 (Tex. May 19, 2017) [15-0910].. 59
I. The *Duhig* Doctrine. 60
1. Perryman v. Spartan Tex. Six Capital Partners, Ltd., 494 S.W.3d 735 (Tex. App.—Houston [14th Dist.] 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 1352 (June 23, 2017) [16-0804].. 60

XXV. PROBATE: WILLS, TRUSTS, ESTATES, & GUARDIANSHIPS. 60
A. Guardianships. 60
1. In re Guardianship of Wooley, 2016 WL 3179643 (Tex. App.—Fort Worth 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 1352 (June 23, 2017) [16-0617].. 60
B. Tortious Interference with Inheritance Rights. 61
1. Archer v. Anderson, 490 S.W.3d 175 (Tex. App.—Austin 2017), *pet. granted*, 60 Tex. Sup. Ct. J. 1230 (June 16, 2016) [16-0256].. 61
2. Kinsel v. Lindsey, 526 S.W.3d 411 (Tex. May 26, 2017) [15-0403].. 62

XXVI. PROCEDURE—APPELLATE. 62
A. Interlocutory Appeal Jurisdiction. 62
1. City of Magnolia 4A Econ. Dev. Corp. v. Smedley, 533 S.W.3d 297 (Tex. Oct. 27, 2017) [16-0718].. 62
2. Univ. of the Incarnate Word v. Redus, 518 S.W.3d 905 (Tex. May 12, 2017) [15-0732]. 63
B. Supersedeas Bonds. 63
1. McFadin v. Broadway Coffeehouse, LLC, 539 S.W.3d 278 (Tex. Feb. 2, 2018) [16-0560].. 63

XXVII. PROCEDURE—PRETRIAL. 64
A. Certificates of Merit. 64
1. Melden & Hunt, Inc. v. E. Rio Hondo Water Supply Corp., 520 S.W.3d 887 (Tex. June 9, 2017) [16-0078].. 64
2. Pedernal Energy, LLC v. Bruington Eng'g, Ltd., 536 S.W.3d 487 (Tex. Apr. 28, 2017) [15-0123].. 65
B. Discovery. 65
1. In re Ford Motor Co., 2017 WL 1149213 (Tex. App.—Houston [1st Dist.] 2017), *argument granted on pet. for writ of mandamus*, 61 Tex. Sup. Ct. J. 332 (Feb. 16, 2018) [17-0264].. 65
2. In re N. Cypress Med. Ctr. Operating Co., 2016 WL 6134457 (Tex. App.—Houston [14th Dist.] 2016), *argument granted on pet. for writ of mandamus*, 60 Tex. Sup. Ct. J. 1353 (June 23, 2017) [16-0851].. 66
3. In re Nat'l Lloyds Ins., 532 S.W.3d 794 (Tex. June 9, 2017) [15-0591].. 67
C. Electronic Discovery. 67
1. In re Shipman, 540 S.W.3d 562 (Tex. Feb. 23, 2018) [16-0607].. 67
2. In re State Farm Lloyds, 520 S.W.3d 595 (Tex. May 26, 2017) [15-0903, 15-0905]..68
D. Forum Non Conveniens. 68
1. In re Mahindra, USA, Inc., 2016 WL 7368048 (Tex. App.—Houston [1st Dist.] 2016), *argument granted on pet. for writ of mandamus*, 60 Tex. Sup. Ct. J. 1660 (Sept. 25, 2017) [17-0019].. 68
E. Responsible Third Party Designation. 69
1. In re Coppola, 535 S.W.3d 506 (Tex. Dec. 15, 2017) [16-0723].. 69
F. Sanctions.. 69
1. Altesse Healthcare Solutions, Inc. v. Wilson, 540 S.W.3d 570 (Tex. Feb. 23, 2018) [16-0922].. 69
G. Summary Judgment. 70
1. Chavez v. Kan. City S. Ry. Co., 520 S.W.3d 898 (Tex. May 26, 2017) [15-0717].. 70
2. Lujan v. Navistar Int'l Corp., 503 S.W.3d 424 (Tex. App.—Houston [14th Dist.] 2016), *pet. granted*, 61 Tex. Sup. Ct. J. 71 (Oct. 27, 2017) [16-0588].. 70

XXVIII. PROCEDURE—TRIAL AND POST-TRIAL. 71
A. Enforcement of Judgments. 71
1. Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chem. Co., L.P., 540 S.W.3d 577 (Tex. Feb. 23, 2018) [16-1018].. 71
B. Findings of Fact and Conclusions of Law.. 72
1. Ad Villarai, LLC v. Pak, 519 S.W.3d 132 (Tex. May 12, 2017) [16-0373].. 72
C. Jury Instructions and Questions. 72
1. Benge v. Williams, 472 S.W.3d 684 (Tex. App.—Houston [1st Dist.] 2014), *pet. granted*, 60 Tex. Sup. Ct. J. 564 (Mar. 10, 2017) [14-1057].. 72
D. Reversal of Judgment Notwithstanding the Verdict. 73
1. Dudley Constr., Ltd. v. ACT Pipe & Supply, Inc., 2016 WL 3917211 (Tex. App.—Texarkana 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 1352 (June 23, 2017) [16-0651].. 73

XXIX. REAL PROPERTY. 73
A. Deed Restrictions. 73
1. Tarr v. Timberwood Park Owners Assoc., 510 S.W.3d 725 (Tex. App.—San Antonio 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 1659 (Sept. 22, 2017) [16-1005].. . . . 73

B. Easements.. 74
1. Lance v. Robinson, 2016 WL 147236 (Tex. App.—San Antonio 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 1352 (June 23, 2017) [16-0323].. 74
C. Leases. 74
1. Shields Ltd. P'ship v. Bradberry, 526 S.W.3d 471 (Tex. May 12, 2017) [15-0803].. 74
D. Lis Pendens. 75
1. Sommers v. Sandcastle Homes, Inc., 521 S.W.3d 749 (Tex. June 16, 2017) [15-0847, 15-0848].. 75
E. Nuisance. 75
1. Town of DISH v. Atmos Energy Corp., 519 S.W.3d 605 (Tex. May 19, 2017) [15-0613].. 75
F. Slander of Title. 76
1. Allen-Pieroni v. Pieroni, 535 S.W.3d 887 (Tex. Dec. 15, 2017) [16-0900].. 76

XXX. TAXES.. 76
A. Assessment. 76
1. Bosque Disposal Sys., LLC v. Parker Cnty. Appraisal Dist., 506 S.W.3d 665 (Tex. App.—Fort Worth 2016), *pet. granted*, 61 Tex. Sup. Ct. J. 254 (Jan. 19, 2018) [17-0146].. 76
B. Determination of Ownership. 77
1. Willacy Cnty. Appraisal Dist. v. Sebastian Cotton & Grain, Ltd., 492 S.W.3d 824 (Tex. App—Corpus Christi–Edinburg 2016), *pet granted*, 60 Tex. Sup. Ct. J. 1607 (Sept. 1, 2017) [16-0626].. 77
C. Franchise Tax. 78
1. Graphic Packaging Corp. v. Hegar, 538 S.W.3d 89 (Tex. Dec. 22, 2017) [15-0669]..78
D. Heavy Equipment. 78
1. EXLP Leasing, LLC v. Galveston Cent. Appraisal Dist., 475 S.W.3d 421 (Tex. App.—Houston [14th Dist.] 2015), *pet. granted*, 60 Tex. Sup. Ct. J. 564 (Mar. 10, 2017) [15-0683].. 78

XXXI. TEXAS CITIZENS PARTICIPATION ACT. 79
A. Initial Burden. 79
1. Adams v. Starside Custom Builders, LLC, 2016 WL 3548013 (Tex. App.—Dallas 2016), *pet granted*, 60 Tex. Sup. Ct. J. 1607 (Sept. 1, 2017) [16-0786].. 79
2. Bedford v. Spassoff, 520 S.W.3d 901 (Tex. June 9, 2017) [16-0229].. 79
3. Harper v. Best, 493 S.W.3d 105 (Tex. App.—Waco 2016), *pet. granted*, 60 Tex. Sup. Ct. J. 1352 (June 23, 2017) [16-0647].. 80
4. Hersh v. Tatum, 526 S.W.3d 462 (Tex. June 30, 2017) [16-0096].. 80
B. Litigation Privilege Defense. 81
1. Youngkin v. Hines, 2016 WL 3896494 (Tex. App.—Waco 2016) *pet. granted*, 60 Tex. Sup. Ct. J.1353 (June 23, 2017) [16-0935].. 81

XXXII. UTILITIES. 81
A. Cost of Relocating and/or Removal of Facilities. 81
1. City of Richardson v. Oncor Electric Delivery Co., 539 S.W.3d 252 (Tex. Feb. 2, 2018) [15-1008].. 81
2. Oncor Elec. Delivery Co. v. Chaparral Energy, LLC, 511 S.W.3d 750 (Tex. App.—El Paso 2016), *pet. granted*, 61 Tex. Sup. Ct. J. 114 (Dec. 8, 2017) [16-0301].. . . 82

XXXIII. WORKERS' COMPENSATION. 83
A. Course and Scope of Employment. 83
1. State Office of Risk Mgmt. v. Martinez, 539 S.W.3d 266 (Tex. Dec. 15, 2017) [16-0337]. 83
B. Exclusive Jurisdiction. 84
1. In re Accident Fund Gen. Ins. Co., S.W.3d , 61 Tex. Sup. Ct. J. 167 (Tex. Dec. 15, 2017) [16-0556]. 84
C. Exclusive Remedy Defense. 84
1. Arnold v. Gonzalez, 2015 WL 5109757 (Tex. App.—Corpus Christi–Edinburg 2015), *pet. granted*, 60 Tex. Sup. Ct. J. 650 (Mar. 31, 2017) [15-0729]. 84

SUPREME COURT OF TEXAS UPDATE

Phil Johnson
Justice
Supreme Court of Texas

I. SCOPE OF THIS ARTICLE

This article surveys cases that were decided by the Supreme Court of Texas from March 1, 2017 through February 28, 2018. Petitions granted but not yet decided are also included.

II. ADMINISTRATIVE LAW

A. Judicial Review

1. Shamrock Psychiatric Clinic, P.A. v. Tex. Dep't of Health and Human Servs., 540 S.W.3d 533 (Tex. Feb. 23, 2018) [16-0890].

At issue in this case is whether Shamrock Psychiatric Clinic, a Medicaid provider, is entitled to a contested-case hearing on the merits of the State's claim to recoup alleged overpayments. The Texas Health and Human Services Commission administers the Texas Medicaid Program and, through its Office of Inspector General, is responsible for investigating violations of and enforcing state laws related to the program. In January 2013, Shamrock received notice that the Inspector General would pursue a payment-hold for alleged overpayments. Shamrock timely responded to this notice, and the Inspector General set the case for hearing before the State Office of Administrative Hearings. Beginning in September, an Inspector General attorney stated the agency's intent to pursue an overpayment claim against Shamrock. In a series of emails, the Inspector General attorney proposed consolidation of the pending payment-hold case with the overpayment case, since the two claims involved overlapping issues. Shamrock agreed that the two cases should be tried together, and, relying on a status report entered by the Inspector General stating the parties' agreement, the administrative law judge continued a November 2013 hearing to March.

The Inspector General attorney handling Shamrock's case soon after left the agency. In December, Shamrock received the Inspector General's final notice of overpayment, which included notice of a 15-day appeal requirement. Relying on the agreement to consolidate the two hearings, Shamrock did not file a written appeal by that deadline. In January 2014, the Inspector General's new counsel notified Shamrock of the State's intent to dismiss the cases because Shamrock failed to submit a written appeal request. The State then "withdrew" its initial payment-hold case, arguing that the administrative law judge no longer had jurisdiction to enforce any alleged agreement. The judge reluctantly dismissed the case.

Shamrock filed suit in district court, seeking a writ of mandamus directing the administrative law judge to enforce the parties' agreement. The trial court granted the State's plea to the jurisdiction, finding that sovereign immunity barred Shamrock's suit. On appeal, Shamrock argued that both the administrative law judge and the Office of Inspector General had a ministerial duty to abide by the agreement. The court of appeals rejected this argument.

The Supreme Court reversed, holding that the Inspector General's status report, read in conjunction with the parties' email correspondence and the administrative law judge's orders relying on the report, constitute a written agreement satisfying SOAH Rule 155.415 and Texas Rule of Civil Procedure 11. The Court stated that administrative law judges, like trial judges, have a ministerial duty to enforce a valid Rule 11 agreement. Because the administrative law judge failed to enforce the agreement in this case, the Court held that the *ultra vires* exception to sovereign immunity applied to Shamrock's suit, and thus the district court erred in granting the State's plea to the jurisdiction.

B. Public Utility Commission

1. City of Richardson v. Oncor Elec. Delivery Co., 539 S.W.3d 252 (Tex. Feb. 2, 2018) [15-1008].

This case involved a dispute between a city and a utility over who must pay relocation costs to accommodate changes to public rights-of-way. The City of Richardson negotiated a franchise agreement with Oncor Electric Delivery Company LLC, requiring Oncor to bear the costs of relocating its equipment and facilities to accommodate changes to public rights-of-way. Richardson later approved the widening of thirty-two public alleys. Oncor refused to pay for the relocation of its equipment and facilities to accommodate these changes. While the relocation dispute was pending, Oncor filed an unrelated case with the Public Utility Commission (PUC), seeking to alter its rates. That case was resolved by settlement, and the resulting rate change was filed as a tariff with the PUC. Richardson enacted an ordinance consistent with the tariff, which included the following pro-forma provision: "Retail Customer, or the entity requesting such removal or relocation, shall pay to Company the total cost of removing such Delivery System Facilities." Oncor relied on this language to support its refusal to pay relocation costs.

At common law, a utility is normally required to bear the costs of right-of-way relocations. This requirement was reflected in the franchise agreement. Oncor argued that the tariff controlled over the franchise agreement because it carried the weight of state law, and because the Tariff was a freely negotiated agreement that reflected Richardson's consent to pay relocation expenses, thus discharging Oncor's obligation to pay such expenses under the franchise agreement. Richardson argued that the tariff was not a freely negotiated agreement, and that it lacked the requisite clarity to abrogate either the franchise agreement or the common law.

C. Railroad Commission

1. Forest Oil Corp. v. El Rucio Land & Cattle Co., 518 S.W.3d 422 (Tex. Apr. 28, 2017) [14-0979].

At issue in this case was whether the Railroad Commission (RRC) has exclusive jurisdiction over environmental contamination claims and whether the arbitration award at issue was proper.

Forest Oil Corporation has been conducting oil and gas operations on a ranch owned by James A. McAllen for over thirty years. In a previous case, both parties agreed to a Settlement Agreement that required Forest to remediate any environmental damage on the ranch. Subsequently, McAllen sued Forest for environmental contamination, among other common-law claims, and was awarded damages in arbitration. Forest moved to vacate the award on several grounds, including that the RRC had exclusive or primary jurisdiction over McAllen's claims, precluding the arbitration. Forest also asserted that there was evidence of partiality of one of the arbitrators, Donato Ramos, because McAllen had earlier objected to using Ramos as a mediator in another case, apparently to avoid any conflict in Ramos' serving as an arbitrator in this case. Forest also argued that the damages awards were in manifest disregard of Texas law, and that the parties had agreed to expanded judicial review of the arbitration award. The trial court largely upheld the arbitration damages, and the court of appeals affirmed.

The Supreme Court affirmed. The Court first determined that the RRC did not have exclusive jurisdiction over contamination claims. While the legislature had put a statutory remedy in place through the RRC, it did not abrogate common-law claims. Without clear legislative intent to abrogate common-law claims, the Court will give full effect to either remedy. Accordingly, the RRC did not have primary jurisdiction because Forest's duty to remediate contamination is grounded in common-law and statute. Furthermore, the Court concluded that Ramos was still an impartial arbitrator because the evidence that he was aware of McAllen's objection in a prior case was circumstantial. The damages awarded were within the discretion of the arbitration panel and were awarded pursuant to the Settlement Agreement. Lastly, the Settlement Agreement prohibited Forest's request of expanded judicial review.

Title search: Supreme Court of Texas Update

Also available as part of the eCourse
2018 eConference on State and Federal Appeals

First appeared as part of the conference materials for the
28th Annual Conference on State and Federal Appeals session
"Supreme Court of Texas Update"