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Exclusive (and/or?) Primary Jurisdiction

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Exclusive (and/or?) Primary Jurisdiction

Introduction

Texas administrative agencies have no inherent powers, they only have the powers granted to them by the Legislature. However, the Legislature often grants broad and commanding authorities to these agencies, giving them exclusive (or at least primary) jurisdiction over all types of cases arising within their field of authority. The doctrines of exclusive jurisdiction and primary jurisdiction have evolved relatively constantly over the past ten years, with different opinions describing specific permutations of the scope of agency authority in ways that are not always immediately recognizable as consistent. This presentation examines a number of cases that have addressed and applied exclusive and primary jurisdiction from 2009 to 2018.

To start with a brief overview of the two doctrines, though they have similar names they are quite different in origin and application. Exclusive jurisdiction must be expressly granted by the Legislature in an agency's empowering statute, though sometimes courts have found exclusive jurisdiction in the text of a statute as a whole even when the term "exclusive" is not actually used. As one would expect, exclusive jurisdiction is jurisdictional, meaning that it can be raised at any time by any party or a court as a case is tried and appealed. Primary jurisdiction, on the other hand, is a judicial construct, and is referred to as "prudential" rather than jurisdictional. When an agency is found to have primary jurisdiction over a subject area, courts are expected to yield to the agency's expertise before ruling on disputes, though there is no requirement that they do so as the court maintains its general jurisdiction over cases before it. Primary jurisdiction must be raised at the trial court to be preserved, though appellate courts do not always enforce this requirement strictly.

Although many judicial opinions place great emphasis on the fact that exclusive and primary jurisdiction are separate doctrines with distinct applicability, the doctrines are frequently discussed together and the clear line between them that these opinions attempt to draw is often blurred in practice.

An Overview of Case Law Developments 2009-2018

2009
Employees Retirement System of Texas v. Duenez, 288 S.W.2d 905 (Tex. 2009)
Nelson v. City of Dallas, 278 S.W.3d 90 (Tex.App. – Dallas, 2009, pet. denied)
Apollo Enterprises, Inc. v. ScripNet, Inc., 301 S.W.3d 848 (Tex. App. – Austin, 2009, no pet.)

2010
Buddy Gregg Motor Homes, Inc. v. Marathon Coach, Inc., 320 S.W.3d 912 (Tex. App. – Austin, 2010, no pet.)

2011
Texas Racing Commission v. Marquez, 2011 WL 3659092 (Tex. App. – Austin, 2011, no pet.)

2012
Main Rehabilitation & Diagnostic Center, LLC v. Liberty Mutual Insurance Company, 376 S.W.3d 825 (Tex. App. – Dallas, 2012, no pet.)

2013
Ellis v. Reliant Energy Retail Services, LLC, 418 S.W.3d 235 (Tex. App. - Houston [14th Dist.], 2013, no pet.)
Vista Medical Center Hospital v. Texas Mutual insurance Company, 416 S.W.3d 11 (Tex. App. – Austin, 2013, no pet.)
City of Houston v. Rhule, 417 S.W.3d 440 (Tex. 2013)

2014
Oncor Electric Delivery Company LLC v. Giovanni Homes Corp., 438 S.W.3d 644 (Tex. App. – Fort Worth, 2014, pet. denied)

Forest Oil Corp. v. El Rucio Land and Cattle Co., Inc., 446 S.W.3d 58 (Tex. App. – Houston [1st Dist.], 2014, order withdrawn (Dec. 2, 2016), aff'd, 518 S.W.3d 422 (Tex. 2017)

2015
Kallinen v. City of Houston, 462 S.W.3d 25 (Tex. 2015)

2016
Clint Independent School District v. Marquez, 487 S.W.3d 538 (Tex. 2016)
McIntyre v. El Paso Independent School District, 499 S.W.3d 820 (Tex. 2016)

2017
Forest Oil Corporation v. El Rucio Land and Cattle Company, Inc., 518 S.W.3d 422 (Tex. 2017)

2018
Electric Delivery Company LLC v. Chaparral Energy, LLC – 61 Tex. Sup. Ct. J. 930, 2018 WL 1974336 (Tex. 2018)

2009

Employees Retirement System of Texas v. Duenez, 288 S.W.2d 905 (Tex. 2009)

Issue Regarding Exclusive Jurisdiction

[In the court's own words:] "The curious question in this case is whether a state agency can demand dismissal of its own claim in court because it failed to exhaust administrative remedies in front of itself."

The Employees Retirement System of Texas ("ERS") asserts a subrogation claim against former member Xavier Duenez and his family, seeking reimbursement of funds it paid their health-care providers. After the claim was filed in court, ERS sought to dismiss the suit because it had exclusive jurisdiction of its own claim.

Summary of Facts

Members of the Duenez family were injured in a collision caused by a drunk driver. ERS paid benefits of more than $400,000 through its insurance administrator. ERS filed suit for subrogation against the Duenezes. By then, the Duenezes were no longer participants in ERS as Mr. Duenez had left his employment with the state, obtained coverage from a new insurer, and dropped all claims for benefits from ERS.

ERS's administrator's suit alleged that the funds it sought were for ERS's benefit. The administrator nevertheless named ERS as a defendant and, strangely, its suit sought both a court judgment ***and*** a declaration that no court had jurisdiction because ERS had exclusive jurisdiction.

ERS filed a plea to the jurisdiction demanding dismissal for the Duenezes to pursue their claims administratively ***even though they had no affirmative claims to pursue***. The trial court denied ERS's plea to the jurisdiction, the court of appeals affirmed, and ERS petitioned for review.

Discussion and Notable Quotes

ERS argued that it was not allowed to subrogate claims. The Court disagreed, noting that the Act authorized ERS to "contain costs," and to provide benefits "at least equal to those commonly provided in private industry." As subrogation reduces costs and private plans commonly include subrogation, the Court determined that ERS was authorized to include subrogation in the plan it adopted. However, the Court noted, being allowed to make use of subrogation is not the same thing as being granted exclusive jurisdiction over it.

The operative statute expressly grants ERS exclusive jurisdiction of disputes relating to payment of a claim:

> The executive director has exclusive authority to determine all questions relating to enrollment in or *payment of a claim* arising from group coverages or benefits provided under this chapter other than questions relating to payment of a claim by a health maintenance organization.

However, the Court noted that there was no claim for benefits in the suit. The Duenezes past medical bills have already been paid, and their future bills are the responsibility of a new insurer. The question here is not a member's claim for payment of benefits (as it was in *Duenez I*), but ERS's claim for *reimbursement* of benefits it has already paid.

The Court determined that the operative statute does not "provide a detailed regulatory scheme suggesting ERS must have exclusive jurisdiction of its own subrogation claims" and "[t]o the contrary, the Act states that its administrative remedies "are the exclusive remedies available to an employee, participant, annuitant, or dependent," but does not include ERS as a potential administrative claimant in that list." The Act also authorizes ERS to file suit (*not* an administrative claim) to resolve questions that might expose it to double liability.

Viewing the Act as a whole, the Court concluded, it appears the Legislature intended ERS's administrative procedures to handle claims for benefits by employees, not claims against third parties by ERS.

"We do not think the Legislature intended ERS to handle administratively every tort suit involving injured state

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