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## **EXCLUSIVE V. PRIMARY JURISDICTION & PLEAS TO THE JURISDICTION**

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## INTRODUCTION

This paper examines the legal principles Texas courts should use in deciding when an administrative agency has exclusive or primary jurisdiction over an issue and selected reported cases concerning the application of those principles. The paper also discusses the procedure for presenting and deciding pleas to the jurisdiction asserted in the Texas trial courts.

### Exclusive or Primary Jurisdiction?

No presumption exists that an administrative agency has jurisdiction to resolve a dispute. *Subaru of Am., Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 220 (Tex. 2002). An agency has only those jurisdictional powers that the legislature in clear and express terms, confers upon it. *Id.* An agency cannot create for itself any excess jurisdictional powers. *Id.*

An agency can have exclusive or primary jurisdiction. *See id.*; *In re Murray*, 268 S.W.3d 279, 282 (Tex. App.—Waco 2008, orig. proceeding). Whether an agency has exclusive or primary jurisdiction depends upon statutory interpretation, which is a question of law. *See McDavid Nissan*, 84 S.W.3d at 221–22. In examining legislative grants of agency jurisdiction, care should be taken not to confuse "exclusive" jurisdiction with "original" jurisdiction. Original jurisdiction does not always mean or include exclusive jurisdiction. *See Territory of Guam v. Rosario*, 296 F. Supp. 140, 142 (D. Guam A.D. 1969); *see also DiAntonio v. Pa. State Univ.*, 455 F. Supp. 510, 512 (M.D. Pa. 1978). Original jurisdiction is the power to decide a matter in the first instance. *Black's Law Dictionary* 982 (10th ed. 2014). The legislature may grant both a court and an administrative agency concurrent original jurisdiction over a claim or issue, but exclusive original jurisdiction over a claim or issue can only be granted to one tribunal. *See McDavid Nissan*, 84 S.W.3d at 220–21 (explaining relationship between trial courts and administrative agencies). Exclusive original jurisdiction over a claim or issue cannot exist in both the agency and a court. *Id.* at 221. The Texas Legislature has given some agencies exclusive original jurisdiction over certain matters.

### Basic Principles of Exclusive Jurisdiction

An agency has exclusive original jurisdiction “when the Legislature gives the agency alone the authority to make the initial determination in a dispute.” *Cash Am. Int'l, Inc. v. Bennett*, 35 S.W.3d 12, 15 (Tex. 2000). A court will usually decide that exclusive jurisdiction exists when the legislature has created a right or claim unknown to the common law and provided the means of deciding and enforcing the right or claim in an administrative agency. *Id.* at 16 (discussing role of common-law claims in determining exclusive jurisdiction). Exclusive jurisdiction also exists when the court decides that “a pervasive regulatory scheme” demonstrates a legislative intent “for the regulatory process to be the exclusive means of remedying the problem to which the regulation is addressed.” *McDavid Nissan*, 84 S.W.3d at 221.

Without a clear or plain legislative statement of exclusivity, Texas courts are reluctant to hold that a statute creating an administrative right and remedy has abrogated a common-law right in favor of an exclusive administrative remedy. *See, e.g., Cash Am.*, 35 S.W.3d at 16; *Bruce v. Jim Walters Homes, Inc.*, 943 S.W.2d 121, 122–23 (Tex. App.—San Antonio 1997, writ denied) (explaining that statute may be interpreted as abrogating common-law principle only when its express terms or necessary implications clearly indicate legislature's intent to do so). So absent a clear or plain statement, Texas courts generally will decide that the agency and the courts have concurrent jurisdiction over the matter. *See McDavid Nissan*, 84 S.W.3d at 220 (“Courts will not imply additional authority to agencies . . .”). When the legislature requires that a party “exhaust” the administrative remedies provided by a statute, “the mandate is the equivalent of a legislative investiture of exclusive original jurisdiction in the administrative agency.” *Davis v. Methodist Hosp.*, 997 S.W.2d 788, 793 (Tex. App.—Houston [1st Dist.] 1999, pet. denied).

If the legislature has given a state administrative agency exclusive original jurisdiction over an issue or a dispute, a party may not petition a court for judicial relief until it has first “exhausted” the available administrative remedies. *McDavid Nissan*, 84 S.W.3d at 221; *Cash Am.*, 35 S.W.3d at 15. In other words, a party must try to secure all available administrative relief from the agency before seeking judicial relief or judicial review of the agency's disposition of the dispute or an issue in the dispute. *Cash Am.*, 35 S.W.3d at 15; *Texas Educ. Agency v. Cypress-Fairbanks I.S.D.*, 830 S.W.2d 88, 90 (Tex. 1992) Also, when the agency's jurisdiction is exclusive, a court can review the agency's decision only at the time and in the manner designated by statute. *Cash Am.*, 35 S.W.3d at 15.

For example, in *Metro Temps, Inc. v. Texas Workers' Compensation Insurance Facility*, 949 S.W.2d 534 (Tex. App.—Austin 1997, no pet.), the Third Court of Appeals held that when an administrative remedy is available for a portion of the plaintiff's claims and the resolution of that portion of the claims may decide other claims over which the agency has no jurisdiction, a district court has no jurisdiction over the other claims until the plaintiff has exhausted the administrative remedy that exists for the portion of the claims that are within the agency's jurisdiction. *See id.* at 536; *see also In re Texas Mut. Ins. Co.*, 157 S.W.3d 75, 82 (Tex. App.—Austin 2004, orig. proceeding) (citing *Metro* for support in abating underlying negligence claim while agency determines coverage issue).

So, when the legislature vests exclusive jurisdiction in an agency over a claim or aspect of a claim brought in court, and the party seeking relief has not exhausted its remedies in the agency, the court lacks subject-matter jurisdiction and must dismiss, without prejudice, the claims embraced within the agency's exclusive jurisdiction, or abate the trial proceedings to allow a reasonable opportunity for the jurisdictional problem to be cured. *McDavid Nissan*, 84 S.W.3d at 221–22; *American Motorists Ins. Co. v. Fodge*, 63 S.W.3d 801, 805 (Tex. 2001).