

No. 20-0268

IN THE SUPREME COURT OF TEXAS

In re Kuraray America, Inc.,
Relator.

Original Proceeding from Cause No. 2018-62973
In the 234th Judicial District Court of Harris County, Texas
Honorable Lauren Reeder, Presiding Judge

**REAL PARTY IN INTEREST LUIS MARTINEZ'S
BRIEF ON THE MERITS**

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Walker v. Packer,
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Rules and Statutes

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Miscellaneous Authorities

Adrian F. Ward et al., *Brain Drain: The Mere Presence of One's Own
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Bill Thornton et al., *The Mere Presence of a Cell Phone May be
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ABBREVIATIONS AND RECORD REFERENCES

Abbreviations:

Kuraray: Relator Kuraray America, Inc. (the defendant below).

Mr. Martinez: Real Party in Interest Luis Martinez (one plaintiff below).

Pet.: Relator Kuraray America, Inc.'s current mandamus petition.

Brief: Relator Kuraray America, Inc.'s current brief on the merits.

Record References:

The mandamus record is cited as “MR:[page number].”

RESPONSE TO KURARAY'S STATEMENT OF THE CASE

Plaintiffs generally agree with Kuraray's recitation of the procedural history in its "*Statement of the Case*." However, Plaintiffs disagree with Kuraray's statement that there is "uncontroverted evidence" showing Kuraray employees were not distracted by cellphone use surrounding the plant explosion. Rel.'s Brief at vii. Instead, Kuraray itself admits that several employees did in fact use their cellphones immediately preceding the explosion. And whether those employees' cellphone use in the hours and minutes before the explosion continued to distract them is in dispute.

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