

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**

LANIER LAW FIRM, P.C.
Kevin P. Parker
State Bar No. 15494020
Kevin.Parker@lanierlawfirm.com
Lawrence P. Wilson
State Bar No. 21704100
Larry.Wilson@lanierlawfirm.com
Caroline G. Allen
State Bar No. 24109576
Caroline.McLeod@lanierlawfirm.com
10940 W. Sam Houston Pkwy N.
Suite 100
Houston, Texas 77064
Telephone: (713) 659-5200

Counsel for Real Party in Interest, Luis Martinez

TABLE OF CONTENTS

INDEX OF AUTHORITIES	iv
ABBREVIATIONS AND RECORD REFERENCES	viii
RESPONSE TO KURARAY’S STATEMENT OF THE CASE	1
ISSUES PRESENTED	2
STATEMENT OF FACTS	4
I. The Kuraray plant explosion occurred after employees failed to properly respond to numerous alarms	4
II. Kuraray has a history of ethylene leaks, missed alarms, and cellphone-use problems	5
III. Kuraray’s employees used their cellphones at critical times immediately before the explosion	6
IV. The lawsuit	8
V. The trial court’s initial discovery rulings	9
VI. Kuraray’s first petition for mandamus	12
VII. The trial court’s revised discovery ruling	13
VIII. Kuraray’s second petition for mandamus	14
SUMMARY OF THE ARGUMENT	15
ARGUMENT AND AUTHORITIES	17
I. Mandamus and discovery standards	17
II. The trial court did not clearly abuse its discretion in issuing a reasonably tailored discovery order	20

A.	The ordered discovery is directly relevant to determining whether Kuraray’s safety policies and procedures were deficient and whether Kuraray had reason to know they were deficient	21
B.	The trial court imposed reasonable limits on discovery	23
C.	The extent to which Kuraray’s employees’ distraction proximately caused the explosion is a disputed question of fact that precludes mandamus relief	25
D.	Kuraray wrongly seeks to restrict the focus to the date of the explosion	30
E.	Kuraray’s other supporting authority is inapposite	32
III.	An appeal amply provides Kuraray with an adequate remedy at law	37
CONCLUSION AND PRAYER		40
CERTIFICATE OF COMPLIANCE		41
CERTIFICATE OF FILING AND SERVICE		42

INDEX OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Axelson v. McIlhany</i> , 798 S.W.2d 550 (Tex. 1990).....	19
<i>Brady v. Fourteenth Ct. of Appeals</i> , 795 S.W.2d 712 (Tex. 1990) (orig. proceeding).....	18
<i>Burk Royalty Co. v. Walls</i> , 616 S.W.2d 911 (Tex. 1981).....	21
<i>Dillard Dep't Stores, Inc. v. Hall</i> , 909 S.W.2d 491 (Tex. 1995) (orig. proceeding) (per curiam).....	2
<i>Ford Motor Co. v. Castillo</i> , 279 S.W.3d 656 (Tex. 2009) (orig. proceeding).....	19
<i>In re Alford Chevrolet-Geo</i> , 997 S.W.2d 173 (Tex. 1999) (orig. proceeding).....	39
<i>In re Am. Optical Corp.</i> , 988 S.W.2d 711 (Tex. 1998) (orig. proceeding) (per curiam).....	<i>passim</i>
<i>In re Angelini</i> , 186 S.W.3d 558 (Tex. 2006) (orig. proceeding).....	2, 18, 30
<i>In re B.B.</i> , 632 S.W.3d 136 (Tex. App.—El Paso 2021, orig. proceeding)	18
<i>In re Christus Health Se. Tex.</i> , 399 S.W.3d 343 (Tex. App.—Beaumont 2013, orig. proceeding) (per curiam)	35, 36
<i>In re Colonial Pipeline Co.</i> , 968 S.W.2d 938 (Tex. 1998) (orig. proceeding) (per curiam).....	37
<i>In re CSX Corp.</i> , 124 S.W.3d 149 (Tex. 2003) (orig. proceeding) (per curiam).....	2-3, 17, 19, 37, 40

<i>In re Deere & Co.</i> , 299 S.W.3d 819 (Tex. 2009).....	37
<i>In re Garza</i> , 544 S.W.3d 836 (Tex. 2018) (orig. proceeding) (per curiam).....	24
<i>In re Indeco Sales, Inc.</i> , No. 09-14-00405-CV, 2014 WL 5490943 (Tex. App.—Beaumont Oct. 30, 2014, orig. proceeding) (mem. op.)	34
<i>In re K & L Auto Crushers, LLC</i> , 627 S.W.3d 239 (Tex. 2021) (orig. proceeding) (per curiam).....	2, 17, 39
<i>In re Kuraray Am., Inc.</i> , No. 14-19-00797-CV, 2020 WL 1181813 (Tex. App.—Houston [14th Dist.] Mar. 12, 2020, orig. proceeding).....	14
<i>In re Memorial Hermann</i> , 464 S.W.3d 686 (Tex. 2015) (orig. proceeding).....	29
<i>In re Moor</i> , No. 14-12-00933-CV, 2012 WL 5463193 (Tex. App.—Houston [14th Dist.] 2012, orig. proceeding) (mem. op.).....	33, 38
<i>In re Nat’l Lloyds Ins. Co.</i> , 507 S.W.3d 219 (Tex. 2016) (orig. proceeding) (per curiam).....	19
<i>In re Nat’l Lloyds Ins. Co.</i> , 449 S.W.3d 486 (Tex. 2014) (orig. proceeding) (per curiam).....	19, 38
<i>In re N. Cypress Med. Ctr. Operating Co.</i> , 559 S.W.3d 128 (Tex. 2018) (orig. proceeding).....	34
<i>In re Padilla</i> , No. 03-18-00477, 2018 WL 4087733 (Tex. App.—Austin, Aug. 28, 2018, orig. proceeding).....	31, 32, 38
<i>In re Pirelli Tire, L.L.C.</i> , 247 S.W.3d 670 (Tex. 2007) (orig. proceeding).....	18

<i>In re Shipman</i> , 540 S.W.3d 562 (Tex. 2018) (orig. proceeding).....	36
<i>In re StarFlite Mgmt. Grp., Inc.</i> , 162 S.W.3d 409 (Tex. App.—Beaumont 2005, orig. proceeding).....	21
<i>In re State Farm Lloyds</i> , 520 S.W.3d 595 (Tex. 2017) (orig. proceeding).....	17, 20, 32, 37
<i>In re Sun Coast Res., Inc.</i> , 562 S.W.3d 138 (Tex. App.—Houston [14th Dist.] 2018, orig. proceeding)	19, 20, 22, 32-33, 38
<i>In re UV Logistics, LLC</i> , No. 12-20-00196-CV, 2021 WL 306205 (Tex. App.—Tyler, Jan. 29, 2021, orig. proceeding) (mem. op.).....	35
<i>In re Walmart, Inc.</i> , 620 S.W.3d 851 (Tex. App.—El Paso 2021, orig. proceeding)	40
<i>In re Walton</i> , No. 11-16-00230-CV, 2017 WL 922418 (Tex. App.—Eastland Feb. 28, 2017, orig. proceeding).....	18
<i>In re Waste Mgmt. of Tex., Inc.</i> , No. 13-11-00197-CV, 2011 WL 3855745 (Tex. App.—Corpus Christi-Edinburg Aug. 31, 2011, orig. proceeding).....	22
<i>In re Woodfill</i> , 470 S.W.3d 473 (Tex. 2015) (orig. proceeding) (per curiam).....	18
<i>Lunsford v. Morris</i> , 746 S.W.2d 471 (Tex. 1988) (orig. proceeding).....	29
<i>Parker v. Bill Melton Trucking, Inc.</i> , No. 3:15-CV-2528-G-BK, 2017 WL 6554139 (N.D. Tex. Feb. 3, 2017)	34-35
<i>Tilton v. Marshall</i> , 925 S.W.2d 672 (Tex. 1996) (orig. proceeding).....	3, 20, 37, 40

<i>TXI Transp. Co. v. Hughes</i> , 224 S.W.3d 870 (Tex. App.—Fort Worth 2007) <i>rev'd on other grounds</i> , 306 S.W.3d 230 (Tex. 2010).....	34
---	----

<i>Walker v. Packer</i> , 827 S.W.2d 833 (Tex. 1992) (orig. proceeding).....	3, 17, 20, 29
---	---------------

Rules and Statutes

TEX. R. CIV. P. 192.3(a)	18, 19, 21, 34
--------------------------------	----------------

TEX. R. EVID. 401	19
-------------------------	----

Miscellaneous Authorities

Adrian F. Ward et al., <i>Brain Drain: The Mere Presence of One's Own Smartphone Reduces Available Cognitive Capacity</i> , 2 J. ASSOC. CONSUMER RSCH. 140 (2017).....	27
---	----

Bill Thornton et al., <i>The Mere Presence of a Cell Phone May be Distracting: Implications for Attention and Task Performance</i> , 45 SOCIAL PSYCH. 1 (2014)	27
---	----

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.

Also available as part of the eCourse

[2023 Practice Tips in Appellate Law: Interference Stacking, Oral Arguments, and Procedural Tools](#)

First appeared as part of the conference materials for the
33rd Annual Conference on State and Federal Appeals session
"Persuasive Oral Argument Techniques"