DRIPPING SPRINGS
Texas

Recent State Cases 2025

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Contents

APPEALS

***City of Laredo v. Rodriguez*, No. 04-24-00093-CV, 2024 WL 950627 (Tex. App.—San Antonio Mar. 6, 2024) (mem. op.).**

The trial court granted the plaintiff's continuance on the city's plea to the jurisdiction to allow for the taking of pertinent discovery. The city appealed that ruling. The appellate court rejected the city's argument that the appellate court had jurisdiction because of the implicit denial of its plea to the jurisdiction. The appellate court found it did not have jurisdiction to hear the appeal because: (1) the trial court's order was not a final judgment; (2) the trial court did not grant or deny the city's plea to the jurisdiction. Additionally, the city had filed a contemporaneous petition for writ of mandamus, which remained pending.

CIVIL SERVICE

***Harris County Sheriff Ed Gonzalez v. Harris County Sheriff's Civil Service Commission*, No. 01-23-00411-CV, 2025 WL 1033748 (Tex. App.—Houston [1st Dist.] April 8, 2025) (mem. op).**

This case involves an employment dispute where the Harris County Sheriff's Office terminated William Perry, a human-resources manager, for not returning to work after exhausting his Family and Medical Leave Act benefits. Perry appealed his termination to the Harris County Sheriff's Civil Service Commission, which reinstated him with back pay. Sheriff Ed Gonzalez challenged the commission's authority to hear Perry's appeal, citing a rule that prohibits appeals from administrative dismissals related to FMLA and leave of absence policies. Gonzalez also alleged that the Commission violated the Texas Open Meetings Act (TOMA) by deliberating in a closed session. The district court dismissed Gonzalez's claims for lack of jurisdiction, citing governmental immunity.

The appellate court reversed the district court's dismissal of the Sheriff's TOMA claims, finding that the Sheriff's petition alleged sufficient jurisdictional facts to establish the district court's jurisdiction over these claims. The appellate court held that TOMA provides an express waiver of governmental immunity for actions seeking mandamus or injunctive relief to reverse a violation of the Act. However, the court affirmed the dismissal of the Sheriff's claims regarding the alleged ultra vires acts, concluding that the commissioners' actions were discretionary and not ministerial, thus not falling within the ultra vires exception to governmental immunity. The case was remanded for further proceedings on the TOMA claims.

CODE ENFORCEMENT

***Quion Investors, Inc. v. City of Wallis, Texas*, No. 14-23-00965-CV, 2025 WL 1232343 (Tex. App.—Houston [14th Dist.] Apr. 29, 2025) (mem. op.).**

The City of Wallis issued Quion Investors, Inc. a "Notice of Violation" alleging violations of city ordinances related to excessive vegetation and requiring compliance within seven days. Quion filed an application for a writ of habeas corpus, claiming the notice unlawfully restrained its liberty and violated its due process and equal protection rights. The city filed a plea to the jurisdiction, arguing the notice did not constitute unlawful restraint. The trial court granted the plea and dismissed Quion's application with prejudice. Quion appealed. The court analyzed whether the notice

constituted a restraint under habeas corpus statutes, ultimately concluding that the notice neither accused Quion of a crime nor imposed unlawful restraint. The court found the notice merely informed Quion of potential future fines and did not constitute a misdemeanor accusation. Additionally, the court held that speculative future events, such as potential fines or complaints, were insufficient for habeas relief. The appellate court affirmed the trial court's decision, concluding Quion's liberty was not restrained by the notice. Quion's arguments regarding due process and equal protection were deemed appropriate for future legal proceedings if a misdemeanor charge were filed.

CONDEMNATION

***Reme L.L.C. v. The State of Texas*, 709 S.W.3d 608 (Tex. February 21, 2025).**

This is a condemnation case where the Supreme Court of Texas held that in such proceedings, an appeal from the commissioner's court to district court includes filing with the trial court.

In this case, the State started condemnation proceedings to acquire property from REME, LLC. After the commissioner issued a damage award, the State electronically filed the commissioners' award with the court clerk, and the judge acknowledged receipt of it three days later. After the judge filling in the award amounts the State objected. REME asserted the State's objection was untimely. The trial court disallowed the state's objection, but the court of appeals reversed, noting the deadline runs only upon the judge's receipt of the award.

A party may object to the commissioners' award "by filing a written statement . . . on or before the first Monday following the 20th day after the day the commissioners file their findings with the court." *Id*. § 21.018(a). A timely filed objection converts the administrative proceeding into a judicial one, which proceeds thereafter "in the same manner as other civil causes." *Id*. § 21.018(b). Chapter 21 provides no specific filing mechanism. Texas Supreme Court precedent interpreting the rules of civil procedure holds that a document is "filed" when put in the custody or control of the clerk. The term "court" has a different meaning than "county judge." By choosing to use "court" instead of "county judge," the Legislature enacted a direct choice. The Court held "the day the commissioners file their findings with the court" in Section 21.018(a) includes filing with the trial court clerk. Assuming proper notice, the deadline for objecting to the award amount is calculated from that day. (Drafted by www.rshlaw.com).

***Edukid, LP v. City of Plano*, No. 05-23-00269-CV, 2024 WL 5244613 (Tex. App. Dec. 30, 2024) (mem. op.).**

In 2017, the City of Plano initiated condemnation proceedings to acquire an easement on a portion of Effat Saifi's property (later transferred to Edukid, LP) for the construction of a hike-and-bike trail after negotiations with Saifi failed. After a hearing, special commissioners assessed damages, and Saifi objected to the award. In 2021, during the trial court proceedings, the city filed a traditional and no evidence motion for partial summary judgment on jurisdictional issues, and the trial court granted the motion. Then, in February 2023, the trial court granted a directed verdict for the city on the remaining issue relating to the value of the property, and Edukid appealed. Affirming the lower court's judgment, the court of appeals concluded as to the partial summary judgment ruling that the city was authorized under Local Government Code § 273.001 to acquire property for public purposes, including for parks, and the city's evidence was sufficient to show it intended to use the property for public use as a hike-and-bike trail to reduce pedestrian traffic related accidents, for which the taking was necessary. Further, nothing in the record supported Edukid's argument that the city's

condemnation determination was fraudulent, made in bad faith, or arbitrary and capricious. Addressing Edukid's due process argument, the court of appeals held that Edukid failed to cite to any legal authority mandating personal notice of the council meeting at which the council authorized the city manager and city attorney to acquire the easement, whether through negotiations or condemnation proceedings. As for the directed verdict, the court of appeals similarly held that Edukid failed to produce evidence on the value of the property or damages to the remainder.

***Milberger Landscaping, Inc. v. City of San Antonio*, No. 08-23-00283-CV, 2024 WL 5099206 (Tex. App.—El Paso Dec. 12, 2024) (mem. op.).**

Milberger Landscaping, Inc. challenged the City of San Antonio, acting through the San Antonio Water System (SAWS), over its condemnation of a portion of land for a permanent easement to construct a sewer pipeline and additional temporary construction easements. After the parties failed to agree on compensation, SAWS filed a condemnation petition, citing the public purpose of upgrading public infrastructure. Following a special commissioner's hearing, Milberger was awarded $230,000 as compensation, which the city deposited with the court in order to obtain possession of the property and continue the project. Milberger filed objections to the award, and SAWS moved for partial summary judgment, seeking to establish its compliance with procedural requirements and to dismiss Milberger's affirmative defenses of fraud, bad faith, and arbitrary and capricious action. The trial court granted SAWS's motion, leaving only the question of adequate compensation for trial. Milberger appealed the dismissal under a permissive interlocutory appeal. On appeal, the court analyzed the public use, fraud, bad faith, and evidentiary claims, ultimately affirming the trial court's partial summary judgment and remanded the case solely for determination of the appropriate compensation for the taking.

***City of Dripping Springs, Tex. v. Lazy W Conservation Dist.*, No. 03-22-00296-CV, 2024 WL 2787270 (Tex. App.—Austin May 31, 2024) (mem. op.).**

In 2019, the city of Dripping Springs sought to install an underground wastewater pipeline under property owned by Bruce Bolbock and Barbara Wiatrek (the Bolbocks). To protect the property in question from condemnation, the Bolbocks conveyed it to the Lazy W Conservation District. The city proceeded with the condemnation suit against Lazy W and the Bolbocks, and special commissioners ruled in favor of the city. In response, Lazy W and the Bolbocks filed counterclaims, general denials, and objections to the ruling, arguing that: (1) the court lacked subject matter jurisdiction as Lazy W was entitled to governmental immunity, and (2) the paramount public importance doctrine prevented the city from condemning the property. After a hearing on the matter, the trial court granted Lazy W's plea to the jurisdiction, and the city filed an interlocutory appeal thereafter. In reversing the trial court's order, the court of appeals concluded that: (1) even assuming Lazy W is entitled to it, governmental immunity does not apply in eminent domain proceedings between two governmental entities; and (2) the doctrine of paramount public importance does not implicate a jurisdictional issue.

***Tran v. City of Haskell*, No. 11-23-00186-CV, 2024 WL 4292222 (Tex. App.—Eastland Sept. 26, 2024) (mem. op.).**

Long Tran owned four properties in the City of Haskell, and because of their dilapidated condition the city condemned the structures. A few months later the city's code enforcement officer resigned, and the city chose to rescind the condemnation orders and instead tried to work with Tran to establish a repair plan to preserve his properties. Tran thereafter sued the city claiming that the city's

condemnation orders, although rescinded, constituted a "temporary" regulatory taking of his property for which he was entitled compensation under the Texas Constitution. Relying on the U.S. Supreme Court case *Arkansas Game & Fish Comm'n v. United States* and a concurring opinion in Texas Supreme Court case *City of Baytown v. Schrock*, Tran argued that because the federal takings clause provides for compensation for "temporary takings" in certain circumstances and the Texas takings clause language is even broader than federal law, his inverse-condemnation claim based on the city's temporary action was compensable under the Texas takings clause. In response, the city argued Tran's claims were not ripe or moot, and Tran failed to sufficiently allege a taking or a claim for property damages by the city. The trial court ruled in favor of the city, and Tran appealed. The court of appeals upheld the lower court's ruling concluding that although the Texas Constitution may very well provide for compensation for temporary takings, because Tran failed to comprehensively brief the court on the "precise scope of the right to compensation that the Texas Constitution affords" beyond its federal counterpart, it could not address the issue. Additionally, the court held that Tran's claims were not ripe for judicial review as there was no final governmental decision regarding his asserted claims.

CONFLICT OF INTEREST DISCLOSURES

***Buford-Thompson Co., LLC v. Rankin Indep. Sch. Dist.*, No. 08-24-00040-CV, 2025 WL 1161459 (Tex. App.—El Paso Apr. 21, 2025)(mem. op.).**

Buford-Thompson Company (BTC) was awarded a construction contract by Rankin Independent School District but failed to disclose gifts given to district officials, as required by Chapter 176 of the Texas Local Government Code. The district declared the contract void after discovering these undisclosed gifts, which BTC claimed were cured by later disclosures. BTC filed a lawsuit for breach of contract, arguing that the district's delay in voiding the contract and BTC's subsequent disclosures created a fact issue regarding the waiver of governmental immunity. The trial court dismissed BTC's claims, agreeing with the district that the contract was void from inception due to BTC's non-compliance with disclosure requirements, thus barring any breach of contract claim.

On appeal, BTC argued that the district's actions were invalid and that Chapter 176 did not authorize the contract to be voided from inception. The appellate court reviewed the case de novo, focusing on whether BTC complied with Chapter 176 and whether the district had the authority to void the contract. The court found that BTC knowingly failed to disclose gifts and did not cure the violation within the statutory period, thus failing to meet Chapter 176's requirements. The court also determined that Chapter 176 allowed the district to void the contract from inception, meaning no valid contract existed for BTC to claim a breach. Consequently, the appellate court affirmed the trial court's dismissal of BTC's claims, upholding the district's plea to the jurisdiction.

DECLARATORY JUDGMENT

***Johnson v. Town of Fulton*, No. 13-23-00436-CV, 2024 WL 2198665 (Tex. App.—Corpus Christi–Edinburg May 16, 2024) (mem. op.).**

In 2012, the Town of Fulton by ordinance granted a 30-foot-wide portion of an easement to Johnson, who owned the underlying fee, so that Johnson could erect a building in the portion of the city's right-of-way that was not being used as a road. Subsequently Johnson erected a fence that blocked the portion of the easement that was being used as a public road. The city sued Johnson for injunctive relief and a declaration stating that the fence constitutes a nuisance and that the city's right-of-way had not been abandoned. Johnson argued that previous surveys, except for one, had been mistaken

about the size of the block associated with the easement. He argued that under that survey, the 30-foot-wide grant of the easement extended into the paved portion of the road. The city filed a motion for summary judgment and attorney's fees, which the trial court granted. Johnson appealed.

The appellate court affirmed in part and reversed in part, holding that: (1) the 2012 ordinance relied on a certain survey when the city granted the 30-foot-wide portion of the easement to Johnson, and therefore Johnson could not try to enforce that ordinance by reliance on a different survey; and (2) because the declaratory relief added nothing to the judgment, the lower could not rely on the Uniform Declaratory Judgment Act for statutory authority to award attorney's fees.

DUE PROCESS

***Burns v. City of San Antonio by & Through City Pub. Serv. Bd. of San Antonio*, No. 15-24-00009-CV, 2025 WL 996377 (Tex. App. [15th Dist.] Apr. 3, 2025).**

The City of San Antonio, through its Public Service Board, filed an action under the Expedited Declaratory Judgment Act (EDJA) to validate certain public securities and ordinances, arguing that a citizens' initiative petition threatened these securities by proposing changes to the Board's structure. The trial court declared the securities and ordinances valid and incontestable, and no party appealed the judgment. Later, Terry Burns and other people who were involved in the initiative petition (collectively "the petitioners"), filed a motion for a new trial, claiming lack of notice and due process violations, but their appeal was dismissed as untimely. Subsequently, the petitioners filed a petition for a bill of review, asserting the EDJA judgment was void for lack of subject matter jurisdiction and due process violations. The trial court granted summary judgment for the city, dismissing the bill of review, and the petitioners appealed.

The appellate court reviewed the trial court's summary judgment de novo, focusing on whether the EDJA barred the petitioner's challenges. The court held that the EDJA permanently enjoins challenges to adjudicated matters, including subject matter jurisdiction, thus barring the claims. However, the court found that the EDJA does not bar challenges based on due process violations due to lack of notice. The court concluded that the city's notice by publication was constitutionally sufficient under the EDJA, as it was an in rem proceeding concerning public interest, not private rights. Consequently, the appellate court affirmed the trial court's judgment, rejecting the petitioners' claims of due process violations and lack of subject matter jurisdiction.

ECONOMIC DEVELOPMENT

***River Creek Dev. Corp. & City of Hutto v. Preston Hollow Capital, LLC, et al.*, No. 03-23-00037-CV, 2024 WL 3892448 (Tex. App.—Austin Aug. 22, 2024) (mem. op.).**

In 2018, the City of Hutto authorized the creation of a public improvement district (PID) and a local government corporation, River Creek Development Corporation (River Creek), to assist with the financing of the improvements. To that end, the city and River Creek entered into several agreements including: (1) a loan agreement and promissory note in which River Creek borrowed $17.4 million from Public Finance Authority (PFA); (2) an interlocal agreement in which the city promised to purchase the public improvements from River Creek through levied assessments paid in installments which would be used to pay off River Creek's promissory note; and (3) a contract with 79 HCD Development to build the public improvements. Rather than the city or River Creek issuing bonds themselves, River Creek entered into an agreement with PFA (a Wisconsin based governmental entity) to issue the bonds, which it later did. Preston Hollow Capital, LLC (Preston

Hollow) purchased those bonds and was to be paid from the River Creek promissory note funds. U.S. Bank National Association was to act as the trustee for the transactions.

In 2021, after concerns arose about whether the city had lawfully entered into the agreements, the city and River Creek filed a lawsuit seeking declaratory relief under the Uniform Declaratory Judgment Act that the related agreements, bonds, and note were void and unenforceable because: (1) the "installment sales contract" provision in the interlocal agreement does not authorize the installment payments to be allowable costs of improvements under the PID Act (Local Government Code Section 372.024); (2) the bonds issued did not comply the PID Act as they had not been issued by an authorized issuer; and (3) promissory notes must be submitted to the attorney general for examination as required by state law. Preston Hollow filed counterclaims and a motion for summary judgment, which the court granted. The city and River Creek then filed this appeal.

The court of appeals affirmed the trial court's judgment holding that: (1) Sections 372.026(f) and 372.023(d) specifically authorize a city to enter into an interlocal agreement that serves as an installment sales agreement in which the city pledges assessments it receives as installment payments to secure a corporation's indebtedness which it issued to finance construction of the public improvements; (2) because the bonds were not issued to fund the city's payment of its costs to purchase the public improvements from River Creek, the requirement in Section 372.024 that the issuer be a political subdivision of this state did not apply; and (3) because the legislature did not expressly provide for a remedy or consequence, failing to obtain attorney general approval under Transportation Code Section 431.071 does not render the agreements, bonds, or promissory note void or unenforceable.

ELECTIONS

***In re Arnold*, No. 05-25-00250-CV, 2025 WL 746720 (Tex. App. Mar. 7, 2025) (mem. op.).**

On January 24, 2025, the city secretary for the City of Dallas determined and notified Carolyn King Arnold that she was ineligible for candidacy based on a recent amendment to the City of Dallas's charter which imposes a term limit. Arnold later filed a petition for a writ of mandamus on March 3, 2025, challenging the determination. The city filed a motion to dismiss, and the court of appeals granted the motion and dismissed the original proceeding as moot. The court reasoned that because it had been filed too close to the deadline for printing ballots, the court could not take action on her request as it would interfere with the orderly process of the election. Additionally, the "capable of repetition, yet evading review" exception to the mootness doctrine did not apply where Arnold failed to show that she could not have challenged the determination sooner.

***In re Dallas HERO,* 698 S.W.3d 242 (Tex. Sept. 11, 2024).**

This case involves citizens' power to propose amendments to their city's charter, the city council's power to do likewise, and the council's responsibilities in preparing the ballot for an election to approve proposed amendments.

Relators organized a citizen petition drive and signed petitions to place three proposed charter amendments on the upcoming election ballot, and the city council submitted three proposed amendments of its own that relators contend would effectively nullify their proposed amendments. The council-initiated propositions included primacy provisions specifying that they control in the event of a conflict. Relators have filed a mandamus petition raising four challenges to the council-initiated propositions.

The court addressed one principal question – whether the ballot language the city council selected to describe the various propositions satisfies the standard of clarity and definiteness articulated by the court. The court determined that the language did not because the propositions contradict each other, and the ballot language as a whole will confuse and mislead voters because it does not acknowledge these contradictions or address the effect of the primacy provisions, which are chief features central to the character and purpose of the council-initiated propositions. Because the citizen-initiated propositions must appear on the ballot and the parties had agreed to the ballot language for those propositions, the court concluded that the proper remedy is to direct the city council not to include its duplicative propositions on the ballot.

***In re Moreno*, No. 13-24-00404-CV, 2024 WL 3843520 (Tex. App.—Corpus Christi–Edinburg Aug. 16, 2024) (mem. op.).**

Moreno filed a petition for writ of mandamus to compel the City of Donna to order an election for two council seats that had come up for election after the expiration of their three-year terms. At the same election in which those two seats had been filled, the voters had approved a charter amendment to extend the terms of council members to four years each. The city did not order an election when the three-year terms expired, and Moreno petitioned for mandamus to compel the city to order the election.

The appellate court granted the petition, holding that the language of the charter amendment did not specifically state that the length of terms would change retrospectively, and therefore the presumption that laws are enacted prospectively applied so that the councilmembers elected at that election were elected to the three-year terms applicable at the time of the election.

***In re Coon*, No. 09-24-00091-CV, 2024 WL 1134038 (Tex. App.—Beaumont Mar. 15, 2024) (mem. op.).**

Coon and Arthur, two candidates for public office in the City of Conroe, filed petitions for writs of mandamus in the appellate court to compel the city secretary to reject applications of two other candidates to appear on the city ballot. Coon and Arthur contended that the two candidates were not physically present when the city secretary notarized their applications, and that because the applications were not properly notarized, the city secretary had a ministerial duty to reject them. The court denied the petitions, holding that Coon and Arthur had not shown that mandamus relief was warranted.

***In re Rogers*, 690 S.W.3d 296 (Tex. May 24, 2024).**

Qualified voters petitioned the board of an emergency services district for a ballot proposition at the next available election to alter the sales tax rates within the district. The board, believing the petition to be legally deficient, refused to place it on the ballot. Relators, three signatories of the petition, sought a writ of mandamus compelling the board to determine whether the petition contains the statutorily required number of signatures or, alternatively, ordering the board to call an election on the petition.

The Supreme Court of Texas concluded that: (1) the court had jurisdiction to grant mandamus relief against the board; (2) as long as the petition had the statutorily required number of signatures, the board had a ministerial, nondiscretionary duty to call an election; and (3) mandamus relief was an appropriate remedy.

***Lamar "Yaka" Jefferson and Jrmar "JJ" Jefferson v. Adam Bazaldua and Eric Johnson,* No. 05-23-00938-CV, 2024 WL 3933886 (Tex. App.—Dallas Aug. 26, 2024) (mem. op.).**
In May 2023, the City of Dallas held an election in which the mayor and District 7 councilmember positions were on the ballot. Lamar Jefferson and Jrmar Jefferson filed for a place on the ballot for these positions but were later disqualified for failing to meet the candidate requirements. After Adam Bazaldua and Eric Johnson were elected to the positions, the Jeffersons filed a joint lawsuit to contest the election results under Title 14 of Election Code.

Bazaldua and Johson both filed a plea to the jurisdiction arguing the Jeffersons lacked standing as they were not "candidates" as required in Election Code Section 232.002. The trial court granted both motions and dismissed the cases, and the Jeffersons appealed. Interpreting the legislature's intent, the court of appeals concluded that rather than the broader definition of "candidate" in Title 15 of the Election Code ("a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office"), a more limited definition—"a person whose name appears on the ballot for an office on Election day"—was consistent with the purpose of an election contest. Because the Jeffersons did not appear on the ballot, they were not candidates and lacked standing for election contest purposes. For those reasons, the court of appeals affirmed the trial court's judgment.

***Derrick Broze v. The State of Texas*, No. 15-24-00020-CV, 2024 WL 4676452 (Tex. App.—15th Dist. Nov. 5, 2024) (mem. op.).**
Derrick Broze applied for a place on the mayoral election ballot in Houston. Mr. Boze's application was denied because of an unpardoned felony conviction in his past. Mr. Broze sued the city, arguing that the state statute violates the Texas Constitution and federal due process protections. The trial court dismissed his suit, and Broze appealed. The appellate court reviewed Mr. Boze's claims and ultimately affirmed the trial court's dismissal order, holding that Boze's allegations lacked a basis in law or fact.

***EPISD Bd. of Dirs. v. Diaz*, No. 04-24-00771-CV, 2025 WL 1119707 (Tex. App.—San Antonio Apr. 16, 2025) (mem. op.).**

Enriqueta Diaz filed an "Emergency Petition for Writ of Election Mandamus" against the EPISD Board of Directors, claiming they violated Texas Education Code § 11.060 by not opening a vacant board position for election. The trial court granted Diaz's petition, ordering the position to be placed on the ballot for a special election. The EPISD Board appealed, arguing Diaz lacked standing as she did not allege a particularized injury distinct from the general public. The Court of Appeals agreed, noting Diaz's claims did not demonstrate a specific injury to her, but rather a general grievance shared with the public. Consequently, the appellate court reversed the trial court's order and dismissed the case for lack of jurisdiction.

***Daniel v. Burgess*, No. 14-23-00936-CV, 2025 WL 1162708 (Tex. App.—Houston [14th Dist.] Apr. 22, 2025)(mem. op.).**
In the November 2022 election for Harris County District Clerk, Democrat Marilyn Burgess defeated Republican Chris Daniel by 25,640 votes. Daniel filed an election contest, claiming that the election's true outcome could not be determined due to polling locations opening late, running out of paper, and voting machine malfunctions. Burgess moved for summary judgment, arguing there was no

evidence that the number of voters prevented from voting was at least as large as her margin of victory. The trial court granted the motion, and Daniel appealed.

On appeal, Daniel argued that he was not required to quantify the number of voters prevented from voting to have the election declared void. The court noted that historically, Texas law requires proof that the number of voters denied the right to vote could materially affect the election result. Daniel failed to provide evidence that at least 25,640 voters were prevented from voting, which was necessary to challenge the election outcome. The court affirmed the trial court's judgment, holding that Daniel did not meet the burden of producing legally sufficient evidence to show the election result was unascertainable.

EMPLOYMENT

***City of McAllen, v. Rodriguez*, No. 13-24-00063-CV, 2025 WL 924691 (Tex. App.—Corpus Christi–Edinburg Mar. 27, 2025) (mem. op.).**

Rodriguez sued the City of McAllen for age, race, and disability discrimination and for retaliation under the Texas Commission on Human Rights Act after his employment with the McAllen Public Utility was terminated. The city filed a plea to the jurisdiction and a motion for summary judgment, arguing that Rodruguez had failed to produce evidence generating a fact issue as to whether the city's governmental immunity to suit was waived. The trial court denied the plea and motion, and the city appealed.

The appellate court reversed, holding that: (1) Rodriguez's age discrimination claim failed because he had not alleged that he was replaced by someone similarly situated to him or significantly younger; (2) his race discrimination claim failed because he had not alleged that similarly situated employees who were of a different race were treated more favorably than he was; (3) his disability discrimination claim failed because the city met its burden to produce evidence demonstrating a legitimate, non-discriminatory reason for his termination; and (4) his retaliation claim failed because he did not allege that he had engaged in any protected conduct that would support a claim of retaliation.

***Lakeview Police Dep't v. Moody*, No. 01-24-00072-CV, 2025 WL 714974 (Tex. App.—Houston [1st Dist.] Mar. 6, 2025) (mem. op.).**

Moody sued the City of Lakeview and the Lakeview Police Department for sex discrimination after she was denied additional leave following the birth of her child. The city and police department filed a plea to the jurisdiction, claiming that Moody had failed to exhaust her administrative remedies because her charge of discrimination to the Texas Workforce Commission was not timely and that Moody had no claim against the city because she had not worked for the city. The trial court denied the plea and the city and police department appealed.

The appellate court reversed in part and affirmed in part, holding that: (1) Moody had not worked for the city and therefore had no claim against the city; and (2) even though Moody's charge of discrimination against the police department was not timely, her initial complaint to the TWC was timely, so there was a fact issue regarding whether she has exhausted her administrative remedies.

***Joseph Andre Davis v. City of Houston*, No. 14-24-00070-CV, 2024 WL 5087687 (Tex. App.—Houston [14th Dist.] Dec. 12, 2024) (mem. op.).**

Joseph Andre Davis, a firefighter/paramedic for the City of Houston, sustained a compensable work-related injury in 2015. The city paid him temporary income benefits until August 2016. The parties disputed the extent of Davis's injury, the date he reached maximum medical improvement (MMI), and his impairment rating. In February 2017, the Division of Workers' Compensation issued a decision regarding the extent of Davis's injuries and determining that Davis reached clinical MMI on August 20, 2016, with a 5% impairment rating. Davis unsuccessfully appealed this decision to an appeals panel. Subsequent administrative rulings in 2022 and 2023 established December 16, 2017, as the statutory MMI date and noted Davis had a disability through this period. Davis filed suit seeking enforcement of these later decisions, arguing he was entitled to additional benefits. The city filed a motion for summary judgment, arguing that it had complied with all enforceable orders, and the trial court granted the city's motion. Davis appealed.

Under Texas workers' compensation law, MMI defines when an injured employee is no longer entitled to temporary income benefits. MMI can occur either clinically, based on medical evidence, or statutorily, 104 weeks after income benefits begin to accrue. The city argued that Davis's clinical MMI date of August 20, 2016, was final and binding, and the court agreed. Therefore, Davis could not claim temporary income benefits after August 20, 2016, regardless of any later findings regarding statutory MMI or disability ratings. Ultimately, the appellate court affirmed the trial court's judgment.

***City of Buffalo v. Moliere*, 703 S.W.3d 350 (Tex. Dec. 13, 2024).**

Moliere, a police officer, engaged in a high-speed chase while a civilian was riding along in his patrol vehicle, resulting in an accident that damaged the patrol vehicle. Moliere reported the accident to the city's chief of police, who issued Moliere a written reprimand. Moliere did not appeal the reprimand; he accepted and signed it. About two weeks later, during a regularly scheduled meeting, the city council met in closed session to discuss Moliere's employment. The city council then reconvened in open session and voted to terminate Moliere. Moliere brought action against the city, the mayor, and the city council members, seeking declaration that the city council acted without authority in terminating his employment, and alleging the termination violated his due process rights.

The trial court dismissed the suit, but the Waco Court of Appeals reversed and remanded, concluding that a fact issue existed as to whether the city council had authority to terminate the officer. The Supreme Court granted the petition for review and reversed the court of appeals's judgement, finding that the city council had authority to fire the officer. Additionally, the Court remanded the case for further proceeding because the court of appeals did not address whether the officer alleged a valid due process claim against members of the city council.

***Dallas Cnty. Hosp. Sys. v. Kowalski*, 704 S.W.3d 550 (Tex. Dec. 31, 2024).**

A former county hospital employee filed suit alleging that the hospital eliminated her position because she was disabled, and in retaliation for her earlier complaints about the accommodation process. The trial court denied the hospital's plea to the jurisdiction, and the Dallas Court of Appeals affirmed. The Supreme Court granted the hospital's petition for review.

The Supreme Court reversed finding that: (1) the employee failed to establish a disability within the meaning of the Labor Code's prohibition against disability discrimination; (2) the hospital did not

discriminate against the employee based on disability; (3) the hospital did not regard the employee as having an impairment; and (4) the hospital did not retaliate against the employee for her earlier complaints about its accommodation process.

***Tex. Dep't of Pub. Safety v. Callaway*, No. 13-23-00166-CV, 2024 WL 4511216 (Tex. App.—Corpus Christi–Edinburg Oct. 17, 2024) (mem. op.).**

Callaway sued the Texas Department of Public Safety (DPS) for disability discrimination and retaliation. He claimed he was subject to a hostile work environment, DPS failed to accommodate his disability, and he lost overtime after returning from leave associated with his alcohol problem. Years after his return to work, Callaway was terminated from DPS as discipline for various off-duty violations of departmental policies during an altercation with officials at his daughter's school. Callaway sued under the Texas Commission on Human Rights Act (TCHRA), claiming that termination was not appropriate discipline for the violations and that he was terminated because of his alcoholism and PTSD. DPS filed a plea with the jurisdiction claiming sovereign immunity as well as a no-evidence motion for summary judgment. The trial court denied both the plea and the motion, and DPS filed an interlocutory appeal.

The appellate court affirmed the trial court's denial of DPS's motion for summary judgment, holding that there was a fact issue regarding whether Callaway's termination was in retaliation for Callaway's complaint about discrimination related to his PTSD. The appellate court reversed and rendered with regard to Callaway's claims of disability discrimination based on his alcoholism and his claims of hostile work environment, failure to accommodate, and lost overtime, holding that: (1) alcoholism is not a disability under the TCHRA, so Callaway's claim of disability discrimination under that act was not viable; and (2) Callaway had failed to make his other claims within the applicable statute of limitations.

***City of San Antonio v. Carnot*, No. 08-24-00034-CV, 2024 WL 4589814 (Tex. App.—El Paso Oct. 28, 2024) (mem. op.).**

Alfred Carnot filed suit against the City of San Antonio following his termination in January 2022 from his position as an airport police officer. Carnot, who was diagnosed with dyslexia and dyscalculia, alleged retaliation, claiming the city discharged him for filing a disability discrimination complaint with the Texas Workforce Commission and U.S. Equal Employment Opportunity Commission in 2020. The city filed a plea to the jurisdiction and motion for summary judgment (MSJ), arguing Carnot did not establish a prima facie case of retaliation and that legitimate, non-retaliatory reasons existed for his termination. The trial court denied the city's plea and MSJ and the city appealed.

Ultimately, the appellate court reversed the trial court's decision, holding that Carnot failed to show his termination was based on retaliation rather than legitimate, non-retaliatory reasons. The city provided evidence that Carnot's termination resulted from documented violations, including multiple procedural errors during arrests and failure to adhere to department standards. The appellate court held that Carnot did not meet his burden of proving pretext or but for causation for retaliation, thus failing to waive governmental immunity; therefore, it reversed the lower court's denial of the city's plea to the jurisdiction and MSJ and rendered judgment dismissing Carnot's claim.

***Bering v. Tex. Dep't of Criminal Justice-PFCMOD,* No. 02-24-00033-CV, 2024 WL 4455843 (Tex. App.—Fort Worth Oct. 10, 2024) (mem. op.).**

Cassandra Bering filed an administrative complaint against her former employer—the Texas Department of Criminal Justice—PFCMOD (the Department)—for alleged retaliation. When filling out the standardized form to file the complaint, Bering did not check the checkbox options—race, color, sex, disability, and retaliation—to identify what the complained of discrimination was based on, instead she checked the box for "other" without filling in the corresponding blank to identify what the "other" basis was. In the main body of the complaint, she explained that she had been retaliated against. Then, relying on that administrative complaint, Bering sued the Department under the Texas Commission on Human Rights Act (TCHRA) for alleged race, gender, and disability discrimination.

The Department pointed out the discrepancy between Bering's complaint and TCHRA claims, and it filed a combination plea to the jurisdiction and motion for summary judgment seeking dismissal of Bering's claims due to her failure to exhaust her administrative remedies. The trial court granted the plea.

The appellate court affirmed the trial court's order, finding that because Bering's TCHRA claims for race, gender and disability discrimination were not within the scope of her administrative complaint, she had failed to exhaust her administrative remedies for those TCHRA claims, and the trial court lacked jurisdiction over them.

***Harris Ctr. for Mental Health & IDD v. McLeod*, No. 01-22-00947-CV, 2024 WL 1383271 (Tex. App.—Houston [1st Dist.] Apr. 2, 2024) (mem. op.).**

McLeod sued the Harris Center for Mental Health & IDD for disability discrimination under the Texas Commission on Human Rights Act (TCHRA). She alleged that the Harris Center retaliated against her after she decided not to accept an offer to accommodate her disability by transferring to a different clinic. She also claimed Harris Center failed to accommodate her request for consistent lunch breaks. The Harris Center filed a plea to the jurisdiction claiming governmental immunity, a response raising various defenses to McLeod's claims, and a motion for summary judgment. The trial court denied Harris Center's plea to the jurisdiction and motion for summary judgment, and Harris Center appealed.

The appellate court reversed, holding that: (1) the Harris Center was a governmental entity under the TCHRA and therefore was entitled to immunity; and (2) because McLeod did not raise a fact issue regarding whether she engaged in a protected activity for her retaliation claim, her claims did not fall under the TCHRA's waiver of immunity.

***Tex. Woman's Univ. v. Casper*, No. 02-23-00384-CV, 2024 WL 1561061, (Tex. App.—Fort Worth Apr. 11, 2024).**

This case presents an issue of first impression: whether, under the election-of-remedies provision in the Texas Commission on Human Rights Act (TCHRA), a plaintiff who has filed a federal action based on allegedly unlawful employment practices is barred from filing a duplicative TCHRA complaint even if she abandons her earlier-filed federal action.

Texas Woman's University (TWU) argued yes and filed a plea to the jurisdiction. Casper contended that the election-of-remedies provision bars a TCHRA complaint only if the earlier-filed federal action

remains pending or has been resolved. The trial court denied TWU's plea. TWU filed an interlocutory appeal.

The appellate court determined that under the plain language of the TCHRA's election-of-remedies provision, an "initiated" federal action is what triggers the prohibition on filing a duplicative TCHRA complaint. Because Casper did not dispute that she "initiated" her federal action before filing her TCHRA complaint, and because she did not dispute that both challenged the same allegedly unlawful employment practices, the court reversed the trial court's order.

***Mendoza v. City of Round Rock*, No. 03-23-00235-CV, 2024 WL 1642920 (Tex. App.—Austin Apr. 17, 2024) (mem. op.).**

In 2019, Irma Mendoza retired from the city of Round Rock in lieu of termination after the city conducted an internal investigation into complaints it had received about Mendoza. Claiming the city's action against her involved age discrimination in violation of the Texas Commission on Human Rights Act (TCHRA), she filed an administrative charge with the Equal Employment Opportunity Commission (EEOC). After reviewing the charge, the EEOC notified Mendoza it would not investigate further and issued her a right-to-sue letter dated June 10, 2020. In its letter, the EEOC noted it had received her administrative charge on June 2, 2020. Then, on June 9, 2022, Mendoza sued the city. In response, the city filed a plea to the jurisdiction claiming governmental immunity, arguing Mendoza's lawsuit was untimely as she failed to file her lawsuit within two years of submitting her charge to the EEOC. The district court granted the city's plea, and Mendoza appealed thereafter. In affirming the lower court's decision, the court of appeals concluded that although Mendoza claimed a discrepancy with the date on the EEOC letter, there was sufficient evidence in the record to support a finding that Mendoza's administrative charge was submitted to the EEOC on June 2, 2020, and by filing her lawsuit on June 9, 2022, she failed to strictly satisfy the TCHRA procedural requirements.

***City of San Antonio v. Diaz*, No. 07-23-00275-CV, 2024 WL 2195443 (Tex. App.—Amarillo May 15, 2024) (mem. op.).**

Diaz sued the city claiming sex and age discrimination and retaliation when she was terminated because she was succeeded by a man who was in his late 30s. However, the city claimed it terminated Diaz because, as a supervisor, she had a subordinate employee help her with a personal project while on the clock. The trial court denied the city's plea to the jurisdiction and the city appealed.

On appeal, the court reversed the trial court. The appellate court found that: (1) Diaz did not provide any comparators for her disparate discipline claim because none of the comparators put forward by Diaz were accused of violating the same city policy or using their position to obtain free labor from a subordinate employee so her claims of discrimination failed; (2) Diaz's evidence failed to show that she engaged in any protected activity of opposing an illegal practice so her retaliation claim failed; and (3) Diaz's request for a "name clearing hearing" was not included in the relief she sought so that claim also failed.

***Adams v. City of Pineland*, No. 12-23-00289-CV, 2024 WL 2064384 (Tex. App.—Tyler May 8, 2024) (mem. op.).**

Robert Adams III, a probationary patrol officer for the City of Pineland, was terminated due to his inability to perform essential job functions. Adams sued the city, alleging disability discrimination, claiming the city regarded him as disabled due to his pancreatitis and related medical treatments.

The trial court granted the city's motion for summary judgment, and Adams appealed. To prevail, Adams needed to show he was qualified for his position and that he was terminated due to his perceived disability. Evidence showed Adams was often unable to perform required tasks like patrolling and initiating traffic stops due to his medical condition and that he was frequently in pain, not actively patrolling, and even sleeping on duty. Ultimately the appellate court affirmed the trial court's summary judgment in favor of the city, concluding that Adams failed to establish a prima facie case of disability discrimination.

***Hadnot v. Lufkin Indep. Sch. Dist.*, No. 12-23-00144-CV, 2024 WL 2334631 (Tex. App.—Tyler May 22, 2024).**

The Lufkin Independent School District posted openings for two school resource officer positions, and Mickey M. Hadnot, a black applicant, applied. Hadnot, with a bachelor's degree in criminal justice, had extensive law enforcement experience including working for the Lufkin Police Department, the district as a school resource officer, and the Texas Department of Public Safety, where he was a Lieutenant at the time of his application. Juan Tinajero, who is Hispanic and fluent in Spanish, also applied. Tinajero had an associate's degree in criminal justice and diverse experience, including working as a reserve officer and private investigator. Despite Hadnot's extensive qualifications, the district hired Tinajero and Jeffrey Taylor, another black applicant. Hadnot filed a race discrimination complaint with the EEOC, which was dismissed, and subsequently filed a lawsuit under the Texas Commission on Human Rights Act. The district filed a motion for summary judgement, which the trial court granted, and Hadnot appealed. Hadnot alleged multiple instances of racial discrimination and cronyism within the hiring process. He claimed another lieutenant, David Rodriguez, accused him of attempting to take Rodriguez's job; manipulated the interview panel to favor Tinajero; and insisted on hiring a Spanish-speaking candidate. Hadnot argued that the district's stated preference for Tinajero's personality and interaction skills with students was a pretext for racial discrimination. The court focused on whether Hadnot presented more than a scintilla of evidence for his claims, finding that he had. Upon meeting this burden, the district had to provide legitimate, nondiscriminatory reasons for their decision, which it did. Hadnot then needed to demonstrate that these reasons were pretextual, which the court found he failed to do. Despite suggesting potential cronyism, Hadnot did not establish that race-based discrimination influenced the hiring decision; therefore, the trial court's summary judgment in favor of the district was affirmed.

***Clifton v. City of Pasadena*, No. 14-23-00143-CV, 2024 WL 2206056 (Tex. App.—Houston [14th Dist.] May 16, 2024) (mem. op.).**

Susan Clifton, the first female assistant chief in the Pasadena Police Department, sued the City of Pasadena for gender discrimination and retaliation under the Texas Commission on Human Rights Act (TCHRA) after being demoted by acting chief Al Espinoza. Clifton alleged her demotion was due to her gender and in retaliation for reporting sexual harassment involving Espinoza's son. The trial court granted the city's plea to the jurisdiction and dismissed Clifton's suit, so she appealed. The appellate court considered whether Clifton provided sufficient evidence to create a fact issue on her discrimination and retaliation claims under the TCHRA, applying the *McDonnell Douglas* burden-shifting framework. Ultimately the appellate court reversed the trial court's dismissal, finding that Clifton produced sufficient evidence to create fact issues on both her claims and remanded the case for further proceedings.

***Borgelt v. Austin Firefighters Ass'n, IAFF Local 975*, No. 22-1149, 2024 WL 3210046 (Tex. June 28, 2024).**

Taxpayers brought action against the firefighters' union and the City of Austin, asserting claims including that a provision of the collective bargaining agreement between the city and the union which provided a shared bank of paid leave for city firefighters to use for union activities, subject to contractual requirements and restrictions on its use, violated the Texas Constitution's Gift Clauses. The state intervened in support of the taxpayers' challenge. The trial court: (1) granted the union's motion to dismiss; (2) granted the union's motion for attorney fees and sanctions under the Texas Citizens Participation Act (TCPA); (3) granted partial summary judgment to the city and the union; and (4) after a bench trial, entered judgement in favor of the city and the union. The taxpayers and the state appealed. The Austin Court of appeals affirmed. The Supreme Court granted petition for review.

The Supreme Court affirmed the appellate court's order finding that the agreement did not violate the gift clauses, but reversed the order of dismissal and its award of sanctions and fees against the taxpayers.

***City of Houston v. Leslie G. Wills*, No. 14-23-00178-CV, 2024 WL 3342439 (Tex. App.—Houston [14th Dist.] July 9, 2024) (mem. op.).**

Leslie Wills was an expert horsewoman and sergeant in the Houston Police Department (HPD) Mounted Patrol for more than a decade, where she was in charge of a number of managerial decisions concerning the training and treatment of horses within the HPD. When Lieutenant Dean Thomas was appointed as the new mounted patrol commander, he made policy changes affecting several areas of Wills's managerial oversight. Wills complained to the chief of police alleging that Thomas subjected her to a hostile work environment and gender bias. HPD reassigned Thomas and later transferred Wills to downtown patrol, which she claimed was retaliatory and amounted to constructive discharge. After having her grievances dismissed by the city, Wills resigned her position with the HPD and filed suit, and the City of Houston filed a plea to the jurisdiction. The trial court denied the city's plea, and the city appealed.

The appellate court held that Wills did not provide *prima facie* evidence of an adverse employment action necessary for her discrimination and retaliation claims. The actions she identified, including reassignment of duties, transfer out of mounted patrol, and constructive discharge, were not supported by evidence sufficient to show they were adverse employment actions under the applicable legal standards. Additionally, even if adverse employment actions had occurred, the city provided legitimate, nondiscriminatory reasons for its actions, which Wills failed to prove were pretextual. Ultimately, the appellate court reversed the trial court's denial of the city's plea to the jurisdiction and rendered judgment dismissing Wills' suit for lack of subject-matter jurisdiction.

***Donna Indep. Sch. Dist. v. Quintanilla*, No. 13-23-00395-CV, 2025 WL 504276 (Tex. App.—Corpus Christi–Edinburg Feb. 14, 2025) (mem. op.).**

Quintanilla, a former child nutrition director for the Donna Independent School District, filed a whistleblower suit against the district after her employment contract was not renewed. Quintanilla alleged that the school district chose not to renew her contract in retaliation for reporting her suspicions that the district's chief financial officer had improperly transferred child nutrition funds for other uses. The school district filed a motion for summary judgement claiming governmental immunity. The trial court denied the motion and the school district appealed.

The appellate court reversed and remanded, holding that Quintanilla had failed to produce evidence showing a causal link between her report and the nonrenewal of her contract.

Raymondville Indep. Sch. Dist. v. Ruiz, No. 13-23-00231-CV, 2025 WL 1075059 (Tex. App.—Corpus Christi-Edinburg Apr. 10, 2025) (mem. op.).
Ruben Ruiz, a former truancy officer for Raymondville Independent School District (Raymondville ISD), filed a lawsuit under the Texas Whistleblower Act (TWA), alleging that he was terminated in retaliation for reporting misconduct by a coworker, Officer Maribel Herrera. Ruiz claimed that Herrera's actions constituted "official oppression" as she allegedly used her position to belittle and mistreat him. Raymondville ISD argued that Ruiz was terminated for insubordination and other misconduct, including bringing a handgun onto school property. The jury found in favor of Ruiz, awarding him $212,000 in damages. Raymondville ISD appealed, challenging the jury's verdict and the trial court's jurisdiction.

The appellate court reversed the trial court's judgment, concluding that Ruiz failed to demonstrate a good-faith belief that Herrera's conduct was a violation of law, which is necessary to establish subject-matter jurisdiction under the TWA. The court found that Ruiz's report did not provide sufficient information to identify any law that Herrera could have violated, and his belief was not reasonable given his training and experience. Consequently, the appellate court rendered a dismissal of Ruiz's suit against Raymondville ISD for lack of subject-matter jurisdiction.

GOVERNMENTAL IMMUNITY—TORTS

***City of Houston v. Sandoval*, No. 01-23-00806-CV, 2025 WL 863777 (Tex. App.—Houston [1st Dist.] Mar. 20, 2025) (mem. op.).**
Sandoval sued the City of Houston under the Texas Tort Claims Act (TTCA) for bodily injury and property damage she allegedly sustained when a city-owned "run-away" garbage truck struck her house and vehicles parked in her driveway. The city filed a motion for summary judgement claiming governmental immunity, arguing that Sandoval's injuries were caused by a mechanical malfunction and therefore the waiver of immunity in the TTCA did not apply to her claim. The trial court denied the motion and the city appealed.

The appellate court affirmed in part and reversed in part, holding that: (1) the city was entitled to governmental immunity with regard to Sandoval's claims for negligent maintenance, negligent entrustment, and negligent hiring, training, and supervision; and (2) there was a genuine issue of material fact regarding whether the city employee was operating or using the city truck for the purposes of the TTCA's waiver of immunity when it struck Sandoval's house.

***City of Houston v. Corrales,* No. 01-23-00416-CV, 2025 WL 676650 (Tex. App.—Houston [1st Dist.] Mar. 4, 2025).**
Corrales sued the City of Houston for a car accident for which a municipal employee was at fault and was awarded damages and court costs. The city appealed, arguing that the waiver of immunity in the Texas Tort Claims Act (TTCA) does not permit the award of court costs.

As a matter of first impression, the appellate court held that the scope of the legislature's waiver of immunity under the TTCA does not include court costs.

***City of Houston v. Gremillion*, No. 14-24-00130-CV, 2025 WL 380524 (Tex. App.—Houston [14th Dist.] Feb. 4, 2025) (mem. op.).**

Brandon Gremillion sued the City of Houston for negligence after a collision with a police vehicle driven by Officer Alberte Chrisphonte-Lovince. The officer was responding to an emergency call with lights and siren activated. She entered an intersection against a red light and struck Gremillion's vehicle, which was proceeding on a green light. The investigating officer concluded that the officer failed to exercise due care in clearing the intersection. The city moved for summary judgment in the case, arguing that it retained governmental immunity, because Officer Chrisphonte-Lovince had official immunity. The trial court denied the motion, and the city appealed. A government employee like Officer Chrisphonte-Lovince may be immune from a lawsuit that arises from the performance of their discretionary duties in good faith, provided the employee was acting within the scope of their authority. The test for official immunity is not whether the officer acted negligently; rather, it is whether no reasonable officer in the same or similar circumstances could have believed that Officer Chrisphonte-Lovince's actions were justified. In this case, the appellate court held that Officer Chisphonte-Lovince's actions in response to the emergency call conclusively established her immunity from liability. Because Officer Chisphonte-Lovince retained immunity, the city was immune from suit; therefore, the court in this case reversed the trial court and dismissed Brandon Gremillion's claims against the city.

***City of Houston v. State Farm Mut. Auto. Ins. Co*., No. 14-24-00133-CV, 2025 WL 554191 (Tex. App.—Houston [14th Dist.] Feb. 20, 2025).**

State Farm sued the City of Houston for property damage after an automobile collision involving a Houston police officer. The original petition alleged that a city employee, driving negligently, caused the collision while acting within the scope of employment. The city moved to dismiss the claims, arguing that State Farm's petition failed to allege facts demonstrating a waiver of governmental immunity. The trial court denied the motion, and the city appealed. In this case, State Farm's petition contained only conclusory allegations that the city's employee was negligent without stating specific facts about the collision, the officer's actions, or any circumstances negating possible immunity defenses. State Farm filed an amended petition; however, the amended petition was untimely and could not be considered. Ultimately, the court held that a mere assertion of negligence is insufficient to establish a waiver of immunity under the TTCA. Because State Farm had an opportunity to amend its petition but failed to cure the deficiencies, the court dismissed its claims with prejudice.

***City of Houston v. Mohamed*, No. 14-24-00169-CV, 2025 WL 556452 (Tex. App.—Houston [14th Dist.] Feb. 20, 2025) (mem. op.).**

Kebret Mohamed, a taxi driver, sued the City of Houston for injuries sustained when he jumped from a wooden deck to escape a fire in the taxi drivers' lounge area at George Bush Intercontinental Airport. He alleged negligence, negligent hiring, and premises liability, claiming the city failed to provide adequate fire safety measures and a safe means of egress. The city moved to dismiss Mohamed's claims, asserting that it retained governmental immunity. The trial court dismissed the city's motion, and the city appealed. A city is generally immune from suit and liability unless the city's governmental immunity is clearly waived. The Texas Tort Claims Act (TTCA) contains waivers of governmental immunity applicable in certain situations. With regard to claims involving injuries caused by a condition or use of tangible property or real property, governmental immunity may be waived for claims in circumstances where the city would be liable for the injuries, if the city were a

private person. The TTCA also contains exceptions to the waiver for certain discretionary functions as well as an exception for police or fire protection. Because Mr. Mohamed's claims either failed to establish a valid waiver of city immunity or exceptions to the waiver applied, the appellate court reversed the trial court's judgment and rendered judgment dismissing Mr. Mohamed's claims.

***City of Houston v. Rodriguez*, No. 23-0094, 704 S.W.3d 462 (Tex. Dec. 31, 2024).**
A city police officer engaged in a high-speed pursuit of another vehicle struck the driver and the passenger of a truck who subsequently sued the city, alleging that the officer's negligent driving caused them personal injuries for which the Tort Claims Act (Act) waives governmental immunity from suit. The city filed a motion for summary judgement arguing that: (1) the Act waives immunity only when the employee would be personally liable, and official immunity shields the officer from liability because he was acting in good faith; and (2) the Act's emergency exception to the waiver applies because the officer was not acting recklessly in responding to an emergency. The trial court denied the motion and the court of appeals affirmed.

The Supreme Court reversed the Houston Court of Appeals's judgement, holding that because the officer acted in good faith during the pursuit, he was protected from personal liability by official immunity, and the city's governmental immunity was not waived under the Act.

***City of Austin v. Powell*, No. 22-0662, 704 S.W.3d 437 (Tex. Dec. 31, 2024).**
A motorist, who was injured when a police officer involved in high-speed chase collided with the motorist's vehicle, sued the city to recover damages for his injuries. The trial court denied the city's plea to the jurisdiction, and the city appealed. The Austin Court of Appeals affirmed.

The Supreme Court granted the city's petition for review. The Supreme Court reversed, holding that: (1) the statute requiring the operator of motor vehicle to maintain distance between vehicles was a law of general applicability and was not specifically applicable to emergency action, for purposes of whether the emergency exception to waiver of immunity under Tort Claims Act (Act) applied to the motorist's action; (2) the statute permitting certain conduct in operating an emergency vehicle did not make all other traffic laws binding in emergency contexts, for purposes of whether the emergency exception applied to immunity waiver under Act; (3) whether the police officer violated department policy was immaterial to the inquiry of whether a law or ordinance existed specifically addressing the emergency response at issue, for purposes of whether the emergency exception applied to immunity waiver under the Act; (4) the motorist did not establish that the police officer's failure to control his speed was reckless to obviate the emergency exception to immunity waiver under the Act; (5) the motorist did not establish that the police officer's failure to maintain distance with the police vehicle that the officer was following was reckless to obviate the emergency exception to immunity waiver under the Act; (6) the motorist did not establish that the police officer's inattentiveness leading up to accident was reckless to obviate the emergency exception to immunity waiver under the Act; and (7) the motorist did not establish that a combination of the police officer's acts was reckless, as required not to apply the emergency exception to immunity waiver under the Act.

***Harris County v. Jones*, No. 01-24-00214-CV, 2024 WL 5160516 (Tex. App.—Houston [1st Dist.] Dec. 19, 2024) (mem. op.).**
Jones sued Harris County under the Texas Tort Claims Act (TTCA) after a motor vehicle collision involving Sutton, a county deputy. Sutton was pursuing a suspect in a stolen vehicle with his lights and siren activated when he maneuvered his vehicle across a highway on-ramp. Jones, who was

driving on the on-ramp, struck Sutton's vehicle. The county filed a plea to the jurisdiction, claiming governmental immunity under the emergency-response exception to the TTCA's limited waiver of immunity. The trial court denied the plea and the county appealed.

The appellate court reversed and rendered judgement dismissing Jones's claims, holding that the emergency-response exception applied because Sutton was responding to an emergency, he had his lights and siren activated, and Jones had not offered evidence sufficient to create a genuine issue of material fact as to whether Sutton acted with reckless disregard for the safety of others.

***City of San Antonio v. Nadine Realme*, No. 04-23-00885-CV, 2024 WL 3954217 (Tex. App.—San Antonio Aug. 28, 2024) (mem. op.).**

The plaintiff participated in a Turkey Trot and tripped over a metal object protruding in the ground and broke her arm. She brought a premises liability claim against the city and the city filed a no evidence summary judgment motion claiming it was immune under the recreational use statute. The trial court denied it and the city appealed. The appellate court affirmed the denial, finding that: (1) the recreational use statute did not expressly include a footrace; (2) a footrace did not include "enjoying nature or the outdoors" under the catchall definition; and (3) a footrace did not fall in the common usage of recreation.

***City of Whitesboro v. Diana Montgomery*, No. 05-23-00979-CV, 2024 WL 3880627 (Tex. App.—Dallas Aug. 20, 2024) (mem. op.).**

In this interlocutory appeal, the City of Whitesboro challenged the trial court's order denying its plea to the jurisdiction in a premises liability and premises defect suit. Diana Montgomery sued the city after she fell while using restroom facilities at the city's swimming pool. In her suit she claimed the city was grossly negligent when it, among other things, removed slip mats in the restrooms and refinished the floors with an epoxy that contained a gritty, non-slip additive. In addition, Montgomery claimed a pool activity instructor told her lifeguards had been having a "shampoo or soap fight" in the restroom earlier in the day making the floor slick. The city objected to the testimony as hearsay filing a motion to strike, but the trial court denied the motion. The court of appeals, in reversing the trial court's order, held that no exceptions to the hearsay rule applied to the witness's testimony, including statements made by a party's agent as the witness was an independent contractor, excited utterance, present sense impression, and statements against interest. In addition, Montgomery failed to provide evidence that the city had actual or subjective knowledge that the new epoxy floor presented a serious hazard or that there was a dangerous condition on the restroom floor at the time of her fall.

***City of Houston v. Meka*, No. 23-0438, 697 S.W.3d 656 (Tex. Aug. 30, 2024) (per curiam).**

This case stems from a personal-injury lawsuit arising out of a motor-vehicle accident involving a City of Houston employee. The city sought dismissal and argued that post-filing diligence in effecting service of process is a jurisdictional requirement that, under Section 311.034 of the Texas Government Code, may be challenged in a plea to the jurisdiction or summary-judgment motion based on governmental immunity.

The Fourteenth Court of Appeals, relying on a Third Court of Appeals opinion, rejected the city's contention and concluded that timely service of process does not implicate subject-matter jurisdiction. The Supreme Court subsequently overturned the Third Court's opinion, clarifying that service that would otherwise be untimely will relate back to a timely-filed original petition if the

plaintiff exercised diligence in attempting service from the point that limitations expired until service was achieved.

Accordingly, because the Fourteenth Court of Appeals relied on what it regarded as the state of law at the time, the Supreme Court granted the city's petition for review, vacated the court's judgment, and remanded.

***City of Dallas v. McKeller*, No. 05-23-00035-CV, 2024 WL 980356 (Tex. App.—Dallas Mar. 7, 2024) (mem. op.).**

In 2019, the City of Dallas was notified through a service request that one of its water meter boxes was missing the lid leaving a hole in the sidewalk. Because the repairs could not be made that day, city staff placed a large orange cone over the hole. However, the cone was later removed by an unknown third party, and Evelyn McKeller sustained injuries when she fell into the hole. McKeller then sued the city on the basis of negligence and premises liability. In response, the city filed a plea to the jurisdiction claiming immunity under the Texas Tort Claims Act (TTCA). After a hearing on the matter, the trial court denied the city's plea to the jurisdiction, and the city appealed.

In its appeal, the city claimed McKeller could not overcome the TTCA's waiver of immunity for the premises liability claim because it had no actual knowledge that the cone had been removed by a third party. The city relied on Texas Civil Practice & Remedies Code Section 101.060 which states a governmental unit retains its immunity for claims based on the removal of a traffic warning device unless the governmental unit fails to correct the removal within a reasonable period of time after having actual notice. The city further argued that the trial court did not have subject matter jurisdiction over McKeller's negligence claim separate from the premises defect claim.

As to the premises liability claim, the court of appeals concluded the city had actual knowledge of the defective condition – an open water meter hole. The court reasoned that McKeller's claim was not based on the failure to replace the cone, and it did not qualify as a "warning device" where it was placed on a sidewalk and not a roadway as required by Section 101.060. As a result, the lower court's denial of the city's plea to the jurisdiction was affirmed. However, as to McKeller's negligence claim, the court of appeals held that because the claim relied on the premises defect in this case, immunity was not waived under the TTCA. For that reason, the court of appeals granted the city's plea to the jurisdiction and rendered judgment dismissing the negligence claim for lack of subject matter jurisdiction.

***City of Mission v. Aaron Cervantes*, No. 13-22-00401-CV, 2024 WL 1326396 (Tex. App.—Corpus Christi–Edinburg Mar. 28, 2024) (mem. op.).**

Cervantes sued the City of Mission under the Texas Tort Claims Act (TTCA) after he was injured on a city-maintained bike path, claiming the city's failure to warn the public of the dangerous condition of the trail was grossly negligent. The city filed a plea to the jurisdiction claiming governmental immunity under the TTCA and the recreational use statute. The city argued that the dangerous condition at issue was not a special defect, so the city owed only a licensee standard of care and therefore the city's immunity was not waived under the TTCA. The trial court denied the city's plea and the city appealed.

The appellate court affirmed the trial court's denial of the city's plea to the jurisdiction, holding that because the city had not produced evidence to negate Cervantes' contention that the dangerous

condition at issue was a special defect, it had failed to carry its burden to negate the existence of jurisdictional facts.

***City of Houston v. Manning*, No. 14-23-00087-CV, 2024 WL 973806 (Tex. App.—Houston [14th Dist.] Mar. 7, 2024) (mem. op.).**

In a case involving a collision between a City of Houston Fire Department truck driven by Wilhelm Schmidt and a car carrying Chelsea Manning and three minors, the appellate court previously affirmed the denial of the city's initial motion for summary judgment on negligence claims. In *Manning I*, the city argued for immunity, citing the driver's official status and exceptions under the Texas Tort Claims Act (TTCA), but failed to conclusively prove absence of negligence or that the emergency and 9-1-1 exceptions applied. The Supreme Court declined to review the appellate court's decision in *Manning I*.

This appeal originates from a second summary judgment motion in which the city reiterated its immunity defense, added additional TTCA arguments, and challenged certain plaintiffs' standing. The trial court denied this motion and allowed two additional plaintiffs to join the case, leading to the city's current appeal.

Generally, a city cannot be vicariously liable for the negligent acts of its employees unless its governmental immunity has been waived. The TTCA contains waivers of governmental immunity when the negligence of a city's employee, acting within the scope of their employment, proximately causes personal injury to another person, arising from the use or operation of a motor driven vehicle, if the employee would be personally liable for the injuries. The city argued that Schmidt would not have been liable for the injuries, since he was protected by official immunity, which can protect government employees from liability from lawsuit if at the time of the injury, they were performing discretionary job functions with good faith. As in *Manning I*, the court in this case held that there were fact questions surrounding Schmidt's good faith and overruled the city on this issue.

There are also exceptions to the TTCA's immunity waiver when an employee is responding to an emergency situation or a 9-1-1 call for assistance, if the employee's actions are essentially reasonable, lawful, and not taken with reckless disregard for the safety of others. The city raised each of these exceptions, but again, the court overruled these issues, pointing to evidence that Schmidt may have been operating the truck recklessly at the time of the collision.

The only issue on which the court found in favor of the city was a standing issue. Two of the claimants who were minors at the time of the collision had reached the age of majority by the time the appeals in *Manning I* were decided, after which, a Second Amended Petition was filed seeking additional damages for medical expenses by these claimants. Because claims for the medical expenses of minors belong to the minors' parents, the appellate court overruled the trial court on this issue. Ultimately, the court overruled all the city's claims other than the standing issue and remanded the case to the trial court for further proceedings.

***Rebeca Garcia v. The City of Austin*, No. 14-23-00241-CV, 2024 WL 1326113 (Tex. App.—Houston [14th Dist.] Mar. 28, 2024) (mem. op.).**

Rebeca Garcia and Mike Ramos were in a car when the police, responding to a 9-1-1 call about drug use and a possible gun, commanded them to exit the vehicle. Ramos, after initially complying, became non-compliant and was fatally shot while attempting to drive away. Garcia, who was in the

car but not physically injured, sued the City of Austin for negligent infliction of emotional distress, claiming severe shock and emotional distress from witnessing the incident.

The City of Austin filed a plea to the jurisdiction, asserting immunity from Garcia's suit. The trial court granted the plea, dismissing Garcia's suit. Garcia appealed, arguing the trial court erred in granting the plea and that the city did not meet its burden to establish governmental immunity. Generally, a city is protected from liability from lawsuit by governmental immunity, but that immunity may be waived by statute. The Texas Tort Claims Act provides limited waivers of immunity for certain negligent conduct, but it does not waive immunity for injuries arising from intentional torts. Garcia argued that her injuries sounded in negligence; however, neither the trial court nor the appellate court agreed, since the shooting in question was clearly an intentional act. Consequently, the appellate court affirmed the trial court's final judgment, dismissing the case for lack of jurisdiction.

***City of Springtown v. Ashenfelter*, No. 02-23-00204-CV, 2024 WL 1792380 (Tex. App.—Fort Worth Apr. 25, 2024) (mem. op.).**
Kalie Ashenfelter sued the City of Springtown after she was involved in an automobile collision with a city police officer. The city appealed the trial court's denial of its combined motion for no-evidence and traditional summary judgment, asserting that it was entitled to immunity based on (1) the police officer's official immunity and (2) the emergency exception to the Texas Tort Claims Act's (TTCA) waiver of immunity. The appellate court affirmed the trial court's order denying the city's combined motion concluding that the city was not entitled to a no-evidence summary judgement and that evidence attached to the city's traditional motion for summary judgement raised a fact issue as to whether governmental immunity was waived.

***City of Austin v. Kalamarides*, No. 07-23-00400-CV, 2024 WL 1422741 (Tex. App.—Amarillo Apr. 2, 2024) (mem. op.).**
The plaintiff sued the city for injuries he suffered in a car accident with a city police officer who was responding to an emergency call. The plaintiff claimed his light was green and that the police officer did not have lights or sirens on. The city claimed the officer did have the vehicle's lights and sirens activated. The city filed a plea to the jurisdiction based on the "emergency exception." The trial court denied the plea.

On appeal, the court reversed and rendered judgment in favor of the city. The court found the city retained its immunity under the emergency response exception because record did not reveal a fact issue as to whether the officer acted in a way that posed a high degree of risk or serious injury to others when responding to an emergency. The video evidence capturing the minutes preceding the collision confirmed that as the officer entered the intersection, she was proceeding slowly, with her vehicle's lights and siren activated.

***City of Houston v. Taylor*, No. 14-22-00629-CV, 2024 WL 1403949 (Tex. App.—Houston [14th Dist.] Apr. 2, 2024) (mem. op.).**
Percy Taylor sued the City of Houston after being involved in a collision with a city ambulance. The city claimed immunity under the Texas Tort Claims Act, arguing that the ambulance was responding to an emergency, which if proven, exempts the city from liability. The trial court denied the city's motion for summary judgment and plea to the jurisdiction. The Texas Tort Claims Act may waive immunity for injuries caused by the operation of motor-driven vehicles unless the injury arises from actions taken during emergency responses. The question in this case was whether the ambulance

was actively responding to an emergency when the collision occurred. The evidence presented showed conflicting accounts of the situation. The ambulance driver indicated that they were transporting a critically ill patient with possible sepsis to the hospital under emergency conditions with lights and sirens activated. Contradictory testimony and a Houston Fire Department incident report suggested that the patient was stable, and that the transportation was at the patient's choice, without emergency lights and sirens. The appellate court affirmed the trial court's decision, finding that factual disputes about the emergency status of the ambulance trip precluded summary judgment. The court concluded that the trial court correctly denied the city's plea to the jurisdiction and MSJ.

***City of Houston v. Caro*, No. 14-23-00319-CV, 2024 WL 1732278 (Tex. App.—Houston [14th Dist.] Apr. 23, 2024) (mem. op.).**

Lucy Caro, a flight attendant, was injured at Bush Intercontinental Airport, which is owned by the City of Houston, when she slipped on water beneath an air conditioning vent. In response to Caro's lawsuit, the City of Houston filed a plea to the jurisdiction, which the trial court denied. On appeal, the city challenged the trial court's denial of its plea to jurisdiction, arguing that it did not have actual knowledge of the hazard, and thereby maintained its immunity under the Texas Tort Claims Act. The court evaluated whether the City of Houston had actual knowledge of the hazard. Evidence showed longstanding issues with condensation at the airport, which were known to city staff. Despite prior observations of water accumulation and temporary remediation measures, no permanent solution was implemented, and no warning signs were present at the time of Caro's fall. The appellate court held that evidence of the city's awareness of the recurring condensation issue, combined with the specific observations made by city staff shortly before Caro's injuries, established a fact issue regarding the city's knowledge of the dangerous condition. The court also found fact issues regarding whether Caro knew about the hazard and whether the city failed in its duty of care. Ultimately, the court affirmed the trial court's decision, holding that the evidence raised sufficient fact issues to deny the city's plea to the jurisdiction, allowing Caro's suit to proceed against the City of Houston for her injuries. The case was remanded for further proceedings concerning the city's knowledge and the adequacy of its remedial actions.

***City of Houston v. Sauls*, No. 22-1074, 690 S.W.3d 60 (Tex. May 10, 2024).**

This is an interlocutory appeal in which the court is asked to decide whether the city is immune from a wrongful-death suit after its police officer, while responding to a suicide call, had an automobile accident with a bicyclist crossing the road.

The bicyclist's heirs sued the city for wrongful death, alleging that the city's employee negligently and proximately caused the bicyclist's death while operating a motor vehicle, such that the employee would be personally liable. The city moved for traditional summary judgment, asserting that its immunity from suit was not waived under the Tort Claims Act because the officer was entitled to official immunity. The trial court denied the motion, and the city appealed. A divided court of appeals affirmed.

The Texas Supreme Court reversed and held: (1) the officer was performing a "discretionary" duty when responding to the suicide call; (2) the city satisfied its burden of making a prima facie showing that the officer acted in good faith based on a need factor; (3) the city satisfied its burden of making

a prima facie showing that the officer acted in good faith based on a risk factor; and the (4) heirs and estate failed to controvert city's showing of good faith.

***Tex. Dep't of Transp. v. Self*, No. 22-0585, 690 S.W.3d 12 (Tex. May 17, 2024).**
Landowners sued the Texas Department of Transportation (TxDOT) and its contractor, alleging inverse condemnation and negligence, after employees of the contractor removed trees from a portion of the landowners' property that was outside TxDOT right-of-way while the contractor was in the process of removing trees from the right-of-way. The trial court denied TxDOT's plea to the jurisdiction, and TxDOT appealed. The Fort Worth Court of Appeals, affirmed in part and reversed in part.

Regarding negligence, the Texas Supreme Court determined that the landowners failed to either show that the subcontractor's employees were in TxDOT's paid service or that TxDOT employees operated or used the motor-driven equipment that cut down the trees, as required to waive immunity under the Tort Claims Act. With respect to inverse condemnation, the court determined that the landowners offered evidence that TxDOT intentionally directed the destruction of trees as part of clearing the right-of-way for public use. Accordingly, the court dismissed the negligence claim, and remanded the cause of action for inverse condemnation to the trial court for further proceedings.

***City of Denton v. Ragas*, No. 02-24-00037-CV, 2024 WL 2202051 (Tex. App.—Fort Worth May 16, 2024) (mem. op.).**
Ragas fell while crossing a street in Denton, Texas, and sued the City of Denton seeking damages for her personal injuries. She alleged that there was a defect in the street's pavement that proximately caused her fall, that the defect was a "special defect," and that the city was negligent in maintaining the street. Alternatively, she alleged that the defect was an ordinary premises defect, that the city had actual knowledge of its existence, and that the city failed to warn her of its existence or remedy the condition. The trial court denied the city's plea to the jurisdiction, and the city filed an interlocutory appeal. The court of appeals reversed, holding that Ragas' claims are barred by governmental immunity.

***City of San Antonio v. Magri*, No. 13-23-00280-CV, 2024 WL 2340826 (Tex. App.—Corpus Christi–Edinburg May 23, 2024) (mem. op.).**
Magri sued the City of San Antonio under the Texas Tort Claims Act (TTCA) after she slipped at the public library while walking over a grate. She claimed the slippery grate was a dangerous condition and that her claim fell under the TTCA's waiver of immunity for premises liability. The city filed a plea to the jurisdiction, which the trial court denied, and the city appealed.

The appellate court reversed and rendered judgment, holding there was no genuine issue of material fact as to whether the city had actual knowledge of the defect because the city had submitted an affidavit from an employee stating that there had been no previous reports of the dangerous condition of the grate in the preceding two years.

***City of Cibolo v. LeGros*, No. 08-23-00291-CV, 2024 WL 3012508 (Tex. App.—El Paso June 14, 2024) (mem. op.).**
Deborah LeGros, a property owner, sued the City of Cibolo, alleging unlawful replatting of a subdivision and failure to enforce land-use restrictions. LeGros claimed that the city's replatting action removed covenants and restrictions, allowing her neighbors to maintain their property contrary to the original restrictions, resulting in potential health and safety hazards. She sought

declaratory relief under the Texas Tort Claims Act (TTCA) and the Uniform Declaratory Judgment Act (UDJA). The city filed a plea to the jurisdiction asserting governmental immunity from the suit, which the trial court denied. The city appealed. Cities are generally immune from lawsuit unless the city's governmental immunity has been specifically waived by statute. Neither the TTCA nor the UDJA contain waivers of governmental immunity applicable to the instant case; therefore, neither waived the city's immunity. Ultimately, the appellate court reversed the trial court's order and rendered judgment for the city, dismissing LeGros' claims for lack of jurisdiction.

***City of San Antonio v. Garcia*, No. 08-23-00329-CV, 2024 WL 3066051 (Tex. App.—El Paso June 20, 2024) (mem. op.).**

Joel Garcia, individually and as next friend of his minor son J.G., sued the City of San Antonio, alleging that Police Officer Kevin Wilkinson negligently caused a vehicular collision. The collision occurred while Wilkinson was responding to a 9-1-1 call with his lights and sirens activated. The city filed traditional and no-evidence motions for summary judgment, asserting governmental immunity based on Wilkinson's official immunity and the emergency response and 9-1-1 exceptions under the Texas Tort Claims Act. The trial court denied the motions, and the city appealed. Because Garcia failed to provide evidence raising an issue of fact challenging the application of the emergency or the 9-1-1 exceptions, the appellate court held that the city was entitled to summary judgment. The appellate court reversed the trial court's order and rendered judgment in favor of the city.

***City of Houston v. Boodoosingh*, No. 14-23-00220-CV, 2024 WL 3188617 (Tex. App.—Houston [14th Dist.] June 27, 2024).**

Delisa Boodoosingh sued the City of Houston after a fire truck, driven by city employee Kevin Goodie, collided with her stopped vehicle. She alleged the crash resulted from Goodie's failure to maintain the vehicle's speed and direction, causing her personal injuries and property damage. Boodoosingh claimed the city had actual or constructive notice of her claims. The city filed a Rule 91a motion to dismiss, asserting lack of required notice under the Texas Tort Claims Act and invoking the "emergency exception" to maintain governmental immunity. The trial court denied the city's motion to dismiss, and the city appealed. Unlike a plea to the jurisdiction, Rule 91a motions to dismiss must be decided based solely on the face of the pleadings and not on the weight of evidence. Because Boodoosingh's pleadings asserted that proper notice had been given, and application of the "emergency exception" would require evidentiary rulings inappropriate to Rule 91a motion analysis, the appellate court affirmed the trial court's order denying the city's motion to dismiss.

***City of Houston v. Zuniga*, No. 01-23-00853-CV, 2024 WL 3259847 (Tex. App.—Houston [1st Dist.] July 2, 2024) (mem. op.).**

Zuniga sued the City of Houston for injuries she suffered in a car accident with a city vehicle. The city filed a plea to the jurisdiction and a motion for summary judgment, claiming that because Zuniga had not provided the city with the notice required under the Texas Tort Claims Act, the city's immunity had not been waived. The trial court denied the city's plea and motion, and the city appealed.

The appellate court affirmed, holding that although Zuniga had not provided formal notice, the city had actual notice that Zuniga believed the city was liable for her injuries based on her statements in the police report and crash investigation, despite the report and investigation determining that the city was not at fault.

***City of Houston v. Stoffer*, No. 01-23-00335-CV, 2024 WL 3417137 (Tex. App.—Houston [1st Dist.] July 16, 2024) (mem. op.).**
Stoffer sued the City of Houston for injuries she suffered in a car accident with a city vehicle driven by Tollet. At the time of the accident, Tollet had been turning into a gas station to refuel the city-owned vehicle on her commute home from work. The city filed a motion for summary judgment, claiming that immunity had not been waived because Tollet was not acting in the course and scope of her employment when she was commuting home from work. The trial court denied the city's motion and the city appealed.

The appellate court affirmed, holding that because Tollet had been refueling the city-owned vehicle, the city had not effectively rebutted the presumption that an employee driving a city-owned vehicle is acting in the course of scope of her employment.

***City of Dallas v. Perez,* No. 05-23-00376-CV, 2024 WL 3593740 (Tex. App.—Dallas July 31, 2024) (mem. op.).**
Brandie Perez, individually and as next friend of her minor children, A.P., G.P., and S.P., sued the city of Dallas for damages suffered due to a vehicle collision caused by Officer Jose Gamez while in pursuit of a fleeing suspect. The city filed a plea to the jurisdiction based on official immunity and claimed the officer's actions satisfied the emergency exception under the Tort Claims Act. After a hearing, the trial court denied the plea, and the city appealed. The court of appeals held that the city met its burden in establishing Officer Gamez was entitled to official immunity because: (1) he was performing a discretionary function as a matter of law when he was engaged in a suspect pursuit to conduct a traffic stop; (2) a reasonably prudent officer under the same or similar circumstances could have believed Officer Gamez's actions were justified; (3) no genuine issue of material fact was raised as to whether Officer Gamez acted in good faith; and (4) he acted within the scope of his authority. Without addressing the city's remaining issue on the emergency exception, the court of appeals reversed the trial court's order and rendered judgment in favor of the city.

***City of Stinnett v. Price*, No. 07-24-00095-CV, 2024 WL 3588589 (Tex. App. July 30, 2024) (mem. op.).**
The plaintiff sued the city for injuries she sustained when she was exiting city hall, ran into a glass panel abutting the glass door, and the glass panel shattered. The trial court denied the city's plea to the jurisdiction and the city appealed. On appeal, the court found that the evidence was conclusive that the danger posed by the glass panels bracketing the door was so open and obvious that it should be known and appreciated by the plaintiff. Therefore, because the plaintiff could not prove that she did not know of the condition (it was open and obvious), she could not establish a waiver of the city's immunity. The appellate court reversed the trial court and granted the city's plea.

***Hitchcock Industrial Development Corporation v. Cressman Tubular Products Corporation*, 698 S.W.3d 29 (Tex. App.—Houston [14th Dist.] July 18, 2024).**
The City of Hitchcock sued Cressman Tubular Products Corporation ("Cressman") for breach of an economic development agreement, unjust enrichment, and fraud. Cressman filed third-party claims against Hitchcock Industrial Development Corporation (the "EDC"), a Type A economic development corporation, for breach of the development agreement, negligent misrepresentation, and fraud. The EDC filed a plea to the jurisdiction, asserting governmental immunity under Texas Local Government Code § 504.107(b). The trial court denied the plea, and the EDC appealed. While the EDC, as a Type

A economic development corporation, is a governmental unit for purposes of the Texas Tort Claims Act and therefore qualifies for interlocutory appeal, economic development corporations do not enjoy governmental immunity from tort claims. The enabling legislation for economic development corporations does not confer immunity; rather, it imports the Texas Tort Claims Act's limitations on liability and damages. Ultimately, the appellate court affirmed the trial court's denial of the EDC's plea to the jurisdiction, holding that Type A economic development corporations do not have governmental immunity from tort claims under the current statutory framework. Note that this opinion extends a holding the Texas Supreme Court made regarding Type B EDCs to Type A EDCs. *See* *Rosenberg Development Corporation v. Imperial Performing Arts, Inc.*, 571 S.W.3d 738 (Tex. 2019).

***City of Missouri City v. Hampton*, No. 14-23-00111-CV, 2024 WL 3507415 (Tex. App.—Houston [14th Dist.] July 23, 2024) (mem. op.).**

Allanias and Damita Hampton sued Missouri City for injuries their daughter Alaina sustained when she collided with a metal fence post while playing in a city park. They alleged negligence and premises liability claims under the Texas Torts Claims Act. Missouri City argued governmental immunity and filed a plea to the jurisdiction, which the trial court denied, prompting the city to appeal.

The appellate court focused much of its analysis on whether Alaina was an invitee, licensee, or trespasser in the city park, because a higher duty is owed by a landowner to an invitee than to either a licensee or trespasser. The Hamptons argued that Alaina should be considered an invitee. The court indicated that Alaina could be considered an invitee if: (1) she had paid for entry to the facility, or (2) the defect to the fence post was considered a legal "special defect." Alaina had not paid for entry to the facility, and based on its location, the fence post could not be considered a special defect; therefore, as a matter of law, the court held that she was a licensee and not an invitee. If the Hamptons could establish that the city had actual knowledge of the dangerous condition, the city still could have been liable for the damages, even though Alaina was a licensee; however, they were unable to make the required showing. Therefore, the appellate court reversed the trial court's order and dismissed the case for lack of subject matter jurisdiction.

***City of Houston v. Hernandez*, No. 01-24-00031-CV, 2024 WL 3817374 (Tex. App.—Houston [1st Dist.] Aug. 15, 2024) (mem. op.).**

Hernandez sued the City of Houston after a police car collided with the trailer attached to the truck he was driving. At the time of the collision, the police car had its sirens activated, and Hernandez had pulled over to the shoulder of the road to allow the police car to pass him. The city filed a motion to dismiss, claiming immunity under the Texas Tort Claims Act (TTCA) and claiming that the emergency exception to the TTCA's waiver of immunity applied. The trial court denied the motion, and the city appealed.

The appellate court affirmed, holding that Hernandez's allegations that the police officer was not responding to an emergency and acted with reckless disregard for the safety of others were sufficient to establish a waiver of the city's immunity and the inapplicability of the emergency exception.

***Wolf v. Mickens*, No. 09-21-00382-CV, 2024 WL 3980616 (Tex. App.—Beaumont Aug. 29, 2024) (mem. op.).**

Wolf sued Mickens, Verret, and Pierre (employees) in their individual capacities under the Texas Tort Claims Act (TTCA) for ultra vires actions, for fraud and civil conspiracy, and for an unlawful taking of her commercial building after the city ordered it demolished. She alleged that the employees required a bribe of $25,000 in exchange for issuing a permit for Wolf to rehabilitate the building and, when she did not give them the money, ordered the building demolished. The trial court granted the employees' plea to the jurisdiction claiming immunity, and Wolf appealed.

The appellate court affirmed in part and reversed and remanded in part, holding that: (1) since Wolf was suing for monetary damages rather than prospective injunctive relief, her claims were not actionable as ultra vires acts; (2) because the TTCA does not waive liability for intentional torts alleged against employees in their individual capacity, the employees were not immune to Wolf's claims of fraud and civil conspiracy related to the $25,000 bribe; and (3) Wolf's takings claim should have been pursued in a direct appeal from her administrative hearing. The court remanded the claims for fraud and civil conspiracy and dismissed the remaining claims.

***Jefferson Cnty. v. Hadnot*, No. 09-23-00052-CV, 2024 WL 3973070 (Tex. App.—Beaumont Aug. 29, 2024) (mem. op.).**

Hadnot sued Jefferson County for injuries she received after Nguyen, a sheriff's deputy, rear-ended the vehicle she was driving. The county filed a plea to the jurisdiction, claiming governmental immunity was not waived under the Texas Tort Claims Act (TTCA) because Nguyen was responding to an emergency at the time of the collision.

The appellate court affirmed in part and reversed and rendered in part, holding that: (1) Hadnot's failure to negate the emergency exception to the TTCA's waiver of immunity in her pleading was a pleading defect, not a jurisdictional defect, and so there was a genuine issue of material fact as to whether the emergency exception applied; and (2) Hadnot had not established the trial court's jurisdiction over the part of her claim alleging that Nguyen had operated her vehicle with reckless disregard for the safety of others because her pleadings did not allege facts supporting that allegation.

***City of Houston v. Moore*, No. 14-23-00316-CV, 2024 WL 3616697 (Tex. App.—Houston [14th Dist.] Aug. 1, 2024) (mem. op.).**

Michael Moore sued the City of Houston for injuries sustained when he tripped over a steel ground plate while working for Southwest Airlines at Hobby Airport, which is owned by the city. The city moved for summary judgment, arguing that Moore failed to provide timely notice of his claim, as required by both the Texas Tort Claims Act (TTCA) and the city charter, thereby preserving the city's governmental immunity. The trial court denied the motion, and the city appealed.

Moore's injury occurred in February 2022, but the city did not receive notice until July 6, 2022, well past the 90-day deadline in the city's charter. The court found that Moore's failure to provide timely notice barred the suit under the TTCA. Moore then contended that the condition that caused his injury was a special defect, potentially waiving the city's immunity; however, the court rejected this argument, finding that a steel ground plate on an airport tarmac did not meet the TTCA's definition of a special defect, which applies to conditions like excavations or obstructions on roadways.

Ultimately, the court reversed the trial court's denial of summary judgment and dismissed the case for lack of subject-matter jurisdiction due to Moore's failure to provide timely notice.

***City of Houston v. Sanchez*, No. 14-23-00152-CV, 2024 WL 3713206 (Tex. App.—Houston [14th Dist.] Aug. 8, 2024) (mem. op).**

Lorraine Sanchez sued the City of Houston for negligence after a city-owned vehicle driven by Lisa Thom, a city fire department employee, rear-ended Sanchez's SUV. The city moved for summary judgment, arguing that governmental immunity barred the claim, because Thom was not acting within the scope of her employment at the time of the accident. The trial court denied the city's motion, and the city appealed.

When a city vehicle is involved in a collision, there is a presumption that the employee was acting in the scope of their employment so the city would be liable under the Texas Tort Claims Act. This presumption can be rebutted with evidence showing the employee was engaged in personal activities. Under the "coming-and-going" rule, the act of commuting to or from work is excluded from an employee's scope of employment. In this case, the city provided an affidavit from Thom stating that she had completed her duties for the day and was commuting home at the time of the collision. This rebuttal successfully shifted the burden to Sanchez to demonstrate that Thom was, in fact, within the scope of her employment, which she was unable to do. The court concluded that the city's governmental immunity was not waived, and the court reversed the trial court's denial of summary judgment, dismissing Sanchez's claims.

***City of Houston v. Rogelio Cervantes Hernandez*, 2024 WL 3867828 (Tex. App.—Houston [14th Dist.] Aug. 20, 2024) (mem. op.)**

Rogelio Cervantes Hernandez sued the City of Houston after a collision with a police officer who was responding to an emergency. Cervantes claimed the officer negligently caused the crash and that the city was negligent in hiring, training, and supervising the officer. The city filed a Rule 91a motion to dismiss, asserting immunity under the Texas Tort Claims Act's (TTCA) emergency and 9-1-1 exceptions. The trial court denied the motion, and the city appealed.

After the city provided evidence that the emergency and 9-1-1 exceptions applied, the burden shifted to Cervantes to plead facts sufficient to overcome these exceptions, which he failed to do. The court also rejected Cervantes's negligent hiring and supervision claims, as they are not covered by the TTCA's waiver of immunity. Ultimately, the court reversed the trial court's denial of the motion to dismiss and rendered judgment dismissing Cervantes's suit with prejudice for lack of jurisdiction.

***City of Houston v. Morris*, No. 14-23-00570-CV, 2024 WL 3980209 (Tex. App.—Houston [14th Dist.] Aug. 29, 2024) (mem. op.).**

Rachel Morris and Mia Sanders, daughters of Steve Sanders, sued the City of Houston after Sanders was struck and killed by a Houston police officer who was participating in a prostitution sting operation at the time. The officer was driving above the speed limit without activating emergency lights or sirens when Sanders, dressed in black and crossing the street, was hit and killed. The city moved for summary judgment, claiming governmental immunity, asserting that the officer was protected by official immunity, and arguing that the Texas Tort Claims Act's (TTCA) emergency exception applied. The trial court denied the city's motion, and the city appealed.

The court applied the test for official immunity, which protects city employees from suit while they are performing discretionary duties in good faith and within the scope of their authority. The officer testified that he exercised discretion in deciding not to activate lights and sirens to avoid compromising the undercover operation and that he believed his speed was reasonable under the circumstances. The court found this sufficient to show that a reasonably prudent officer could have believed his actions were justified. The appellees then faced the burden of presenting evidence sufficient to raise a genuine issue of material fact to counter the officer's claim of good faith, which they were unable to do. Because the officer was, therefore, entitled to official immunity, the city retained its governmental immunity under the TTCA, which shields municipalities from liability when their employees are immune from suit. Ultimately, the appellate court reversed the trial court's denial of summary judgment and dismissed the claims for lack of subject matter jurisdiction.

***City of San Antonio v. Burch*, No. 05-24-00078-CV, 2024 WL 4379951 (Tex. App.—Dallas Oct. 3, 2024)(mem. op.).**

This case involves a premises-liability suit brought by Drana Burch after she fell as a result of uneven brick pavers while attending an event at the Alamodome. The City of San Antonio, in response to the suit, filed a combined motion for no-evidence and traditional summary judgment asserting, among other things, governmental immunity. The trial court denied the city's motion, ruling in favor of Burch, and the city appealed. The court of appeals, in addressing the no-evidence motion only, concluded that: (1) Burch failed to show that the slight unevenness of the brick pavers was unreasonably dangerous; (2) Burch failed to show the city had actual knowledge of the condition where there was no evidence of prior reports of injuries or complaints; and (3) evidence of nonspecific paver repair service invoices was insufficient to directly show actual knowledge of the specific issue. For those reasons, the court reversed trial court's decision and dismissed the suit for lack of jurisdiction.

***Buenrostro v. Tex. Dep't of Transp.*, No. 07-24-00048-CV, 2024 WL 4511214 (Tex. App.—Amarillo Oct. 16, 2024) (mem. op.).**

The Texas Department of Transportation (TxDOT) applied a brine solution to a road in advance of a winter storm. TxDOT subsequently received reports of "slick roads" and then applied sand to the road. After the sand had been applied, a TxDOT employee noticed an oily contaminate floating on the top of the brine in the tank, so the tank was flushed. After the sand was applied, Buenrostro lost control of his vehicle and was fatally injured. His heirs filed a lawsuit. TxDOT filed a plea to the jurisdiction, which the trial court granted.

On appeal, the court affirmed the grant of the plea and found: (1) there was no evidence of TxDOT's actual knowledge of the dangerous condition because TxDOT did not know the contaminant from the brine made it onto the road, there were intervening fourteen hours between the brine and the accident; and (2) there was no evidence the contaminant in the brine made it onto the roadway or caused the accident.

***In Re City of Houston*, No. 01-24-00629-CV, 2024 WL 4846843 (Tex. App.—Houston [1st Dist.] Nov. 21, 2024) (mem. op.).**

Tapia and Welborn sued the City of Houston following the death of their daughter, who was struck and killed by a train. The city filed Rule 91a, motion to dismiss, asserting it was entitled to dismissal under several provisions in the Texas Tort Claims Act and that Tapia and Welborn had no standing to bring the suit. The city also filed a motion for summary judgment in the alternative, claiming that the

trial court lacked subject-matter jurisdiction due to Tapia and Welborn failing to timely deliver notice of their claim to the city. Tapia and Welborn filed a motion for continuance as to the city's motion for summary judgment, which the trial court granted. The trial court did not make a ruling on the city's Rule 91a motion to dismiss. The city filed a petition for a writ of mandamus in the appellate court, asking the court to compel the trial judge to rule on the motion to dismiss.

The appellate court conditionally granted the motion to dismiss, holding that the trial court's failure to rule on the motion to dismiss within 45 days as required under the rules of procedure was an abuse of discretion.

***City of San Antonio v. Bailey*, No. 08-23-00302-CV, 2024 WL 4849351 (Tex. App.—El Paso Nov. 20, 2024) (mem. op.).**

Alvin Bailey allegedly sustained personal injuries while riding his bicycle on a city-owned trail. He claimed to have hit a yellow rope that had been stretched across the trail, causing him to fall and sustain injuries. He also alleged that a broken pipe had leaked water across the trail and that a light on the trail had burned out. Consequently, Bailey sued the City of San Antonio and the San Antonio Water System (SAWS) for negligence and premises liability. The city and SAWS filed a joint plea to the jurisdiction, asserting governmental immunity under the Texas Tort Claims Act (TTCA) and Recreational Use Statute. The trial court denied the plea, and the city and SAWS appealed.

Bailey argued that SAWS was performing a proprietary function in maintaining the water pipe, because a provision of the TTCA states that maintenance and operation of a public utility is a proprietary rather than a governmental function, which would preclude governmental immunity. However, the court held that SAWS's alleged negligence arose from its governmental function of providing water and sewer services, which are governmental functions; therefore, SAWS maintained its immunity from Bailey's negligence claim. Additionally, because there was no evidence of a defect in the yellow rope itself nor allegations related to use of the yellow rope by a government employee at the time Bailey sustained his injuries, Bailey was unable to sustain a premises liability claim. Furthermore, when a plaintiff engages in recreation on government property, a claim for premises liability may be maintained only when malicious intent, gross negligence, or bad faith on the part of the governmental entity can be shown, which Bailey failed to plead. Ultimately the appellate court reversed the trial court's order and rendered judgment in favor of the city and SAWS.

***Hernandez v. Cameron County*, No. 13-23-00098-CV, 2024 WL 5087387 (Tex. App.—Corpus Christi–Edinburg Dec. 12, 2024) (mem. op.).**

Hernandez sued Cameron County after a motor-vehicle collision involving Gonzalez, a county deputy. The county filed a plea to the jurisdiction claiming governmental immunity, arguing that the emergency-response exception under the Texas Tort Claims Act (TTCA) applied because Gonzalez was responding to a burglary in progress when the collision occurred. The trial court granted the county's plea to the jurisdiction. Hernandez appealed, arguing that there was a genuine issue of material fact regarding whether Gonzalez acted recklessly when responding to the emergency, which would negate the emergency-response exception. Hernandez claimed that Gonzalez disregarded a red light and entered the intersection at high speed without using his siren, while Gonzalez claimed he slowed down and had his siren and lights activated.

The appellate court reversed and remanded, holding that there was a genuine issue of material fact as to whether Gonzalez acted with reckless disregard for the safety of others.

***LaRose v. City of Missouri City*, No. 14-24-00197-CV, 2024 WL 5051187 (Tex. App.—Houston [14th Dist.] Dec. 10, 2024) (mem. op.).**

Pshatoia LaRose filed a *pro se* lawsuit against the City of Missouri City, alleging negligence and failure by its police department to investigate her reports of stalking, harassment, theft of phone data, property damage, and other misconduct. She claimed damages of $253,900, asserting that the city failed to adhere to state law requiring a fair investigation of her complaints. The trial court dismissed the case for lack of subject-matter jurisdiction after the city filed a plea to the jurisdiction based on governmental immunity. Cities in Texas are generally immune from suit unless a valid statutory or constitutional waiver of immunity applies. The court discussed how the Texas Tort Claims Act waives immunity in limited circumstances involving (1) injuries caused by motor vehicles, (2) the use of tangible property, or (3) real property, but since LaRose's claims did not fall into any of these categories, the court found no such waiver in LaRose's claims. Moreover, LaRose did not cite any other statutory basis to support waiving the city's governmental immunity. Consequently, the judgment dismissing LaRose's case for lack of subject-matter jurisdiction was affirmed.

***Harris Cnty. v. McFarland*, No. 01-24-00331-CV, 2025 WL 51847 (Tex. App.—Houston [1st Dist.] Jan. 9, 2025) (mem. op.).**

McFarland filed a premises liability claim against Harris County under the Texas Tort Claims Act after she caught her sandal on the corner of an entryway mat at a county office and fell. The county filed a plea to the jurisdiction claiming governmental immunity. McFarland subsequently amended her appeal. The trial court denied the county's plea and the county appealed.

The appellate court reversed and rendered, holding that: (1) the county's plea to the jurisdiction was not moot merely because it was filed prior to McFarland's amended pleading because the amended pleading did not advance any new claims; and (2) McFarland did not establish a waiver of the county's immunity because she had not demonstrated a fact issue as to whether the county had actual knowledge of a dangerous condition.

***City of Houston v. Tran*, No. 01-24-00235-CV, 2025 WL 309723 (Tex. App.—Houston [1st Dist.] Jan. 28, 2025) (mem. op).**

Tran sued the City of Houston and Houghlen, a city employee, under the Texas Tort Claims Act (TTCA) after a collision involving her vehicle and a city police vehicle driven by Houghlen. Houghlen filed a motion to dismiss, claiming that he was entitled to dismissal under the TTCA's election-of-remedies provision because Tran had sued both him and the city. The trial court denied the motion and Houghlen appealed. The appellate court affirmed, holding that Houghlen was not entitled to dismissal because the motion to dismiss had been filed on his own behalf only and the TTCA's election-of-remedies provisions require a court to dismiss an employee only on a motion by the city.

***City of Garland v. Pena*, No. 05-24-00133-CV, 2025 WL 99785 (Tex. App.—Dallas Jan. 15, 2025).**

Benjamin David Pena, a temporary worker for a staffing agency, sued the City of Garland, alleging premises liability and negligence after being crushed by a dump truck at the city's landfill. The city, in response, filed a plea to the jurisdiction, which the trial court initially granted. Pena appealed the decision, and the court of appeals remanded the case to the lower court to allow Pena to amend his pleading. After Pena filed his amended petition, the city filed its plea to the jurisdiction claiming immunity under the Texas Tort Claims Act (TTCA). After a hearing, the trial court denied the city's plea, and the city appealed.

In reversing the lower court, the court of appeals held that: (1) Pena's allegations constituted a negligence claim rather than a premises liability claim where his injuries were caused by an act or activity, specifically the backing up of the dump truck by a third party, not by the condition or use of the city's tangible real property; (2) although Pena alleged the city's landfill was generally dangerous and the city could have found safer ways to operate the facility, he failed to sufficiently plead any facts that the city had actual knowledge of a specific condition posing an unreasonable risk of harm that caused his injuries; (3) public policy did not support extending sovereign immunity to include general allegations that a location was dangerous which would subject a landowner to premises liability for all injuries occurring on his property; (4) the city had no duty to protect another from the negligent acts of a third person; and (5) on his negligence claim, Pena failed to establish how a city employee waiving a truck driver in specific direction constituted "operation" or "use" of a motor-driven vehicle as required by the TTCA.

***Lincoln Property Company v. Herrera*, No. 13-23-00276-CV, 2025 WL 339036 (Tex. App.—Corpus Christi–Edinburg Jan. 30, 2025) (mem. op.).**
Herrera filed a premises liability claim under the Texas Tort Claims Act against Lincoln Property Company (Lincoln), SP II Limited Partnership (SP II), and the San Antonio Housing Authority Foundation (SAHA) after her mother, Maria, fell on the sidewalk at a public housing apartment complex operated on behalf of SAHA by Lincoln and SP II. Maria later died of her injuries. Lincoln, SP II, and SAHA filed a plea to the jurisdiction claiming governmental immunity. The trial court denied the plea and this appeal followed.

The appellate court reversed and remanded, holding that: (1) although Lincoln and SP II are private entities, they were entitled to governmental immunity because they were subsidiaries of SAHA, a housing authority, with no independent discretion; and (2) Maria was an invitee rather than a licensee because she paid rent to live at the complex; and (3) the pleadings neither demonstrated nor negated jurisdiction because they did not address the question of whether there was constructive knowledge of the alleged premises defect, so the claim was remanded to the trial court for further proceedings.

***Sanchez v. City of Houston*, 2025 WL 271313 (Tex. App.—Houston [14th Dist.] Jan. 23, 2025).**
Melissa Sanchez sued the City of Houston, alleging that a mounted police officer recklessly charged into her with his horse during a protest, causing injuries. The trial court granted the city's motion for summary judgment and plea to the jurisdiction based on governmental immunity, while Sanchez's motions for a new trial and continuance were denied. Sanchez appealed. Cities are generally immune from suit and liability, unless that immunity has been waived by the Legislature. The Texas Tort Claims Act (TTCA) waives governmental immunity in certain circumstances, including circumstances where the use of tangible personal property causes injury or death. In this case, Sanchez alleged that the city's immunity was waived by the TTCA due to the use of a horse to cause her injuries. The TTCA, however, does not apply to claims when the injury is connected to an act or omission arising from civil disobedience. Because the events occurred during a protest, which the court concluded was an act of civil disobedience, the TTCA's waiver of governmental immunity did not apply; therefore, the trial court's rulings were affirmed in the city's favor.

***City of Houston v. Busby*, 2025 WL 336968 (Tex. App.—Houston [14th Dist.] Jan. 30, 2025).**
Following a collision with a City of Houston fire truck, Randy Busby pleaded no contest to a charge of failure to yield to an emergency vehicle. Later, Busby sued the city for injuries sustained during the

same collision, alleging that the driver of the fire truck negligently ran a red light without using his emergency lights or sirens. The city sought summary judgment, arguing, among other things, that Busby's claims were barred because he had pleaded no contest in the previous criminal case stemming from the same incident. The trial court denied the city's summary judgment motion, and the city appealed. The *Heck* doctrine prevents civil claims that would imply the invalidity of a prior criminal conviction unless that conviction has been reversed, expunged, or invalidated. Busby's claims against the city were based on allegations that the driver failed to use emergency lights and sirens, which, if true, would contradict Busby's prior no contest plea, making his claims impermissible under *Heck*. Following *Heck*, the appellate court reversed the trial court's ruling and rendered judgment dismissing Busby's claims against the city.

***City of Houston v. Polk*, 2025 WL 339175 (Tex. App.—Houston [14th Dist.] Jan. 30, 2025) (mem. op.).**

Betram Polk sued the City of Houston after a collision with a police officer's vehicle, alleging the officer negligently failed to control his speed. Rather than filing a plea to the jurisdiction, the city moved to dismiss Polk's claims arguing (1) Polk failed to provide timely notice under the Texas Tort Claims Act (TTCA), (2) the officer was protected by official immunity, and (3) the emergency exception to the TTCA applied. The trial court denied the city's motion to dismiss, and the city appealed. When ruling on the motion to dismiss, a court must rely on the content of the pleadings without considering extrinsic evidence. Because Polk's pleadings sufficiently alleged facts establishing that timely notice was made and negating the emergency exception, while the city's pleadings failed to conclusively establish the defense of official immunity, the appellate court affirmed the trial court's dismissal of the city's motion.

***City of Denton v. Rodriguez-Rivera*, No. 02-24-00393-CV, 2025 WL 421227 (Tex. App.—Fort Worth Feb. 6, 2025).**

A driver brought action against the city for negligence and negligence per se, seeking compensatory damages for personal injuries he sustained when a city employee backed a bulldozer into his pickup truck while he was waiting to dump a container of trash at the city's landfill as part of his trash rental container business. The trial court denied the city's plea to jurisdiction based on governmental immunity under the Tort Claims Act.

On appeal, the city argued that because Rodriguez-Rivera was engaged in the recreational activity of "off-road automobile driving" at the time of the collision, the city maintained its immunity due to his failure to meet the heightened evidentiary threshold of "gross negligence" established by the Texas Recreational Use Statute. The appellate court affirmed, holding that (1) the city's governmental immunity was waived, and (2) as a matter of first impression, commercial activity was excluded from the Recreational Use Act's limitations on governmental liability for "pleasure driving."

<u>GOVERNMENTAL IMMUNITY – CONTRACTS</u>

***Baylor Cnty. Special Util. Dist. v. City of Seymour,* 709 S.W.3d 5 (Tex. App.—Eastland, Mar. 20, 2025).**

This case involves a breach of contract suit filed by the City of Seymour against Baylor County Special Utility District. The city alleged that Baylor violated their contract by purchasing water from a third party instead of exclusively from the city. Baylor claimed governmental immunity and argued that the contract was not a "requirements contract." In its opinion affirming the trial court's dismissal of the

city's claims for declaratory judgment, injunctive relief, and attorney's fees, the Fifth Court of Appeals held that the parties' contract was a "requirements contract" and the city could not seek a determination of its rights and responsibilities against Baylor, a governmental entity. Thereafter, Baylor filed a motion for rehearing in which it requested that the court modify its opinion by removing the following statements to avoid confusion on remand: (1) "Importantly, Baylor presented no evidence that Seymour could not fulfill its water supply requirements or that its acquisition of water from other sources was due to Seymour's inability to provide same;" and (2) "Moreover, because our decision today includes that the contract is a requirements contract, Seymour's claim for declaratory judgment is moot." In denying Baylor's motion for rehearing, the court held that nothing in the statements prevents Baylor from providing evidence in support of its defenses in further proceedings or suggests that the city has already prevailed on its substantive claims.

***City of Rio Vista v. Johnson County Special Utility Dist.*, 2025 WL 309937 (Tex. App.—15th Dist. Jan. 28, 2025) (mem. op.).**

The Johnson County Special Utility District (District) sued the City of Rio Vista for breach of an interlocal agreement resolving water service boundary disputes. The agreement included provisions regarding emergency water connections and a requirement for notice and consent before extending water lines into the other party's service area. The District alleged that the city violated the agreement by extending water lines into the District's service area and misusing an emergency connection agreement to calculate its water service capacity. The city filed a plea to the jurisdiction, arguing governmental immunity. The trial court denied the city's plea, and the city appealed. Cities are generally immune from lawsuit or liability unless immunity has been waived by the Legislature. Chapter 271 of the Texas Local Government Code waives a city's immunity from suit for contract disputes related to the provision of goods or services to the city. In this case, the court held the interlocal agreement not to be a contract for goods or services; therefore, the city's immunity was not waived from the District's breach of contract claim. Consequently, the appellate court reversed the trial court's order and rendered judgment dismissing the District's claims.

***City of Houston v. 4 Families of Hobby*, LLC, No. 01-23-00436-CV, 702 S.W.3d 698 (Tex. App.—Houston [1st Dist.] Aug. 6, 2024).**

The City of Houston issued a request for proposals (RFP) to enter a contract to provide concessions at the city's three airports. At the time the city issued the RFP, Pappas provided concessions at the airports. The city awarded a new contract to Areas, and Pappas sued the city for breach of contract based on the RFP, breach of its existing contract with the city, violation of the Texas Open Meetings Act (TOMA), violation of the equal protection clause under the Texas Constitution, and for a declaratory judgment that the award of the contract to Areas was void. Another company, Four Families, which had also submitted a proposal, later joined the suit as a plaintiff. Pappas claimed the city's governmental immunity was waived under Chapter 252 and Chapter 271 of the Local Government Code. The city filed a plea to the jurisdiction asserting governmental immunity, which the trial court denied, and the city appealed.

The appellate court affirmed in part and reversed and rendered in part, holding that: (1) because the concessions contract was a revenue contract rather than an expenditure contract, Chapter 252 did not apply; (2) the RFP did not constitute a contract subject to Chapter 271; (3) the city's initial contract with Pappas for airport concessions was a contract subject to Chapter 271, and therefore as to Pappas claim of breach of that contract, the city's immunity was waived; (4) notice under the

TOMA was sufficient and therefore the city's action was not voidable under that act; (5) Pappas had presented a facially valid equal protection claim; and (6) declaratory judgment relief was proper based on Pappas's allegations of violations of the equal protection clause. The appellate court remanded the claims for breach of the existing contract, the equal protection claim, and the claim for declaratory judgment back to the trial court for further proceedings.

***Double H Contracting, Inc. v. El Paso Water Utilities Public Service Board, et al.*, No. 08-23-00345-CV, 705 S.W.3d 430 (Tex. App.—El Paso Oct. 29, 2024).**

Double H Contracting, Inc. (Double H) sued the El Paso Water Utilities Public Service Board (EPWater), the City of El Paso, among other parties, after EPWater awarded multiple contracts for road repair work through a single public procurement process. Historically, EPWater had used a single contractor to address road repairs following utility line work, but with growing repair backlogs and resident complaints, EPWater sought bids to secure multiple contractors through a competitive sealed proposal process. Double H, the highest-ranking proposer, argued that Texas law limited EPWater to awarding the contract solely to the highest-ranked proposer. The trial court disagreed, granting EPWater's motion for summary judgment. Double H appealed.

Ultimately, the appellate court affirmed the trial court's grant of summary judgment in favor of EPWater, holding that EPWater's contract awards were lawful under the public health and safety exemption in Chapter 252 of the Texas Local Government Code. This exemption allows municipalities to bypass competitive bidding requirements if the procurement is necessary to preserve or protect public health or safety. EPWater provided evidence, including affidavits and data, showing that delays in road repairs after utility work posed risks to public safety and justified retaining multiple contractors to handle repair work more quickly and efficiently. The court found this evidence sufficient to support EPWater's determination that the exemption applied to the instant procurement, rendering competitive bidding requirements inapplicable. Additionally, EPWater acted within its discretion by retaining multiple contractors for efficient road repair work through the competitive sealed proposal process. The court concluded that the terms of the proposal explicitly allowed awarding contracts to multiple qualified proposers, and EPWater had followed the solicitation's procedures, which allowed contracting with additional entities beyond the highest scorer.

***San Jacinto River Auth. v. City of Conroe*, No. 22-0649, 688 S.W.3d 124 (Tex. Apr. 12, 2024).**

This case looks at the scope of the statutory waiver of immunity under Chapter 271 of the Local Government Code (Chapter 271) for contractual claims against local government entities.

At issue were contracts that obligated two cities to buy surface water from a river authority. When a dispute over fees and rates arose, the cities stopped paying their complete balances, and the authority sued the cities to recover those amounts. The trial court granted the cities' plea to the jurisdiction, and the court of appeals affirmed on the ground that the authority did not engage in pre-suit mediation as the contracts required. The river authority petitioned for review.

The Supreme Court held that neither the contractual procedures for alternative dispute resolution, which are enforceable against local governments under Section 271.154 of the Local Government Code, serve as limits on the waiver of immunity set out in Section 271.152, nor does the parties' agreement to mediate apply to the authority's claims. The Court also rejected the cities' alternative argument that the agreements did not fall within the waiver because they failed to state their

essential terms. Accordingly, the Court reversed and remanded to the trial court for further proceedings to resolve the authority's claims on the merits.

***Campbellton Rd., Ltd. v. City of San Antonio by & through San Antonio Water Sys.*, No. 22-0481, 688 S.W.3d 105 (Tex. Apr. 12, 2024).**

A property developer, which owned 585 acres within city's extra-territorial jurisdiction, brought a breach of contract and declaratory judgment action against the city by and through the city's water utility, arising from utility's agreement with the developer that the utility would provide sewer service for proposed residential developments on the developer's property. The trial court denied the city's plea to the jurisdiction and motion to dismiss for lack of subject matter jurisdiction. On appeal, the San Antonio Court of Appeals reversed and remanded, finding Chapter 271 of the Local Government Code (Chapter 271) did not apply to waive the city's immunity. The developer filed a petition for review.

The Supreme Court reversed and remanded, finding that the following supported waiver of the city's sovereign immunity under Chapter 271: (1) the developer sufficiently pleaded that a written, bilateral contract was formed; (2) the developer sufficiently pleaded that a written, unilateral contract was formed; (3) the contract terms contemplated that the utility had a right to the developer's participation in the project upon contract signing, as would support waiver of city's sovereign immunity under the Chapter 271; (4) the contract terms contemplated provision of payment to the developer; and (5) the developer sufficiently pleaded that the contract contemplated provision of services to the utility, as required to trigger waiver of sovereign immunity.

***Quadvest, L.P. v. San Jacinto River Auth.*, No. 09-23-00167-CV, 2024 WL 2064487 (Tex. App.—Beaumont May 9, 2024) (mem. op.).**

The San Jacinto River Authority (SJRA) and Quadvest, L.P. and Woodland Oaks Utility, L.P., (the Utilities) entered into a series of contracts which were used by SJRA to secure payment of seven bond issuances. The contracts were based on a water conservation plan that was later declared void in court, and the Utilities then stopped making payments under the contracts. SJRA sued the Utilities, and the Utilities asserted several affirmative defenses, including that the contract failed for lack of consideration. SJRA filed a motion for partial summary judgment, claiming that the Utilities' affirmative defenses could not be raised because three statutes in the Government Code and the Water Code made the contracts incontestable after they had been approved by the Attorney General and Comptroller of Public Accounts. The trial court granted SJRA's motion for partial summary judgment and the Utilities appealed.

The appellate court affirmed, holding that: (1) Sections 1202.006(a) and 1371.059(a), Government Code, and Section 49.184(e), Water Code, operated to prevent the Utilities' affirmative defenses contesting the contract because those statutes provided that a contract to secure the payment of bonds that has been approved by the Attorney General is incontestable; and (2) the Utilities had not reserved those affirmative defenses in the contract.

***Edland v. Town of Cross Roads*, No. 02-23-00416-CV, 2024 WL 2854878 (Tex. App.—Fort Worth June 6, 2024) (mem. op.).**

James Edland was the former police chief of the Northeast Police Department (NEPD), which was created by agreement between Town of Cross Roads and the City of Krugerville. After NEPD was dissolved, Edland became police chief of Krugerville and sued the town for breach of contract,

alleging that he was entitled to severance pay. The contract was signed by Edland and Mike Starr as the chair of the NEPD Commission; it was not signed by either the town or the city. Cross Roads filed a plea to the jurisdiction and a motion for summary judgement. Edland filed a motion for partial summary judgement. The trial court denied Edland's motion and granted the town's motion.

The court of appeals affirmed, finding that Starr did not have the authority to bind Cross Roads and Cross Roads did not, by written resolution or ordinance adopted by its council, agree to the obligations set out in the contract.

***City of San Antonio v. Spectrum Gulf Coast, LLC*, No. 13-23-00342-CV, 2024 WL 3199166 (Tex. App.—Corpus Christi–Edinburg June 27, 2024) (mem. op.).**
Spectrum sued the City of San Antonio's utility, CPS Energy, for breach of a 2005 contract that governed the fees Spectrum paid to CPS Energy for the use of its utility poles. Section 54.204(c), Utilities Code, was enacted in the intervening years while the contract was in force. That statute prohibited a city from charging any utility company a higher price than any other company. Spectrum contended that because CPS Energy charged AT&T a lower fee for the use of its utility poles, it had breached the contract provision requiring compliance with all applicable laws. The trial court granted partial summary judgment in favor of Spectrum, and CPS Energy appealed.

The appellate court reversed and remanded, holding that by the contract's language, the contract had continued in effect rather than renewing from year to year. Therefore, the applicable statutes were the ones in effect at the time the contract was initially executed, and the constitutional prohibition on statutory impairment of contract operated to prevent the intervening passage of Section 54.204(c), Utilities Code, from affecting the contract's terms.

***City of Pharr v. Garcia*, No. 13-23-00120-CV, 2024 WL 3370666 (Tex. App.—Corpus Christi–Edinburg July 11, 2024) (mem. op.).**
Garcia sued the City of Pharr for breach of written and oral contracts, alleging the city had failed to pay for services rendered by Garcia in association with a Toby Keith concert. The city filed a plea to the jurisdiction, claiming that concerts are a governmental function rather than proprietary, and that Garcia's claims did not fall under Chapter 271's waiver of immunity for contract claims because the claims relied in part on alleged oral contracts. The trial court denied the plea and the city appealed.

The appellate court reversed, holding that: (1) concerts are a governmental function for the purposes of Garcia's claims against the city; and (2) because an oral contract is not included in the definition of contract under Chapter 271, there was no applicable waiver of the city's governmental immunity.

***Graham Constr. Services, Inc. v. City of Corpus Christi*, No. 13-22-00536-CV, 2024 WL 4707819 (Tex. App.—Corpus Christi–Edinburg Nov. 7, 2024) (mem. op.).**
Graham Construction Services (Graham) and the City of Corpus Christi sued each other after various disputes arose when the city hired Graham to construct a new wastewater treatment plant. After Graham claimed completion of the first phase of the two-phase project, the city refused to issue a certificate of substantial completion, claiming the first phase had not been completed. Graham vacated the project site without performing the second phase. Graham sued the city for breach of contract and the city counterclaimed for breach of contract. The trial court awarded damages to both parties, which were offset, resulting in Graham owing the city $1.29 million. The trial court also awarded attorney's fees to both parties, which were wholly offset. Graham appealed, claiming that

the trial court erred in its award of damages to the city for failure to complete the second phase of the project because the certificate of substantial completion was a condition precedent to Graham's obligations in the second phase, and that the city breached the contract first, excusing Graham's obligations. Graham also claimed that the trial court's award failed to fairly compensate it for city-related delays. The city cross-appealed, contending that the trial court erred by failing to award the city liquidated damages under the contract, by awarding Graham damages related to delays out of the city's control, and by awarding Graham attorney's fees.

The appellate court affirmed in part and reversed in part, holding that: (1) Graham was not excused from its obligations under the contract because the issuance of the certificate of completion of the first phase was not a condition precedent to the performance of the second phase of the project and the city had not breached the contract; (2) the city was entitled to liquidated damages under the contract; (3) Graham had not shown with evidence as a matter of law that the trial court's damages award did not fairly compensate it for city-related delays; (4) because a provision in the contract provided that Graham was not entitled to damages arising from delays outside the city's control, the trial court had erred by awarding those damages; and (5) affirmed the trial court's award of attorney's fees to Graham.

***Nelson v. City of Lubbock*, No. 07-23-00209-CV, 2025 WL 1230467 (Tex. App.—Amarillo Apr. 28, 2025) (mem. op.).**

Jeremy Scot Nelson sued the City of Lubbock for negligence after a city garbage truck, operated by Gavin Martinez, ran over his legs while he was lying next to a dumpster in a public alley on February 24, 2020. Nelson alleged that Martinez was negligent for failing to stop the truck before running over debris that concealed him and that the City was negligent in hiring and supervising its employees. The city filed a motion for summary judgment, a no-evidence motion for summary judgment, and a plea to the jurisdiction, arguing it retained immunity from suit as it owed no legal duty to Nelson. The trial court granted all three motions, leading Nelson to appeal.

On appeal, the Court affirmed the trial court's decision, concluding that the City of Lubbock owed no legal duty to Nelson. The court analyzed whether a duty existed for drivers to inspect alley debris for concealed persons and found no such duty under common law, considering factors like risk, foreseeability, and social utility. Consequently, the court determined that the trial court correctly dismissed Nelson's claims due to lack of subject matter jurisdiction.

***City of Houston v. Johnson*, No. 01-23-00938-CV, 2025 WL 1033754 (Tex. App.—Houston [1st Dist.] Apr. 8, 2025) (mem. op.).**

Mary Johnson sued the City of Houston for negligence after a tree limb fell from a city-operated heavy trash truck and struck her car, causing personal injury and property damage. Johnson claimed that the Texas Tort Claims Act (TTCA) Section 101.021(1) waived the city's governmental immunity because her damages arose from the operation or use of a motor-driven vehicle. The city filed a motion to dismiss under Texas Rule of Civil Procedure 91a, arguing that Johnson's claims did not fall within this immunity waiver. The trial court denied the city's motion, and the city appealed.

At the appellate court, the city contended that Johnson failed to plead sufficient facts to establish a waiver of immunity under section 101.021(1). The court reviewed the case de novo and affirmed the trial court's decision, concluding that Johnson's allegations were sufficient to establish that her damages arose from the operation and use of a motor-driven vehicle due to a government employee's

negligence. The court also noted that the city did not specify any TTCA exceptions that Johnson's allegations plausibly implicated, so she was not required to negate them.

***City of Killeen–Killeen Police Dep't. v. Terry*, No. 22-0186, 2025 WL 1196743 (Tex. Apr. 25, 2025) (per curiam).**

Aamir Terry sued the City of Killeen's police department after a police cruiser, responding to a 9-1-1 call, struck his vehicle. The court of appeals initially affirmed the trial court's denial of the city's plea to jurisdiction, applying a rule that governmental entities are immune from suits unless the operator acted recklessly. However, the Supreme Court of Texas clarified in City of Austin v. Powell that the emergency exception to the Tort Claims Act requires a two-step inquiry: first, determining if any laws or ordinances apply to the emergency action, and second, assessing recklessness only if no laws or ordinances apply. The court of appeals failed to consider whether the officer complied with applicable laws, such as Section 546.001 of the Transportation Code, before addressing recklessness. Additionally, the case involves Section 101.062, which pertains to 9-1-1 emergency services and does not include a recklessness prong, potentially affecting the immunity waiver. The Supreme Court vacated the court of appeals' judgment and remanded the case for further proceedings in light of these considerations.

***City of Ranger v. Ranger Airfield Maint. Found.*, No. 11-23-00204-CV, 2025 WL 994022 (Tex. App. Apr. 3, 2025).**

The case involves a dispute between the City of Ranger and the Ranger Airfield Maintenance Foundation concerning a lease agreement and its amendment related to the operation and maintenance of Ranger Airfield. The Foundation sued the city for breach of contract, anticipatory breach of contract, specific performance, and declaratory judgment under the Texas Uniform Declaratory Judgments Act (UDJA), alleging the city's failure to convey property and refusal to permit third-party construction of hangars. The city argued that the lease and its amendment pertained to governmental functions, thus not waiving its immunity, and that the contract lacked essential terms, was not for goods or services, and was not properly executed. The city filed a plea to the jurisdiction based on governmental immunity, which the trial court denied.

***City of Houston v. Chourng*, No. 14-24-00251-CV, 2025 WL 1187191 (Tex. App.—Houston [14th Dist.] Apr. 24, 2025) (mem. op.).**

Sokmen Chourng sued the City of Houston following a collision on U.S. Highway 59 with an ambulance driven by a city employee transporting a stabbing victim. Chourng alleged negligence under the Texas Tort Claims Act (TTCA), claiming the city's employee failed to safely pass his vehicle, causing the collision. The city sought dismissal, arguing it retained governmental immunity under the TTCA's emergency response and 9-1-1 emergency services exceptions. The trial court denied the City's plea to the jurisdiction and no-evidence motion for summary judgment.

<u>IMMUNITY</u>

***P'ship v. AHFC Pecan Park PSH Non-Profit Corp.*, No. 07-23-00362-CV, 2024 WL 1185132 (Tex. App.—Amarillo Mar. 19, 2024) (mem. op.).**

The city, in partnership with a nonprofit, planned to put in housing for the homeless in a hotel. The Chaudhari Partnership (the "Partnership") and the county attorney sued in separate actions. Once the Partnership learned that the county attorney filed a separate lawsuit, the Partnership intervened

and nonsuited the action it initiated with prejudice. The city filed a plea to the jurisdiction, which the trial court granted. Only the Partnership appealed.

On appeal, the court found that: (1) the Partnership failed to address the ground implicating that the Partnership had failed to state a cause of action against the city in its cause of action; and (2) the provision of public housing is a governmental function. The appellate court affirmed the trial court's dismissal with prejudice.

***City of Dallas v. Ahrens*, No. 10-23-00315-CV, 2024 WL 1573388 (Tex. App.—Waco Apr. 11, 2024 (mem. op.).**

Following a sniper shooting that resulted in the death of five Dallas police officers, the city contracted with a charitable organization, Assist the Officer Foundation (ATO), to process and distribute mail, including checks and cash, received by the city for the benefit of the families of the officers who were killed. Believing that ATO mishandled the funds, and because ATO refused to release cash they claim to be legally entitled to, Katrina Ahrens and her children sued ATO, the city and others seeking damages in connection with the city's handling of donations sent to the city after her husband's line of duty death.

In its plea to the jurisdiction, the city contended that it was immune from suit arising out of its governmental functions. The city specifically asserted that the complained-of activities, its handling of mail sent to the city, fell within the governmental function of police protection and control. The trial court denied the plea, and the city appealed. The appellate court affirmed the trial court's order, finding when the city entered into an agreement with ATO it engaged in a proprietary function.

***Bellamy v. Allegiance Benefit Plan Mgmt., Inc.*, No. 11-23-00105-CV, 2024 WL 3528535 (Tex. App.—Eastland July 25, 2024).**

Amanda Bellamy sued the city of Midland and Allegiance Benefit Plan Management Inc., the city's "plan supervisor," after her initial medical claim and subsequent appeals for coverage under the city's self-funded insurance plan were denied. Both the city and Allegiance filed a plea to the jurisdiction based on governmental immunity, and in its initial order, the trial court granted the city's plea but denied Allegiance's plea. After filing a motion for reconsideration, Allegiance's plea was granted, and Bellamy appealed. Bellamy argued, among other things, that: (1) because Allegiance did not submit its motion for reconsideration within 30 days of the trial court's initial denial, the trial court abused its discretion by reconsidering and later granting Allegiance's plea; and (2) because Allegiance was not the city's "plan administrator" it was not entitled to governmental immunity.

The court of appeals affirmed the trial court holding that state law contains no such requirement that a motion for reconsideration be filed within 30 days of a trial court signing an interlocutory order. It further held that the trial court did not abuse its discretion by reconsidering its interlocutory order denying Allegiance's plea to the jurisdiction as it retained the plenary power to do so until the judgment became final. The court also concluded that the record sufficiently showed Allegiance served as a third-party administrator of the city's plan entitling it to derivative governmental immunity.

***City of Waco v. Page*, No. 10-24-00039-CV, 2024 WL 4562815 (Tex. App.—Waco Oct. 24, 2024) (mem. op.).**

Page and Matthew Vasquez sued the City of Waco when a Waco police officer who was responding to a 9-1-1 call of a home invasion in progress shot and killed their dog, Finn. The officer unknowingly arrived at the wrong address when the city's GPS system gave the officer the wrong address for the home invasion and approached the back door of residence with his weapon drawn. The officer shot and killed Finn when five or six dogs charged out of the door, and Finn rushed toward the officer as he backed up, forcing him to retreat into a fenced side yard when Finn continued to lunge and bark at the officer. The city filed a plea to the jurisdiction, which was denied after a hearing.

The appellate court found that the Vasquez's constitutional claim – deprivation of property – does not waive the city's immunity because they did not plead or establish an independent constitutional waiver of immunity. Additionally, because the Vasquezes did not allege any facts that Finn's death was proximately caused by the city's operation or use of a motor-driven vehicle or motor-driven equipment, they did not pled facts establishing a valid waiver of immunity. Accordingly, the court reversed the trial court's decision.

LAND USE

***City of Highland Vill. v. Deines*, No. 02-24-00431-CV, 2025 WL 494695 (Tex. App.—Fort Worth Feb. 13, 2025) (mem. op.).**

This case arises from flood damage to the home of Deines and Palumbo (Homeowners). During the month prior to the flood, the city had used skid-steer-type vehicles to place rocks near the Homeowners' property. On the day of the flood, the city delivered skid-steer-type equipment to the area adjacent to the Homeowners' home so that the city could begin its Sewer Line Stabilization Project. That evening, over three inches of rain fell, and the Homeowners' home flooded.

The Homeowners sued the city, alleging a claim under the Texas Tort Claims Act and, in the alternative, a claim for inverse condemnation. The city answered, asserting a general denial and the affirmative defense of governmental immunity, and later filed a plea to the jurisdiction, arguing (1) that its immunity was not waived because it did not use motor-driven equipment and (2) that the Homeowners had failed to properly plead an inverse-condemnation claim. After additional filings by the parties and a hearing, the trial court denied the plea.

The appellate court reversed the trial court's denial of the city's plea to the jurisdiction and remanded the case to the trial court to provide the Homeowners with an opportunity to replead.

***City of Dallas v. Dallas Short-Term Rental All.*, No. 05-23-01309-CV, 2025 WL 428514 (Tex. App. Feb. 7, 2025) (mem. op.).**

In 2023, the City of Dallas adopted two ordinances regulating short-term rentals. The first ordinance banned short-term rentals in single-family residential zones, and the second established a permit process for other areas. Shortly thereafter, the Dallas Short-Term Rental Alliance (DSTRA) and several individuals sued the city, claiming the ordinances were unconstitutional and seeking injunctive relief. The trial court granted DSTRA's request for a temporary injunction, preventing the city from enforcing the ordinances, and the city appealed. In affirming the lower court, the court of appeals held that DSTRA met their burden to establish a probable right of recovery under their due-course-of-law argument by showing: (1) they possessed well-established rights to lease their property; (2) the city

would deny them those rights by enforcing the two ordinances within six months; and (3) DSTRA would suffer probable, imminent, and irreparable injury without injunctive relief.

***Litinas v. City of Houston*, No. 14-23-00746-CV, 2024 WL 4982561 (Tex. App.—Houston [14th Dist.] Dec. 5, 2024).**

Nicholas Litinas, owner of a flower shop in the City of Houston, filed an inverse condemnation claim against the city and another local redevelopment authority. He alleged that modifications they were planning, including curbing and driveway reductions, would eliminate the head-in parking spaces essential to his business, damaging the market value of his property. The city filed a plea to the jurisdiction, arguing that the planned modifications were entirely within the city's right-of-way and did not materially impair access to Litinas's property. The trial court granted the plea, dismissing the case for lack of jurisdiction, and Litinas appealed.

Governmental immunity from suit can be waived if a taking, damaging, or destruction of property is established. Additionally, if access is materially and substantially impaired, it can constitute a compensable taking. In this case, while alternative access points and parking spots would remain after the project, the remaining access is incompatible with the property's specific use as a flower shop, which is reliant on convenient, head-in parking, which was completely eliminated by the project. Ultimately the appellate court reversed and remanded the trial court's decision, holding that Litinas presented sufficient evidence of material and substantial impairment of access to survive the city's plea to the jurisdiction.

***San Jacinto River Auth. v. Medina*, No. 01-23-00013-CV, 2024 WL 4885853 (Tex. App.—Houston [1st Dist.] Nov. 26, 2024) (mem. op.).**

Several dozen homeowners (the homeowners) sued the San Jacinto River Authority (the authority) alleging a constitutional taking of their properties after the authority released water from Lake Conroe following Hurricane Harvey in a manner that caused flooding and damage to their properties. The authority filed a plea to the jurisdiction based on governmental immunity, which the trial court denied. The authority appealed.

The appellate court reversed and rendered judgment, holding that the homeowners had not produced evidence sufficient to raise a fact issue as to whether the authority's water releases were a substantial factor in causing the flood damage on their properties.

***Maciejack v. City of Oak Point*, No. 02-23-00248-CV, 2024 WL 3195851 (Tex. App.—Fort Worth June 27, 2024) (mem. op.).**

This case stems from a dispute between the Maciejacks and the City of Oak Point, and Winston Services, Inc. over permits that the Maciejacks had sought from the city to build a fence and pool on their property. The Maciejacks sued the city and Winston Services, and the city countersued for remedies related to alleged violations of city ordinances. After a bench trial, the trial court entered judgment for the city and Winston Services, and awarded the city trial and conditional attorney's fees. On appeal, the Maciejacks raise five issues related to findings on their equitable-estoppel affirmative defense, findings that they had received proper notice of ordinance violations, and the attorney's-fees award.

The appellate court reversed and remanded the award of conditional attorney's fees. The court affirmed the rest of the trial court's judgement, finding that equitable estoppel was inapplicable to the city.

***TCHDallas2, LLC v. Espinoza*, No. 05-22-01278-CV, 2024 WL 3948322 (Tex. App.—Dallas Aug. 27, 2024) (mem. op).**

In 2020, the city's building official issued TCHDallas2 (TCH) a certificate of occupancy (CO) for commercial amusement use. Later in 2022, an assistant building official revoked TCH's CO after determining it had been issued in error as TCH, according to its original land use statement, had been operating a gambling establishment in violation of Texas Penal Code Section 47.04. TCH appealed the revocation to the city's Board of Adjustment (BOA), and the BOA subsequently reversed the building official's decision and reinstated TCH's CO. In its decision, the BOA presumed TCH's use of its property was legal as its operations may have fallen within the "safe harbor" provision of Section 47.04(b). Further, TCH had worked with the city attorney and city council for two years to obtain the CO and had not been prosecuted by the district attorney or found by a court to have been operating illegally.

Shortly thereafter, the city appealed the BOA's decision to the trial court. In reversing the BOA's decision, the trial court found that based on evidence presented at trial the BOA had abused its discretion by reversing the building official's revocation as she was obligated to revoke the CO because TCH had been operating an illegal gambling establishment. TCH appealed, and the court of appeals held that the trial court had impermissibly substituted its own discretion in place of the BOA's. Because the BOA could have reasonably reached more than one decision in the case, the trial court was required to give deference to the BOA's decision. As such, the court reversed the trial court's judgment and affirmed the BOA's reinstatement of TCH's CO.

***City of McLendon-Chisholm v. City of Heath, et al.*, No. 05-23-00881-CV, 2024 WL 4824113 (Tex. App.—Dallas Nov. 19, 2024) (mem. op.).**

This case stems from a development agreement between the City of McLendon-Chisholm and MC Trilogy Texas, LLC, which provided for the development of land within the city limits and extraterritorial jurisdiction (ETJ) bordering the City of Heath. The agreement allowed for minimum lot sizes incompatible with McLendon-Chisolm's 2015 Comprehensive Plan. Heath claimed the drastic change in the residential density requirements near its border with McLendon-Chisholm would cause it substantial harm as it would create a 358% increase in traffic on its roads, require additional public safety personnel, decrease its property values and tax revenues, and disrupt its future development plans. Heath sued the McLendon-Chisolm seeking declaratory and injunctive relief and additionally claimed the city violated the Texas Open Meetings Act (TOMA) in 11 specific instances. In response, McLendon-Chisolm filed a plea to the jurisdiction on the basis that Heath lacked standing. While the trial court granted McLendon-Chisolm's plea to the jurisdiction stating that Heath lacked standing to sue over "issues, ordinances, regulations, and agreements pertaining to development, land use, zoning, governance, and related matters involving land within the city limits and ETJ," the court denied the plea with regard to Heath's standing to bring TOMA claims. In reversing the lower court in part, the court of appeals concluded that because Heath presented sufficient evidence of concrete and particularized, actual and imminent injuries traceable to McLendon-Chisolm's agreement with Trilogy which could be redressed by a favorable ruling, Heath met its burden to show it has standing. As for Heath's standing as it relates to the TOMA claims, the

court of appeals affirmed the lower court's ruling that Heath sufficiently alleged standing to support a showing that it is an "interested person" as required under the TOMA.

***City of Bee Cave v. Citizens for Pres. of Brown Prop.*, No. 13-24-00092-CV, 2025 WL 996429 (Tex. App.—Corpus Christi–Edinburg Apr. 3, 2025) (mem. op.).**

The case involves the City of Bee Cave appealing the trial court's denial of its plea to the jurisdiction against the Citizens for the Preservation of the Brown Property (Citizens). The city purchased the 45-acre Brown property in 2017, designating it for "municipal purposes." Citizens sued the city, alleging violations of Chapter 26 of the Texas Parks and Wildlife Code (TPWC), claiming the city council committed to preserving the property as open space but later voted to cede part of it for a road project without following Chapter 26's notice and hearing requirements. The city argued that the property was not designated as a park and thus not subject to Chapter 26, and that it had complied with Chapter 26 requirements, rendering Citizens' claims moot.

The trial court denied the city's plea to the jurisdiction and the city appealed. The appellate court reviewed the trial court's decision de novo, focusing on whether the city had designated and used the Brown property as a park or recreation area, which is necessary for Chapter 26 to apply. The court found that the city had not used the property as a park or recreation area, as evidenced by affidavits and studies showing the property was undeveloped and not listed as a park. Citizens failed to provide evidence of prior use as a park, and the court concluded that Chapter 26 did not apply. Consequently, the appellate court reversed the trial court's judgment and rendered judgment dismissing the Citizens' suit for lack of jurisdiction.

MUNICIPAL COURT

***Jaramillo v. City of Odessa Animal Control*, No. 11-23-00117-CV, 2024 WL 3362927 (Tex. App.—Eastland July 11, 2024) (mem. op.).**

In 2022, City of Odessa animal control officers took custody of Allie Jaramillo's dogs after they attacked several teenage minors. The city subsequently requested a hearing in municipal court for a determination of the dogs' dangerousness. At the hearing, the court ordered Jaramillo to comply with the dangerous dog requirements under Texas Health and Safety Code Section 822.042 before the dogs could be returned to her. After more than 30 days, the municipal court held a second hearing and determined that Jaramillo had failed to comply with the applicable requirements and ordered the dogs to be euthanized pursuant to Section 822.042(e). Jaramillo appealed to the county court at law, but the court affirmed the municipal court's findings. Jaramillo further appealed arguing, among other things, that: (1) the municipal court lacked subject-matter jurisdiction to hear and decide the case; (2) her constitutional right to due process was violated where city animal control officers did not inform her that her dogs were considered dangerous dogs under Section 822.042(g)(3) and she did not receive notice of the hearing to determine whether her dogs would be euthanized; and (3) the municipal court erred in determining all of the dogs were dangerous under Section 822.041 because only one of the dogs was alleged to have bitten the minor-victims.

The court of appeals, overruling all of Jaramillo's issues, first pointed out that a municipal court's authority over the matter could be found in Section 822.042(c) and (g)(2). Second, the court noted that Section 822.042(g) only requires that the owner be notified in one of the three ways, and

Jaramillo learned she was the owner of a dangerous dog when she learned of the attack and signed owner-surrender forms applicable to when dogs make unprovoked attacks. Therefore, Jaramillo's due process rights were not violated as the record also indicated she had in fact received notice of the hearings. Lastly, the court of appeals held that neither the municipal court nor the county court at law had erred in determining Jaramillo's were dangerous under the applicable statute because the minor-victims were attacked and reasonably believed they would suffer harm or bodily injury from all the dogs.

ORDINANCES

***City of Killeen v. Bell Cnty.*, No. 03-23-00316-CV, 2025 WL 1118583 (Tex. App. Apr. 16, 2025) (mem. op.).**

The City of Killeen and Ground Game Texas appealed the trial court's denial of their pleas to the jurisdiction in a lawsuit filed by Bell County, the 27th Judicial District Attorney's Office, and Bell County Attorney's Office. The lawsuit challenged the constitutionality and validity of Killeen's ordinance decriminalizing misdemeanor marijuana possession, which was adopted following voter approval in 2022. Bell County argued that the ordinance was preempted by state law, including Texas Local Government Code Section 370.003 and Texas Health & Safety Code Section 481.121, and that it interfered with the prosecutorial discretion of the DA's Office. The city and Ground Game contended that Bell County lacked standing, failed to establish a waiver of governmental immunity, and had a defective jurat and verification of their petition.

The court of appeals, in affirming the trial court's order denying the pleas to the jurisdiction, concluded that the DA's office had standing because the ordinance interfered with its prosecutorial discretion, a legally protected interest. The court also determined that the Uniform Declaratory Judgments Act (UDJA) waived the city's governmental immunity for claims challenging the validity of the ordinance, including claims for injunctive relief. Additionally, the court found that the issue of capacity did not affect subject-matter jurisdiction and that the alleged defective jurat did not deprive the trial court of jurisdiction.

PREEMPTION

***State v. City of San Marcos*, No. 15-24-00084-CV, 2025 WL 1142065 (Tex. App. [15th Dist.] Apr. 17, 2025).**

The City of San Marcos passed an ordinance prohibiting police officers from issuing citations or making arrests for certain low-level marijuana offenses, which the State of Texas argued was preempted by state law. The state sued the city and its officials under the Uniform Declaratory Judgment Act (UDJA) for a declaration that state law preempts the ordinance and sought injunctive relief. The trial court dismissed the state's suit for lack of jurisdiction and denied the state's request for a temporary injunction. On appeal, the state argued that the trial court erred in dismissing its UDJA claim and in denying the temporary injunction. The appellate court held that the city, except for the city manager, was not immune from the state's declaratory judgment action and that the trial court abused its discretion in denying some of the relief sought in the state's request for a temporary injunction. The court found that the ordinance conflicted with Section 370.003 of the Texas Local Government Code, which prohibits municipalities from adopting policies that prevent the full enforcement of drugs laws. Consequently, the state had a probable right to relief on its preemption

claim, and the ordinance was preempted by state law. The court reversed the trial court's order granting the plea to the jurisdiction, except for the claim against the city manager, and remanded the case for entry of a temporary injunction prohibiting enforcement of the ordinance pending a final trial on the merits. The court allowed the state an opportunity to replead its claims against the city manager to present evidence that she personally took action to prevent enforcement of state law.

***State v. City of Austin*, No. 15-24-00077-CV, 2025 WL 1200903 (Tex. App. [15th Dist.] Apr. 24, 2025).**

The State of Texas sued the City of Austin and its officials, challenging a local ordinance, approved by Austin voters and the city council, that prohibits law enforcement from making citations or arrests for low-level marijuana possession misdemeanors, except in specific circumstances. The state argued that the ordinance is preempted by Section 370.003 of the Texas Government Code, which prohibits municipalities from adopting policies that do not fully enforce drugs laws. The trial court granted the city's plea to the jurisdiction and denied the state's request for a temporary injunction, leading to this appeal.

On appeal, the state contended that the trial court erred in granting the plea to the jurisdiction and in denying the temporary injunction. The appellate court agreed, finding that the ordinance is preempted by state law, as it creates a barrier to the full enforcement of drugs laws, as stated above. The court held that the Uniform Declaratory Judgment Act waives the city's immunity from the state's declaratory judgment action. The court also found that the state's ultra vires claims against city officials were improperly dismissed, as the officials acted without legal authority by adopting the ordinance.

The court rejected the city's argument that the state lacked standing, clarifying that the state is not seeking to compel more arrests but is challenging the ordinance's validity. The appellate court concluded that the state established a probable right to relief and an irreparable injury, which justifies a temporary injunction. The court reversed the trial court's judgment and remanded the case for proceedings consistent with its opinion, including entering a temporary injunction prohibiting enforcement of the ordinance.

PUBLIC INFORMATION ACT

***City of Houston v. Estrada*, No. 14-23-00035-CV, 2025 WL 1225845 (Tex. App.—Houston [14th Dist.] Apr. 29, 2025).**

In 1998, Larry Edgar Estrada was convicted of capital murder and sentenced to death. Estrada, represented by Mayer Brown LLP, filed a mandamus suit under the Texas Public Information Act (TPIA) in 2004, seeking information from the City of Houston for his federal habeas petition. The city filed a plea to the jurisdiction, arguing that Estrada, being incarcerated, was not a "requestor" under the TPIA, and thus the trial court lacked subject-matter jurisdiction. Mayer Brown argued that it, too was a "requestor" for purposes of the TPIA. The trial court granted the city's plea, dismissing Estrada's claims, but the court denied a similar plea regarding Mayer Brown's claims. Mayer Brown was awarded attorney's fees by the trial court, which the city appealed, arguing that Mayer Brown did not "incur" fees as required by the TPIA.

The appellate court found the evidence legally insufficient to support the award of attorney's fees to Mayer Brown, as Mayer Brown did not charge itself fees and, therefore, had not incurred any as required by the TPIA. The court also held that the grounds for the city's jurisdictional plea were non-

jurisdictional, reversing the trial court's dismissal of Estrada's claims and remanding for further proceedings. The appellate court's decision highlights the requirement that attorney's fees must be "incurred" to be recoverable under the TPIA, impacting cases involving pro bono or in-house counsel.

TAKINGS

Commons of Lake Houston, Ltd. v. City of Houston, No. 23-0474, 2025 WL 876710 (Tex. Mar. 21, 2025).

A developer of a master-planned community in the floodplain brought an inverse condemnation action against the city, alleging that the city's amendment of its floodplain ordinance following a historic hurricane, to require residences to be built at least two feet above the 500-year floodplain, was a regulatory taking under the Texas Constitution.

The trial court denied the city's plea to the jurisdiction, but the court of appeals reversed and dismissed, holding that the developer cannot establish a valid takings claim because the city amended the ordinance as a valid exercise of its police power and to comply with a federal flood-insurance program. The developer petition for review.

The Supreme Court, reversed and remanded, holding that: (1) amendment of the ordinance as an exercise of the city's police power did not preclude a regulatory takings claim; (2) amendment of the ordinance to ensure compliance with the federal flood insurance program did not preclude a regulatory takings claim; (3) the regulatory takings claim was ripe for adjudication; and (4) the developer had standing to assert a regulatory takings claim.

***City of Kemah v. Crow*, No. 01-23-00417-CV, 2024 WL 3528440 (Tex. App.—Houston [1st Dist.] July 25, 2024) (mem. op.).**

Crow applied for a city building permit to build a barndominium and two cottages on her land for use as short-term rentals and as a residence for herself. The city issued the permit but then took a series of actions afterward to halt and delay construction, including requiring her to submit a drainage plan. Crow sued the city, claiming inverse condemnation because the city had made it impossible for her to use and enjoy her land. The city filed a plea to the jurisdiction, claiming the trial court had no jurisdiction because the city had not made a final determination denying Crow's drainage plan. The trial court denied the plea and the city appealed.

The appellate court affirmed, holding that: (1) Crow's pleading was sufficient to establish a facially valid takings claim because the pleading asserted that the city had issued a permit and then took a series of actions to prevent her from developing her property; and (2) Crow was not required to plead that the city had made a final determination with regard to the drainage plan.

***City of Buda v. N. M. Edificios, LLC*, No. 07-23-00427-CV, 2024 WL 3282100 (Tex. App.—Amarillo July 2, 2024) (mem. op.).**

The city entered into a drainage easement agreement with a developer where the city was to "construct, operate, maintain, replace, upgrade, and repair" drainage improvements that convey surface water from the subject property and other nearby properties. The developer then sold the property to another developer. The second developer submitted updated plans for the property and the city instructed the developer to provide for additional drainage improvements before the application could proceed. The developer sued the city based on either an investment-backed or regulatory taking. The city filed a plea to the jurisdiction.

On appeal, the appellate court: (1) found the developer's claims were ripe; (2) rejected the city's arguments that the claim was really a contract dispute and not a taking; (3) rejected the city's challenges to the takings claims based on investment-backed expectations because regulatory takings claims may involve decisions by a governmental authority that do not directly implicate a regulation; and (4) found the statute of limitations for a takings claim is ten years so the claims could proceed.

***Bigelow Arizona TX-344, LP v. Town of Addison*, No. 05-23-00642-CV, 2025 WL 1018715 (Tex. App.—Dallas, Apr. 4, 2025) (mem. op.).**

In this case, Bigelow Arizona TX-344, LP (Bigelow) operated a hotel under the trade name Suites of America in the Town of Addison since 1998, primarily offering long-term rentals exceeding thirty days. In 2015, Addison amended its zoning code, and in 2019, it passed a hotel occupancy tax (HOT) ordinance, which limited the percentage of rooms that could be exempt from hotel occupancy tax based on long-term stays. Bigelow filed claims for inverse condemnation and declaratory judgment, arguing that the ordinance constituted a regulatory taking and violated due process. The trial court granted Addison's plea to the jurisdiction, and this appeal followed.

The appellate court affirmed the trial court's decision, concluding that Bigelow failed to establish a valid inverse condemnation claim as Addison's conduct did not constitute a "taking" under the Penn Central factors. The court of appeals also held that Bigelow's declaratory judgment claim was redundant, as it was subsumed within its compensatory takings claim. Additionally, the court held that the HOT ordinance was rationally related to Addison's legitimate interest in tax collection, dismissing Bigelow's due course of law claim.

TAXES

***Jones v. Whitmire*, No. 14-23-00550-CV, 2024 WL 1724448 (Tex. App.—Houston [14th Dist.] Apr. 23, 2024).**

The dispute centers on whether the City of Houston's City Council correctly allocated ad valorem tax revenues to the Dedicated Drainage and Street Renewal Fund (Drainage Fund) as mandated by the city's charter. Taxpayers James Robert Jones and Allen Watson contested that the city council underfunded the Drainage Fund by applying incorrect methodology to calculate the required allocation. The city disagreed, resulting in lengthy litigation. Houston's Charter requires an allocation to the Drainage Fund based on proceeds from $11.8 cents per $100 of the city's ad valorem tax levy, adjusted for debt service for certain bonds. The Taxpayers argued that the city council allocated significantly less than what was required, while the city council contended that their allocation methodology was aligned with the charter and influenced by another charter provision which limits growth in tax revenue collections (Revenue Cap). After the case was escalated to the Texas Supreme Court and remanded back, the trial court ruled in favor of the city. The Taxpayers appealed, disputing the council's methodology, arguing that it deviated from the charter's directives. The appellate court in this case sided with the Taxpayers, determining that the city's methodology of allocating funds to the Drainage Fund was incorrect. The court ruled that the full $11.8 cents per $100 of taxable property value should be allocated to the Drainage Fund before deducting debt service obligations, and without the application of the Revenue Cap to the allocation formula. The appellate court reversed the trial court's decision, instructed the city to follow the charter's explicit allocation formula, and enjoined the city from using an incorrect methodology. The Taxpayers' request for mandamus relief was denied as they obtained an adequate remedy by appeal.

***City of Castle Hills v. Robinson*, No. 04-22-00551-CV, 2024 WL 819619 (Tex. App.—San Antonio Feb. 28, 2024) (mem. op.).**
The appellate court previously issued a ruling in February 2024 but withdrew the ruling and substituted this one.

The city filed maintenance liens against the Robinson's property before she obtained ownership and eventually sued along with other taxing entities filed suit against Robinson to recover delinquent property taxes. Robinson counter-claimed against the city, claiming the city had failed to notify her and the previous owners of the code violations and maintenance liens and that her constitutional rights were violated by the failure to provide proper notice. The city filed a motion for summary judgment on the grounds that the trial court lacked jurisdiction over the counterclaims as well as non-jurisdictional grounds, which the trial court denied.

Affirming the denial of the city's motion, the appellate court interpreted the summary judgment motion on jurisdiction as a plea to the jurisdiction and addressed only those arguments. The court dismissed some of the city's arguments because the plaintiff did not make claims against which the city argued. The court determined the injunctive claims could proceed and that the city's statute of limitations argument failed because the evidence did not establish when Robinson's claims accrued.

On the federal constitutional claims, the court determined that the city did not support its argument that Robinson could not establish the claims as a matter of law with any citations to evidence in the record. As for the statute of limitations argument, the court determined that since the pleadings only contained federal claims, the statute of limitations was not a jurisdictional requirement.

***Bodine v. City of Vernon*, No. 07-24-00089-CV, 2024 WL 3879520 (Tex. App.—Amarillo Aug. 20, 2024) (mem. op.).**
The city and other governmental entities obtained a judgment to foreclose on a property to recover delinquent ad valorem taxes, naming the record owners, the heirs of the record owners, and other unknown persons who may have a claim of ownership to the property. Bodine filed a petition for a bill of review to vacate the judgment because she was not named as a defendant and had entered into an executory contract to purchase the property from the record owner's brother. The city filed a plea to the jurisdiction, which the trial court granted.

In affirming the plea to the jurisdiction, the appellate court found Bodine did not have standing because there was no evidence of any conveyance, deed, or other instrument transferring title to the property at any point before the sheriff's sale. The appellate court also found: (1) Bodine had no interest in the property so her due process rights were not violated; and (2) Bodine was not entitled to personal service of the suit.

<u>ULTRA VIRES ACT</u>
***Piney Point Homes, LLC v. Burgess*, No. 14-24-00137-CV, 2025 WL 1162711 (Tex. App.—Houston [14th Dist.] Apr. 22, 2025)(mem. op.).**
Piney Point Homes, LLC filed a lawsuit against District Clerk Marilyn Burgess after over $1 million from the court's registry was disbursed to an unauthorized account due to fraudulent wire instructions. The funds were intended for a settlement but were diverted to an account controlled by another entity and subsequently converted to cryptocurrency, leaving the intended recipient unpaid. Piney Point alleged that Burgess committed an ultra vires act by not following the trial court's

disbursement order, which specified a different account. Burgess filed a plea to the jurisdiction, claiming immunity, which the trial court granted, leading to Piney Point's appeal.

On appeal, the court examined the ultra vires claim, and determined that Burgess acted within her legal authority when she failed to follow the provided wiring instructions, as required by the court's order. Because Piney Point failed to prove that Burgess acted without legal authority or failed to perform a ministerial act, they failed to meet the criteria for an ultra vires action. Consequently, the appellate court affirmed the trial court's decision, upholding Burgess's plea to the jurisdiction.

UTILITIES

***McAllen Public Utility v. Brand*, No. 13-23-00020-CV, 2024 WL 4001814 (Tex. App.—Corpus Christi–Edinburg Aug. 30, 2024) (mem. op.).**

McAllen Public Utility (MPU) sued the board of the Hidalgo County Water Improvement District No. 3 (the district) for ultra vires actions after the district changed the rates it charged MPU for delivery of raw water from the Rio Grande. MPU claimed that the district had changed its rates in violation of Section 11.036, Water Code, which requires that a person that supplies conserved or stored water must follow certain rules about prices and terms. MPU also sought a declaration that the district violated S.B. 2185 (2021), legislation that requires the district to post certain information on its internet database. The district board members filed a plea to the jurisdiction and the trial court granted the plea. MPU appealed.

The appellate court affirmed, holding that: (1) Section 11.036 did not apply because water from the Rio Grande is not stored or conserved; and (2) MPU did not have standing to sue the district for violating S.B. 2185.

***Lost Pines Groundwater Conservation Dist., et. al., v. Lower Colorado River Auth.*, No. 03-23-00303-CV, 2024 WL 3207472 (Tex. App.—Austin June 28, 2024) (mem. op.).**

In 2018, the Lower Colorado River Authority (LCRA) applied for operating and transport permits from the Lost Pines Groundwater Conservation District (LPGCD). After a State Office of Administrative Hearings (SOAH) contested case hearing, LPGCD approved LCRA's permits with modifications in November 2021. Later that month, LCRA filed a motion for rehearing, and in May 2022, LPGCD issued an order adopting its final decision. LCRA then filed a second motion for rehearing, and while the motion was pending with LPGCD, also filed suit in district court. In response, LPGCD filed a plea to the jurisdiction based on governmental immunity, but the trial court denied the motion. At issue in this interlocutory appeal was whether LCRA timely filed its petition for judicial review within the deadline under Water Code Section 36.251 as the trial court's jurisdiction is only invoked if LCRA files its petition after all administrative appeals to LPGCD are final and if it files within 60 days after the date on which LPGCD's decision becomes final. LPGCD's decision becomes final when a motion for rehearing is denied or it is overruled by operation of law. LCRA, LPGCD, and intervenors (including the city of Elgin), disagreed on when LPGCD's order became final, and which statutory timeframe (either 91 days under Water Code Section 366.412(e) or 55 days under Sections 2001.144 and 2001.146(c) of the Administrative Procedure Act (APA) and Section 36.416(a) of the Water Code) applies when a decision is considered final by operation of law.

The court of appeals held that the 55-day deadline in Section 2001.146(c) applied because LPGCD had contracted with SOAH to conduct the contested case hearing, subjecting it to the APA provisions. Because LPGCD's November 2021 decision became final by operation of law under the

55-day deadline in January 2022 and LCRA did not file its lawsuit within 60 days of that date, it failed to comply with the statutory prerequisites for seeking judicial review. As such, the court of appeals reversed the lower court's order and dismissed LCRA's suit for lack of jurisdiction.

***Dahl v. Vill. of Surfside Beach*, No. 14-23-00218-CV, 2024 WL 3447472 (Tex. App.—Houston [14th Dist.] July 18, 2024) (mem. op.).**

Todd Dahl, Ted Dahl, and Tina Dahl sued the Village of Surfside Beach after being required to pay $4,000 for a water connection to a house they were constructing, which they claimed violated the city's ordinance mandating the city to cover costs for the first 100 feet of waterline extensions. After paying the money under protest, the Dahls sought reimbursement and a declaratory judgment, and the city asserted governmental immunity. The trial court dismissed the Dahls' claims with prejudice for lack of jurisdiction, and the Dahls appealed.

On appeal, the Dahls argued that the Texas Tort Claims Act (TTCA) waives the city's governmental immunity for claims related to water and sewer services and that the Uniform Declaratory Judgment Act (UDJA) likewise waives immunity from a suit to declare rights under a municipal ordinance. Unfortunately for the Dahls, the appellate court disagreed. The TTCA waives immunity only for tort claims involving property damage, personal injury, or death, none of which were claimed by the Dahls. Likewise, the UDJA waives immunity for actions that challenge the validity of an ordinance rather than its application. In this case, the Dahls challenged the city's application of the ordinance; therefore, the city's immunity was not waived. Ultimately, the appellate court determined that while the trial court correctly dismissed the claims, the Dahls should be given the opportunity to amend their pleadings. The trial court's order dismissing the case was reversed, and the case was remanded for further proceedings to allow such amendments.

***Rooney & Nacu v. City of Austin, Watson, Roalson, & Lucas*, No. 03-23-00053-CV, 2024 WL 4292040 (Tex. App.—Austin Sept. 26, 2024) (mem. op.).**

Michael Rooney sued the City of Austin and city officials seeking declaratory and injunctive relief after he was denied a certificate of occupancy for failing to connect to the city's water system. Rooney had previously been denied a waiver of the connection requirement as well as a building permit after requesting that the property be served by a water well he installed in 2017. Rooney claimed, among other things, that (1) the city's ordinance connection requirement did not apply to his property as it was not "a structure served by the city's water utility," (2) city officials engaged in ultra vires conduct in applying these requirements to his property and denying his request for a waiver, and (3) the connection requirement as applied to his property was unconstitutional. In response, the city filed a plea to the jurisdiction. Although the trial court denied the city's motion, a bench trial resulted in a ruling in favor of the city to which Rooney appealed.

The court of appeals affirmed the lower court concluding: (1) that because Rooney sought a declaration of his rights under the city's ordinance, rather than a declaration of its validity, the Unform Declaratory Judgment Act did not waive the city's governmental immunity, (2) the plain language of the ordinance indicated "a structure served by" meant a structure located within a certain proximity to the city's water system not a structure already "connected to" the system, (3) under this construction of the ordinance language, city officials did not act ultra vires in requiring Rooney to comply with the city's connection requirement; (4) city officials did not act ultra vires in denying Rooney's waiver of the connection requirement as the ordinance granted city officials the discretion

to grant an exemption; and (5) Rooney failed to show that the city's connection requirement was not rationally related to a legitimate governmental interest.

***Save Our Springs Alliance, Inc. v. Tex. Comm'n on Environ. Qual. and the City of Dripping Springs*, No. 23-0282 (Tex. Apr. 11, 2025).**

In this appeal from the El Paso Court of Appeals' upholding of the City's TCEQ wastewater discharge permit, the Supreme Court of Texas affirmed the court of appeals' decision holding that the TCEQ used the correct water quality analysis of its rules in granting the wastewater discharge permit under Texas Water Code Chapter 26.

The plaintiff sued TCEQ after it granted the City a wastewater discharge permit after an extended process including contested-case hearing and settlement process with other protestants. The plaintiff claimed that the TCEQ incorrectly interpreted its anti-degradation rules by looking at overall water quality and not a parameter-by-parameter review causing an arbitrary and erroneous agency decision. The City intervened in favor of upholding its permit. Both the City and TCEQ, and the Administrative Law Judge who upheld the permit in the contested case hearing, argued that the TCEQ was correct in its interpretation of the anti-degradation rules. The trial court held that the TCEQ violated its anti-degradation rules and enjoined the wastewater permit rather than remanding the permit back to the TCEQ to fix any alleged issues. The court of appeals reversed and upheld the permit and the plaintiff appealed.

To reverse the judgment of a state agency under the Administrative Procedure Act, a court has to show that the agency's decisions are erroneous as a matter of law, are not supported by substantial evidence, or is arbitrary or capricious. Tex. Gov't Code § 2001.141. Substantial evidence is not a matter of whether a court believes the agency's decision was correct or not, but whether there is a reasonable basis for its decision. Dyer v. TCEQ, 646 S.W.3d 498, 505 (Tex. 2022); Tex. Health Fac. Comm'n v. Charter Medical-Dallas, Inc., 665 S.W.2ssd 446 (Tex. 1984). The anti-degradation rules of TCEQ for review of a wastewater discharge permit defines degradation as "lowering of water quality" without mention of lowering of water quality parameters. The Supreme Court held that TCEQ had a reasonable basis for its reading of its rules as overall water quality instead of a parameter-by-parameter review and upheld the City's permit.

The Supreme Court affirmed the Court of Appeals decision upholding the permit's issuance.

WHISTLEBLOWER

***City of Denton v. Grim*, No. 22-1023, 694 S.W.3d 210 (Tex. May 3, 2024).**

Former city employees filed suit against the city under the Whistleblower Act (Act), based on allegations that they were terminated for having reported violations of law by a city council member who leaked confidential vendor information to a local newspaper reporter in the context of a story about a controversial plan for the construction of new power plant. The trial court denied the city's motions, and the Dallas Court of Appeals affirmed.

The Texas Supreme Court reversed, finding: (1) alleged violations by the city council member, who was not a public employee, of the Public Information Act and the Open Meetings Act, could not be imputed to city, and thus, the council member's violations of law were not violations of law by the city, as an employing governmental entity, within the meaning of the Act; (2) the council member was not acting as an agent for city when she allegedly violated the law, and thus, council member's

violations of law were not violations of law by the city, as an employing governmental entity; (3) whether a government official who had no authority to act on behalf of the government entity was acting in his or her individual or official capacity at the time of the violation of law had no bearing on the issue of whether the official's violation of law constituted a violation of law by employing government entity, within the meaning of the Act, and (4) the goal of the Act to encourage public employees' reports of violations of law that were detrimental to public good or society in general without fear of retribution had no bearing on whether a violation of law by a governmental official who had no authority to act on behalf of a governmental entity constituted a violation of law by an employing governmental entity, within the meaning of Act.

WORKERS COMPENSATION

***City of Stephenville v. Belew*, No. 11-22-00273-CV, 2024 WL 968970 (Tex. App.—Eastland Mar. 7, 2024).**

In 2014, Michael Belew, a firefighter and EMT for the City of Stephenville, passed away after developing pancreatic cancer. His spouse and legal beneficiaries (the Belews) applied for workers' compensation death benefits under the Texas Workers' Compensation Act (TWCA), asserting Michael's cancer originated from his service as a city firefighter. To apply for the death benefit, a claimant proceeds through a benefits review conference, a contested-case hearing, and an appeal, if applicable, through the Texas Department of Insurance's Division of Workers' Compensation (TDI-DWC). During the contested hearing stage of the proceedings, a TDI-DWC officer determined that Michael had sustained a qualifying injury in the form of an occupational disease during the course of his employment with the city. The hearing officer relied on the "Firefighter's Presumption" in Texas Government Code Chapter 607 which allows state governments to shift the burden of proving causation from a claimant to an employer. The officer also relied on a similar decision in which a firefighter suffered from pancreatic cancer and was determined to be eligible for workers' compensation benefits. After appealing the administrative decision, the TDI-DWC upheld the hearing officer's decision, and the city appealed to the district court.

The city argued that the presumption did not apply in Michael's case, because pancreatic cancer did not meet the requirements under Section 607.055. The district court ruled in favor of the Belews, and the city appealed to the court of appeals. At the time of Michael's death, the "Firefighter's Presumption" statute required a claimant to show that: "the cancer was known to be associated with fire fighting or exposure to heat, smoke, radiation, or a known or suspected carcinogen … or a type of cancer that may be caused by exposure to heat, smoke, radiation, or a known or suspected carcinogen as determined by the International Agency for Research on Cancer [IARC]."

After a thorough analysis of the statutory construction and plain meaning of the language, the court of appeals concluded that for the "Firefighter's Presumption" to apply, Section 607.055 required a claimant to show by exclusively relying on IARC materials and determinations, a general causal link between the cancerous condition originating from the course and scope of the person's employment and the specific exposures listed in the statute (heat, smoke, radiation, or a known suspected carcinogen). Ultimately, because the Belews failed to establish this causal link, providing no evidence of IARC determinations, the court held that Michael did not sustain a compensable injury under Texas Government Code Chapter 607. The court further held that the "Firefighter's Presumption" did not apply to the pancreatic cancer Michael developed. As a result, the court reversed the trial court's decision and rendered judgment in favor of the city.

ZONING

***Badger Tavern LP, 1676 Regal JV, and 1676 Regal Row v. City of Dallas*, No. 05-23-00496-CV, 2024 WL 1340397 (Tex. App.—Dallas Mar. 29, 2024) (mem. op.).**

This case stems from a certificate of occupancy issued to Badger Tavern, which operated a cabaret in Dallas called La Zona Rosa. In 2021, Badger Tavern applied to the City of Dallas for a certificate of occupancy record change to rename its business to La Zona Rosa dba Poker House of Dallas. During the approval process, there was some indication that Badger Tavern was changing its business operations from a cabaret to a private membership-based poker club. While the city issued the certificate of occupancy record change, it later sent Badger Tavern two notices that it was in violation of the city's ordinances by failing to obtain the proper certificate of occupancy before changing the use of the property. When Badger Tavern failed to cease operations as a poker club and apply for a new certificate of occupancy, the city sued Badger Tavern seeking injunctive relief.

After a hearing, the trial court granted the city's request, and Badger Tavern appealed. Badger Tavern argued that: (1) the trial court lacked jurisdiction because the city failed to first exhaust its administrative remedies by appealing to the city's Board of Adjustment (BOA); (2) the court erred in granting an injunction under Texas Local Government Code Sections 54.016 (applicable to municipal health and safety ordinances) and 54.018 (an action for repair or demolition of a structure) when the city did not request relief under Section 54.018; and (3) the city failed to present sufficient evidence of a "substantial danger of injury or adverse health impact" to support a temporary injunction under Section 54.016.

In affirming the lower court, the court of appeals concluded that because the city was not alleging an error in a zoning decision but instead was enforcing a zoning ordinance violation by Badger Tavern, it was not required to appeal to the BOA. As for the grounds for injunctive relief, the court held that although the city did not present evidence as required under Section 54.016, it also sought temporary and permanent injunctive relief under Texas Local Government Code Section 211.012(c) (zoning ordinance violations and remedies). Because the record reflected that Badger Tavern changed the use of its property without first obtaining the proper certificate of occupancy and failed to cease operations as such, the evidence was sufficient to support temporary injunctive relief under Section 211.012(c).

***Arlington v. City of Arlington*, No. 02-23-00288-CV, 2024 WL 2760415 (Tex. App.—Fort Worth May 30, 2024) (mem. op.).**

Liveable Arlington, Jade Cook, and Gibran Farah Esparza (collectively "plaintiffs") sued the City of Arlington; the Assistant Director of the Planning and Development Services Department; the Mayor; and City Council Members (collectively the "city") seeking injunctive, mandamus, and declaratory relief based upon the city council's approval of the establishment of a drilling zone and new gas-drilling permits on land known as the Fulson Drill Site. The plaintiffs further alleged that the council failed to provide proper notice of its actions. The city filed a plea to the jurisdiction alleging governmental immunity. The trial court granted the plea. The plaintiffs appealed.

The appellate court affirmed in part, finding that governmental immunity protected the city from claims they violated the Texas Constitution due-course-of-law provision, Section 253.005 of the Local Government Code or a city ordinance. But the court reversed and remanded, finding that the

plaintiffs' claim under the Open Meetings Act survives the city's plea. The court also affirmed the trial court's order denying the application for temporary injunction.

MISCELLANEOUS

***Albertson Companies, Inc. v. Cnty. of Dallas*, No. 14-23-00279-CV, 2024 WL 2279191 (Tex. App.—Houston [14th Dist.] May 21, 2024).**

Dallas and Bexar counties sued various pharmaceutical manufacturers, distributors, and pharmacies, alleging negligence in dispensing opioids and ignoring red flags of abuse and diversion. The pharmacies moved to dismiss the suits under the Texas Medical Liability Act (TMLA), arguing that the counties failed to serve expert reports within 120 days as required by the TMLA. The pharmacies' motions to dismiss hinged on whether a county is a "person" for purposes of the TMLA. Because "person" is a legal term of art, it must be construed according to common law rather than simply looking to the Code Construction Act. The court examined numerous court precedents and definitions and held that in most cases under the common law, "person" does not include governmental entities; therefore, the counties in this case were not subject to the TMLA's expert report requirement.

***Joiner v. Wiggins*, No. 01-23-00026-CV, 2024 WL 3503065 (Tex. App.—Houston [1st Dist.] July 23, 2024) (mem. op.).**

Joiner, mayor of the City of Kemah, sued his campaign opponent, Wiggins, for defamation after Wiggins displayed signs reading that Joiner had pleaded guilty to spending public funds for political advertising. Wiggins filed a no-evidence motion for summary judgment and the trial court granted the motion. Joiner appealed.

The appellate court reversed and remanded, holding that Joiner had raised an issue of material fact regarding: (1) whether the statement was false, because it referred to an ethics complaint rather than an actual crime; and (2) whether Wiggins had made the statement with actual malice.

***Kleinman v. State*, No. 03-23-00708-CR, 2024 WL 3355046 (Tex. App.—Austin July 10, 2024).**

In late 2021, Cedar Park code compliance officers learned Michael Kleinman and AusPro Enterprises, L.P. were operating a head shop in violation of the city's zoning ordinances. After a warning, Kleinman and AusPro failed to come into compliance with the city's codes, and as a result were issued 15 citations over several months. The violations were Class C misdemeanors and were punishable by fines only. Kleinman and AusPro were found guilty of the violations in municipal court but later appealed. During this time, they also filed a pretrial application for writ of habeas corpus challenging the city's zoning ordinance as unconstitutionally vague on its face and additionally alleging their prosecution was unconstitutionally selective and in violation of their rights to equal protection. Although the trial court determined Kleinman and AusPro were restrained in their liberty, the court denied their application for writ of habeas corpus.

In affirming the lower court's order, the court of appeals concluded that Texas habeas relief could not be extended to applicants who have been charged with fine-only offenses and are not in custody or have not been released from custody on bond. As a such, Kleinman and AusPro failed to satisfy the restraint requirement for habeas relief.

***Kleinman v. State*, No. 03-23-00665-CR, 2024 WL 3355069 (Tex. App.—Austin July 10, 2024).**
This case stems from the same shop in which Kleinman was cited multiple times by code compliance officers for violating various Cedar Park ordinances and a provision in the Texas Health and Safety Code. In 2023, Kleinman was found guilty of those violations in municipal court but appealed his convictions to the trial court. As part of the process, Kleinman filed the required appeal bonds but did not personally sign them, instead granting his attorney a limited power of attorney to do so. Because Kleinman did not personally sign them as required by Tex. Code of Criminal Procedure Art. 17.08(4), the municipal court denied the bonds. The State then filed an application for a writ of procedendo arguing the trial court lacked jurisdiction because Kleinman's appeal bonds were insufficient to perfect the appeals and that the court should remand them to the municipal court for enforcement of the final judgments. The trial court granted the State's application, and Kleinman appealed.

Evaluating Articles 44.14 and 45.0426 of the Code of Criminal Procedure and citing to a sister court's decision, the Court of Appeals concluded that a court in which an appeal is taken cannot dismiss a defendant's appeal for lack of jurisdiction for a deficient appeal bond without first providing the defendant notice and an opportunity to cure by filing a new amended bond. Because the trial court did not provide Kleinman this notice or opportunity to cure, the court of appeals reversed the trial court's order and remanded the case for further proceedings.

***City of Baytown v. Jovita Lopez*, No. 14-23-00593-CV, 2024 WL 3875941 (Tex. App.—Houston [14th Dist.] Aug. 20, 2024) (mem. op.).**
Three pitbulls owned by Jovita Lopez attacked and killed a neighbor's Labrador. The City of Baytown seized the pitbulls and classified them as "dangerous dogs" under its ordinance, ordering them to be euthanized. Lopez appealed to the county court, which affirmed the dangerous dog designation but vacated the euthanasia order while also modifying other conditions applicable to Lopez. The county court lowered the insurance liability requirement applicable to Lopez from $300,000 to $100,000, to bring it in line with Harris County regulations, and limited her financial responsibility to the city for the boarding of the dogs to $2,500. The city appealed, arguing that the county court's orders violated its ordinance. The appellate court agreed, ruling that such deviations were improper as Lopez failed to prove that the city's ordinance was arbitrary or unreasonable. The court of appeals reversed the county court's order and remanded the case, instructing the lower court to enforce the $300,000 insurance requirement per dog and recalculate the boarding fees owed by Lopez in accordance with the city ordinance.

***Dallas Police & Fire Pension Sys. v. Townsend Holdings, et al.*, No. 05-23-00099-CV, 2024 WL 5134654 (Tex. App.—Dallas Dec. 17, 2024) (mem. op.).**
In 2015, after the Dallas Police & Fire Pension System (DPFP) faced significant real-estate investment losses and its actuary reported DPFD was insolvent, DPFD authorized its new executive director to hire a law firm to review possible claims related to prior investment transactions. After the investigation concluded, DPFD sued its real estate investment consultant, Townsend Holdings LLC, its principals, and its former attorney, Gary Lawson, for a breach of fiduciary duty, breach of contractual duty, and negligence. At trial, Townsend's attorney argued to the jury that DPFD attorneys had been deceptive, coached witnesses before trial, and manufactured the case. While DFPD's lawyers did not immediately object, they notified the court and Townsend the next morning of their position that Townsend's attorney had engaged in incurable jury argument but did not request a ruling

or curative instruction. After the jury found that Townsend had not breached its fiduciary duties or contractual duties, both parties were negligent, and awarded a take-nothing judgment, DFPD moved for a new trial. The motion was later denied by operation of law, and DPFD appealed.

In upholding the denial of DPFD's motion for new trial, the court of appeals first addressed whether the comments made by Townsend's attorney were incurable. Noting that while some comments were improper, the court concluded the evidence supported some of the complained-of jury arguments and as a whole were not shown to be incurably "extreme," "inflammatory," and "prejudicial." As to DPFD's second issue that the evidence was factually insufficient to support a jury finding that Townsend did not breach a fiduciary or contractual duty, the court of appeals disagreed and determined that evidence at trial presented by both parties could have supported the jury's findings. As a result, DPFD failed to show that the evidence was so weak or that the jury's findings were so against the great weight and preponderance of the evidence that they were clearly wrong and unjust.

***Donalson v. Houston Mennonite Fellowship Church, Inc., et al.*, No. 12-24-00194-CV, 2024 WL 5158419 (Tex. App.—Tyler Dec. 4, 2024) (mem. op.).**

This case arises from long-running disputes among a number of parties over ownership and use of some real property in Canton, Texas. In this case, Barney Jo Donalson, Jr. (acting *pro se*) claimed an ownership interest in a room on the property and challenged a 2020 stipulated permanent injunction governing the property's use. The Houston Mennonite Fellowship Church, Inc. (HMFC) and Robert Coyle, who essentially was claiming to represent the public's interest, also asserted claims against the City of Canton and sought an injunction. The city filed a plea to the jurisdiction, arguing that Donalson, HMFC, and Coyle lacked standing to file any of their claims. The trial court granted the plea, dissolved a preliminary injunction obtained by Donalson in a different Harris County court, and severed Donalson's unrelated breach of contract claims concerning a separate Houston property. Donalson, HMFC, and Coyle appealed. After analyzing the different standing issues, the appellate court ultimately affirmed the lower court's ruling, holding that: (1) Donalson, HMFC, and Coyle all lacked standing; (2) the trial court lacked subject matter jurisdiction over their claims; and (3) dissolution of the preliminary injunction and severance of unrelated claims were proper.

***Webb County v. Mares*, No. 14-23-00617-CV, 2024 WL 5130862 (Tex. App.—Houston [14th Dist.] Dec. 17, 2024).**

Cynthia Mares sued Webb County, alleging the commissioners court violated the Texas Open Meetings Act (TOMA) by inadequately notifying the public before their decision to restructure the county's Administrative Services Department. During the meeting in question, the commissioners court split the department into two, reassigned Mares to a new position, and reduced her salary from $105,000 to $75,000. The agenda for the meeting included an item which referenced general discussion and adoption of the county's budget but did not mention departmental restructuring or salary reductions. Mares filed a claim following the meeting, and was later terminated by the county. In her lawsuit, among other things, Mares sought back pay and lost retirement benefits and attorney's fees and costs. The trial court ruled in Mares's favor, finding a TOMA violation, awarding her $39,000 in back pay and lost retirement benefits, and granting $69,650 in attorney's fees and costs. Webb County appealed.

TOMA requires specific notice of the subject to be discussed at government meetings. To be sufficient, such notice must fairly identify the meeting and be sufficiently descriptive to alert a reader that a particular subject will be addressed. The agenda item at issue referenced general budget discussions but did not alert the public to the restructuring of the Administrative Services Department or Mares's salary reduction. Comparing the notice to the actions taken, the appellate court concluded the notice fell short of TOMA's requirements. TOMA does not waive governmental immunity for claims seeking money damages; therefore, the court concluded that Mares could not recover back pay or retirement benefits essentially stemming from this violation. The court reversed the portion of the judgment awarding back pay and lost retirement benefits and rendered judgment that Mares take nothing on her monetary damages claim, while affirming the trial court's findings of a TOMA violation and the award of attorney's fees and costs.

***City of San Benito v. Rios*, No. 13-24-00579-CV, 2025 WL 945566 (Tex. App.—Corpus Christi–Edinburg Mar. 28, 2025) (mem. op.).**

The City of San Benito posted notice for a meeting to approve an election order for the purpose of voting on amendments to the city charter. Rios, a resident, sued the city, claiming the city violated the Texas Open Meetings Act (TOMA) by failing to provide proper notice of the substance of the election. The trial court issued a temporary injunction enjoining the city from adopting or confirming the election results and voiding all votes regarding the propositions. The city appealed the order, claiming that Rios was not entitled to the temporary injunction.

The appellate court reversed the temporary injunction, holding that the: (1) the notice adequately informed the public of the proposed charter amendments; (2) the trial court's orders improperly interfered with the elective process, once it had begun, in violation of the doctrine regarding separation of powers and the judiciary's deference to the legislative branch; and (3) Rios had not shown that he had a probable right to relief on the merits of his claim.