# LEGAL MALPRACTICE UPDATE

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## I. INTRODUCTION

This article discusses cases of interest related to potential claims against lawyers and law firms, as well as disqualification matters, decided by Texas state courts in 2014 and 2015.

## II. ATTORNEY IMMUNITY

For the first time since the initial opinion announcing litigation immunity existence more than a century ago, the Texas Supreme Court has further defined the scope of this immunity. While the opinion has clarified some issues, questions concerning the appropriate standards to be applied remain.

### A. *Cantey Hanger, LLP v. Byrd.*

This case concerns the scope of an attorney's immunity from civil liability to non-clients in the litigation context.[1] Cantey Hanger represented the wife in contentious divorce proceedings that resulted in a settlement and the entry of an agreed divorce decree. The decree awarded wife an airplane that was owned by a leasing company that the decree awarded to husband. Under the decree, the wife was responsible for all *ad valorem* taxes on that plane. Husband, along with the leasing company and another company (collectively, "Plaintiffs") later sued wife for allegedly falsifying a bill of sale transferring the plane from the leasing company to a third party over a year after the divorce decree was entered. This bill of sale shifted tax liability for the plane from wife to husband. Plaintiffs also asserted claims against Cantey Hanger, including allegations of fraud, aiding and abetting, and conspiracy in connection with its work on the falsified bill of sale.[2]

Cantey Hanger asserted the affirmative defense of litigation immunity, arguing that it owed no duty to Plaintiffs and that it was not liable to Plaintiffs for actions taken in the course and scope of its representation of wife in the divorce proceedings.[3] In response, Plaintiffs argued (1) that Cantey Hanger's conduct was wrongful and not part of the discharge of its duties in representing its client; and (2) a general "fraud exception" to attorney immunity should apply, because claims based on fraudulent conduct by an attorney should generally be permitted.[4] The trial court granted Cantey Hanger's traditional summary judgment motion on all claims. A divided Court of Appeals reversed as to the fraud, aiding and abetting, and conspiracy claims related to the sale of the plane.[5] In a 5-4 split decision, the Texas Supreme Court held that Cantey Hanger had conclusively established its protection under the qualified attorney-immunity doctrine, by showing that it acted within the scope of representing its client when it arranged for transfer of ownership of the airplane pursuant to the divorce decree.[6]

In reaching this decision, the Texas Supreme Court first noted that courts of appeals have developed two different approaches to the application of a "fraud exception" to attorney immunity.[7] In adopting the narrower application of the exception, the Court held that an attorney's knowing commission of a fraudulent act is actionable only if it is committed outside

the scope of the attorney's legal representation of the client.[8] "Fraud is not an exception to attorney immunity; rather, the defense does not extend to fraudulent conduct that is outside the scope of an attorney's legal representation of his client, just as it does not extend to other wrongful conduct outside the scope of representation. An attorney who pleads the affirmative defense of attorney immunity has the burden to prove that his alleged wrongful conduct, regardless of whether it is labeled fraudulent, is part of the discharge of his duties to the client."[9]

The Court then considered whether Cantey Hanger had conclusively "established that its alleged conduct was within the scope of its legal representation of [wife] in a divorce proceeding."[10] Ultimately, the Court concluded that Plaintiffs complained about the manner in which Cantey Hanger carried out a specific responsibility assigned to it in the divorce decree, which, the Court held, "fell squarely within the scope" of Cantey Hanger's representation of the wife in the divorce proceeding.[11] While the Court provided little discussion concerning whether Cantey Hanger's alleged conduct occurred "in litigation," the Court stated "[b]ecause we conclude that Cantey Hanger's alleged conduct falls within the scope of its duties in representing its client in litigation, we need not consider the attorney-immunity doctrine's application to an attorney's conduct that is unrelated to litigation but nevertheless falls within the ambit of client representation and 'requires the office, professional training, skill, and authority of an attorney.'"[12]

The dissent states that the majority adopted a test that merely requires that the conduct at issue occur within the scope of a client's representation or the discharge of duties to the client.[13] According to the dissent, this test does not limit this form of attorney immunity to the context of litigation, and instead enlarges the scope of the litigation immunity to include matters outside the context of litigation.[14]

B. *U.S. Bank National Association v. Sheena*

In one of the first Texas appellate opinions discussing *Cantey Hanger,* the Fourteenth Court of Appeals identified ambiguities in the *Cantey Hanger* standard.[15] First, the court noted, the *Cantey Hanger* opinion "appears to say that a defendant asserting attorney immunity in a litigation context need only conclusively prove that the allegedly actionable conduct, even if it is alleged to be fraudulent, was part of the discharge of the attorney's duties to the client in the litigation context."[16] Deemed the "Complete Immunity Rule," the court stated that "if this were the only requirement for attorney immunity, then an attorney would enjoy complete immunity from civil liability for all conduct committed during the representation of a client in litigation, even if the conduct is fraudulent. . . ."[17]

The court then noted that another part of the *Cantey Hanger* opinion appears to articulate a different standard. Under this "Partial Immunity Rule," a defendant seeking immunity in a litigation context must prove "that (1) the allegedly actionable conduct, even if it is alleged to be fraudulent, was part of the discharge of the attorney's duties to the client in the litigation context;

and (2) the allegedly actionable conduct was not 'foreign to the duties of an attorney.'"[18] To determine immunity under the Partial Immunity Rule, a court would need to distinguish between conduct "foreign to the duties of an attorney" and conduct not foreign to such duties. While the *Cantey Hanger* opinion did not specifically identify a standard for making this determination, the *Sheena* court discusses possible standards to be applied in that case.[19] Because the *Sheena* Court ultimately concluded that the conduct at issue was not foreign to the duties of an attorney, the court affirmed the trial court's judgment.[20]

## III. ATTORNEY-CLIENT ARBITRATION CLAUSES

### A. *Royston, Rayzor, Vickery, & Williams, LLP v. Lopez*

This case concerns the enforceability of an arbitration provision in an attorney-client employment contract.[21] Francisco Lopez hired Royston, Rayzor, Vickery & Williams LLP ("Royston") to represent him in a divorce proceeding against his common-law wife, who had won $11 million playing the lottery. Lopez and the law firm entered into an employment contract, which included an arbitration provision under which any dispute arising out of the employment contract or the representation would be subject to arbitration, except for any claims made by the firm to recover fees or expenses.[22] After a mediated settlement, Lopez sued Royston claiming that it had induced him into accepting an unreasonably low settlement. Royston moved to compel arbitration, but the trial court denied that motion. The appellate court affirmed, stating that the arbitration provision was so one-sided that it was substantively unconscionable and was therefore unenforceable. Royston then filed an interlocutory appeal challenging the denial under the Texas Arbitration Act and an original proceeding seeking relief under common law.[23]

The Texas Supreme Court considered three arguments: unconscionability, public policy, and illusory. In rejecting the unconscionability argument, the Court reiterated that once it is established that a valid arbitration agreement exists and that the claims at issue are within the scope of the agreement, a presumption arises in favor of arbitrating those claims and the burden is on the party opposing arbitration to prove unconscionability.[24] The Court further stated that arbitration provisions in attorney-client contracts are not presumptively unconscionable,[25] and challenges to an arbitration provision must be based on the arbitration provision alone, rather than other potential bases for challenging other aspects of the contract. [26] And finally, the Court held that specifically excluding certain disputes from the arbitration requirement does not render the provision "so one-sided as to be unconscionable[,]" even if the provision excludes all potential claims by just one of the parties.[27]

In addressing the public-policy argument, the Court acknowledged two competing policies regarding attorney-client arbitration agreements: "the policy of holding attorneys to the highest level of ethical conduct and the policy of encouraging and enforcing arbitration agreements."[28] Lopez argued that the Disciplinary Rules require lawyers to provide information concerning the proposed arbitration provision, even to prospective clients, and that lawyers have the burden to show that such appropriate explanations have been made.[29] The Court rejected this argument, holding that the Disciplinary Rules "are not binding as to substantive laws regarding attorneys, although they inform the law" and that Ethics Opinions, while advisory, carry less weight than the Disciplinary Rules.[30] Therefore, the Court "declined to impose, as a matter of public policy, a

legal requirement that attorneys explain to prospective clients, either orally or in writing, arbitration provisions in attorney-client employment agreements."[31] Moreover, the Court stated that "prospective clients who sign attorney-client employment contracts containing arbitration provisions are deemed to know and understand the contracts' content and are bound by their terms on the same basis as are other contracting parties."[32]

Finally, the Court held that the arbitration provision was not illusory merely because it excluded potential claims by Royston against its client. Even with such a purportedly one-sided provision, Royston was still required to arbitrate all other claims it might have against its client. Because Royston could not avoid that aspect of the arbitration provision, the provision was not illusory.[33]

### B. Duty to Disclose Arbitration Provision to Prospective Clients

In *Greenberg Traurig, LLP v. National American Insurance Company,* the primary dispute focused on whether Greenberg had a duty to disclose to National American Insurance Company ("NAICO") the existence and nature of the arbitration provision in a retainer agreement for a new matter based on Greenberg's prior attorney-client relationship with NAICO on other matters.[34] The trial court held that Greenberg's "long-standing fiduciary relationship" gave rise to an "exceedingly high duty of disclosure," which Greenberg failed to meet.[35] The court of appeals reversed, finding that Greenberg did not have a fiduciary duty to disclose the implications of an arbitration provision in a retainer agreement for a new representation, despite Greenberg's prior long-standing relationship with NAICO.[36] Even assuming that a long-standing fiduciary relationship existed between NAICO and Greenberg, the court was "unconvinced" that such a relationship would impose an overarching duty on Greenberg to disclose the arbitration provision.[37] As the court ultimately held, while an attorney-client relationship may be fiduciary in character, the fiduciary duties extend only to the dealings within the scope of the underlying relationship of the parties.[38]

## IV. DISQUALIFICATION

### A. *In re RSR Corporation*

This case addresses the standard to apply when a party's former employee is hired as a "consultant" by lawyers for the opposing party. In disqualifying the plaintiff's attorneys, the trial court treated the former employee like a "side-switching paralegal" applying the test articulated in *In re American Home Products Corp.*[39] The Texas Supreme Court held that *American Home Products* "does not govern a fact witness with information about his former employer if his position with that employer existed independently of litigation and he did not primarily report to lawyers. To the extent the fact witness discloses his past employer's privileged and confidential information, the factors outlined in *In re Meador*, 968 S.W.2d 346 (Tex. 1998) (orig. proceeding), should guide the trial court's discretion regarding disqualification."[40]

Bickel & Brewer represented RSR Corporation in litigation against Inppamet S.A. Hernan Sobarzo was Inppamet's finance manager during the relevant time frame, and he gained information relevant to the lawsuit through his employment. When Sobarzo later resigned, he took with him gigabytes of data. According to the opinion, over time, Bickel & Brewer representatives met with Sobarzo at least 19 times for more than 150 hours, including two

instances in which Sobarzo traveled to New York to meet with the lawyers. Sobarzo insisted on compensation for his time, and at one point, he signed a written consulting agreement that formalized the terms of his compensation. But two months after signing the agreement, Sobarzo stopped consulting with Bickel & Brewer and recanted some of his prior accusations.[41] When Inppamet moved to disqualify Bickel & Brewer, based on its exposure to Sobarzo and his documents, the trial court granted the motion. The court of appeals later denied RSR's petition for mandamus relief.[42]

Because Sobarzo was a fact witness, the Texas Supreme Court concluded, the multi-factor test from *In re Meador* would "properly balance Inppamet's need to protect privileged information against RSR's interest in retaining counsel."[43] *Meador* applies when an attorney receives an opponent's privileged or confidential material outside of the normal course of discovery, such as when a departing employee surreptitiously takes copies of confidential documents. *Meador* provides "a flexible, fact-oriented standards so that trial courts may reach a just result."[44] "Applying the bright-line rule from *American Home Products* to fact witnesses instead of legal staff would limit discovery in fact-gathering."[45] Because the trial court employed a different standard, the Court conditionally granted the writ of mandamus, noting that it was not deciding "whether disqualification would have been proper under *Meador* because the trial court did not reach that issue and did not resolve all facts relevant to the *Meador* analysis."[46]

### B. *In re Houston County*

Attorneys from the two-lawyer County Attorney's Office represented the Department of Family and Protective Services (the "Department") in a case involving termination of a mother's parental rights.[47] The mother moved to disqualify the lawyers from representing the Department because they had also represented the mother in an ancillary protective-order proceeding.[48] The trial court granted the motion to disqualify. The lawyers sought mandamus relief, in part challenging the trial court's authority to disqualify both lawyers in the County Attorney's Office from representing the Department in the underlying proceeding, relying on cases in the criminal context. In denying the petition, the court of appeals held that the trial court had the necessary authority to disqualify the lawyers, noting that it had not been presented with, nor was able to locate, any civil cases to support the County Attorneys' argument.[49]

### C. *In the Interest of Kahn*

Two plaintiffs initially filed suit, and approximately seven months later, an amended petition was filed adding an additional plaintiff.[50] Approximately three and a half months later, the plaintiffs filed a motion to disqualify counsel for the defendants. The trial court granted the motion to disqualify and the defendants filed a petition for writ of mandamus. The defendants argued that the trial court abused its discretion by not finding that the plaintiffs had waived their motion to disqualify through delay, noting that more than 10 months had passed between the filing of the lawsuit and the motion to disqualify. The appellate court rejected the contention that the waiver analysis should focus on the 10 months that elapsed between the filing of the litigation and the filing of the disqualification motion, noting that one plaintiff did not join the suit until seven months after the suit was filed. The court noted that no authority had been located stating that the delay of one party in seeking disqualification could be attributed to another party. Therefore, in evaluating waiver, the court considered only the time that had elapsed after the third plaintiff

joined the litigation. Ultimately, the court concluded that the trial court was within its discretion to find that the plaintiffs had not waived their motion to disqualify.[51]

## V. EXPANSION OF *PEELER'S* SOLE-PROXIMATE-CAUSE BAR

In 1995, in *Peeler v. Hughes & Luce,*[52] the Texas Supreme Court addressed the question of whether a person convicted of a criminal offense could sue her lawyer for legal malpractice. The trial court had granted summary judgment in favor of the lawyer, claiming that the plaintiff's own illegal acts were the sole proximate cause of her alleged damages, and because she did not seek to withdraw her guilty plea or set aside her conviction, she could not pursue malpractice claims against her lawyer.[53] The Texas Supreme Court affirmed, recognizing a public-policy justifying the sole-proximate-cause bar: allowing a convicted criminal to take advantage of his or her own wrong which would shock the public conscience, foster disrespect for the courts, and discredit the administration of justice.[54] Based on this foundation, the Court held that "plaintiffs who have been convicted of a criminal offense may negate the sole proximate cause bar to their claim for legal malpractice in connection with that conviction only if they have been exonerated on direct appeal, through post-conviction relief, or otherwise."[55]

Two recent cases have attempted to broaden the application of *Peeler's* sole-proximate-cause bar.

### A. *Byrd v. Phillip Galyen, P.C.*

In this case, the trial court issued a remedial-contempt order against plaintiff Philip Byrd based on his failure to comply with several orders issued in his divorce proceeding. [56] The court sanctioned Byrd by striking his pleadings, prohibiting him from making certain claims regarding the division of property, and committing him to jail for 30 days, although the court later allowed Byrd to pay $20,000 to suspend the jail sentence.[57] Byrd later sued the law firms and several lawyers that had represented him in his divorce proceeding.[58] Among other things, Byrd alleged a negligence claim through which he sought to recover damages caused by the alleged acts or omissions surrounding the contempt order.[59] Lawyers filed a no-evidence summary judgment motion contending, among other things, that Byrd's legal malpractice claim was subject to *Peeler's* sole-proximate-cause bar.[60] Specifically, the lawyers argued that because Byrd had been convicted, incarcerated, and had not been exonerated, Byrd was barred from seeking any recovery for damages for legal malpractice arising from that conviction, because the sole proximate cause of any damages was Byrd's own wrongful conduct.[61]

In an interlocutory appeal, the court noted that cases applying *Peeler* have uniformly arisen from a malpractice plaintiff's conviction under the penal code or a federal criminal statute, and such cases have not addressed the sole-proximate-cause bar in the context of civil litigation.[62] Therefore, the primary issue on appeal was whether the remedial-contempt order against Byrd was tantamount to a criminal conviction, thereby barring Byrd's negligence claims under *Peeler*.[63] Ultimately, the court concluded that "an application of the narrow sole-proximate-cause bar to legal-malpractice claims arising out of a civil remedial-contempt order would be one step too far."[64] The nature of the remedial-contempt order in a civil case differs from a criminal conviction such that the policy considerations underlying the sole-proximate-cause bar do not apply. For example, the court noted that while "exoneration" is an exception under the

application of the *Peeler* standard, exoneration is not a form of relief available in the context of a remedial-contempt order; therefore it would be legally impossible for the contemnor to demonstrate exoneration as contemplated by *Peeler*. The Court of Appeals reversed and remanded.[65]

B. *Futch v. Baker Botts, LLP*

After pleading guilty to a felony offense, the former client sued the law firm that had represented him, seeking, among other things, forfeiture of attorney's fees based on alleged breaches of fiduciary duty.[66] The trial court entered summary judgment in favor of the law firm under the *Peeler* doctrine, because a convicted felon who has not been exonerated as a matter of law may not recover tort damages or obtain the equitable remedy of fee forfeiture. [67] Ultimately, the Court of Appeals affirmed, concluding that even though the original *Peeler* case addressed only legal-malpractice claims, the plaintiff's claims for breaches of fiduciary duty were nevertheless subject to the *Peeler* doctrine, because such claims were connected to the plaintiff's conviction. Consequently, the plaintiff's claims for fee forfeiture fell within the scope of the *Peeler* doctrine, and were therefore barred.[68]

## VI. BARRATRY

*Neese v. Lyon* analyzes in detail the statutes on which private rights of action for barratry are based, as well as potential remedies and related causes of action.[69] According to plaintiffs' allegations, two individuals, Carl "Stacey" Neese and Irl Hooper, suffered injuries in a 2010 pipeline explosion, which also killed Neese's brother. Within weeks of the explosion, the Neese family hired Ted B. Lyon & Associates PC, and Hooper did the same approximately two weeks later. The lawyers and the law firm had no prior relationship with the Neeses, but they hired a private investigator, William Heidelberg, to solicit the Neese family to hire the Lyon firm. Heidelberg allegedly traveled to Oklahoma and contacted Neese, and he falsely told Neese that he was investigating the pipeline explosion on behalf of a private foundation and that he was not associated with any law firm. Heidelberg also told Neese that he should consider hiring the Lyon law firm, which had previously obtained huge verdicts for victims of other pipeline explosions. The lawyers later flew to Oklahoma to meet with the Neeses, and the Neeses hired the Lyon law firm under a 40% contingency fee agreement. When Heidelberg asked Neese if he knew of anyone else who had been injured in the explosion, Neese referred him to Hooper. Heidelberg later met with Hooper in the hospital, providing Hooper with similar information that had been provided to Neese. The lawyers later flew to Oklahoma to meet with Hooper, who also hired the Lyon law firm on a 40% contingency fee basis.

The lawyers filed suit for the Neeses and Hooper, and the case eventually settled, with the clients paying attorneys' fees and expenses pursuant to their agreements. Sometime after the settlement, the clients learned of Heidelberg's relationship with the lawyers, and that Heidelberg was paid a $50,000 bonus for successfully soliciting the clients for the law firm.[70] The clients then sued the lawyers and the law firm for, among other things, barratry, fee forfeiture, rescission, suspension from the practice of law, and revocation of law licenses. The lawyers filed a traditional summary judgment motion, which was granted.[71]

The Dallas Court of Appeals affirmed in part, reversed in part, and remanded for further proceedings.[72] The key holdings are as follows:

- Texas Government Code § 82.065 governed the barratry claims, rather than Section 82.0651. Section 82.0651 became effective on September 1, 2011, and does not apply to barratrous conduct seeking to procure an attorney-client contract that occurred before that date. [73]

- Texas Government Code § 82.065 provides a private right of action under which a client may sue to avoid a barratrous contingency-fee agreement. Such contracts are voidable by the clients.[74]

- The remedy under Section 82.065 is rescission and restitution. This is allowed even after full performance of the contract, although counter-restitution may be required.[75] The trial court can, as part of the restitution remedy, determine the value of the lawyers' services.[76] Section 82.065 does not entitle a client to an automatic forfeiture of all fees paid to the lawyers, without consideration of counter-restitution.[77]

- Rescission remains available even if the clients retain the settlement funds they recovered in the underlying case. The clients are not required to return benefits received from third parties as a prerequisite for rescission. Instead, the lawyers would be entitled to receive counter-restitution for the services the lawyers provided.[78]

- A claim for barratry is subject to a four-year statute of limitations under Texas Civil Practice and Remedies Code § 16.051 (West 2015).[79]

- Regarding the request for an order suspending or revoking law licenses pursuant to Texas Government Code § 82.062, the court held that this provision does not create a private cause of action. "[A]n individual attorney may not sue to have another attorney disbarred. That power rests solely with the state bar."[80]

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[1] *Cantey Hanger, LLP. v. Byrd*, 467 S.W.3d 477, 479 (Tex. 2015).
[2] *Id.* at 479-80.
[3] *Id.* at 480.
[4] *Id.*
[5] *Id.* at 480-81.
[6] *Id.* at 485.
[7] *Id.* at 483.
[8] *Id.*
[9] *Id.* at 484.
[10] *Id.*
[11] *Id.* at 485.
[12] *Id.* at 482, n. 6.
[13] *Id.* at 489-90.
[14] *Id.* at 493.
[15] *U.S. Bank National Association v. Sheena*, --- S.W.3d ---, 2015 WL 668117 (Tex. App.---Houston [14 Dist.] October 29, 2015, no pet. h.).
[16] *Id.* at *4 (citing *Cantey Hanger, LLP. v. Byrd*, 467 S.W.3d 477, 483-84 (Tex. 2015)).
[17] *Id.*
[18] *Id.*
[19] *Id.*

[20] *Id.* at *5. *See also Highland Capital Management LP v. Looper Reed & McGraw, P.C.*, 2016 WL 164528 (Tex. App.—Dallas January 14, 2016, no pet. h.) (applying *Cantey Hanger* standard in affirming trial court's judgment in favor of law firm based on attorney immunity).
[21] *Royston, Rayzor, Vickery, & Williams, LLP v. Lopez*, 467 S.W.3d 494 (Tex. 2015).
[22] *Id.* at 498.
[23] *Id.*
[24] *Id.* at 499-500.
[25] *Id.* at 500.
[26] *Id.* at 501.
[27] *Id.* at 501-02.
[28] *Id.* at 502-03.
[29] *Id.* at 503.
[30] *Id.*
[31] *Id.* at 504.
[32] *Id.* at 504-05.
[33] *Id.* at 505-06.
[34] *Greenberg Traurig, LLP v. National American Insurance Company*, 448 S.W.3d 115, 119-20 (Tex. App.—Houston [14th Dist.] 2014, no pet.).
[35] *Id.* at 118.
[36] *Id.* at 120.
[37] *Id.*
[38] *Id.* at 120-21.
[39] *In re American Home Products Corp.*, 95 S.W.2d 68 (Tex. 1998) (orig. proceeding).
[40] *In re RSR Corp.*, --- S.W.3d ---, 2015 WL 7792871,*1 (Tex. 2015).
[41] *Id.* at *1-2.
[42] *Id.* at *2.
[43] *Id.* at *3.
[44] *Id.* at *4.
[45] *Id.* at *5.
[46] *Id.* at *6.
[47] *In re Houston County*, ---S.W.3d ---, 2015 WL 4930995, at *1 (Tex. App.—Tyler August 19, 2015, no pet. h.).
[48] *Id.* at *1-2.
[49] *Id.* at *3-5.
[50] *In the Interest of Kahn*, --- S.W.3d ---, 2015 WL 7739735, at *1 (Tex. App.—Houston [14th Dist.] December 1, 2015, no pet. h.).
[51] *Id.* at *2-3.
[52] *Peeler v. Hughes & Luce*, 909 S.W.2d 494, 497-98 (Tex. 1995).
[53] *Id.* at 496, 498.
[54] *Id.* at 497.
[55] *Id.* at 497-98.
[56] *Byrd v. Phillip Galyen, P.C.*, 430 S.W.3d 515, 517-19 (Tex. App.—Fort Worth 2014, pet. denied).
[57] *Id.* at 518-19.
[58] *Id.* at 519.
[59] *Id.* at 519-21.
[60] *Id.* at 520.
[61] *Id.*
[62] *Id.* at 523.
[63] *Id.*
[64] *Id.* at 526.
[65] *Id.*
[66] *Futch v. Baker Botts, LLP*, 435 S.W.3d 383, 384 (Tex. App.—Houston [14th Dist.] 2014, no pet.).
[67] *Id.* at 384-85.
[68] *Id.* at 392-93.
[69] *Neese v. Lyon*, --- S.W.3d ---, 2015 WL 4600046, at *7 (Tex. App.—Dallas July 31, 2015, no pet. h.).
[70] *Id.* at *1.

[71] *Id.* at *2.
[72] *Id.* at *19.
[73] *Id.* at *11-12.
[74] *Id.* at *4-5.
[75] *Id.* at *5-8.
[76] *Id.* at *14.
[77] *Id.* at *5-8.
[78] *Id.* at *15.
[79] *Id.* at *9-10.
[80] *Id.* at *18.