

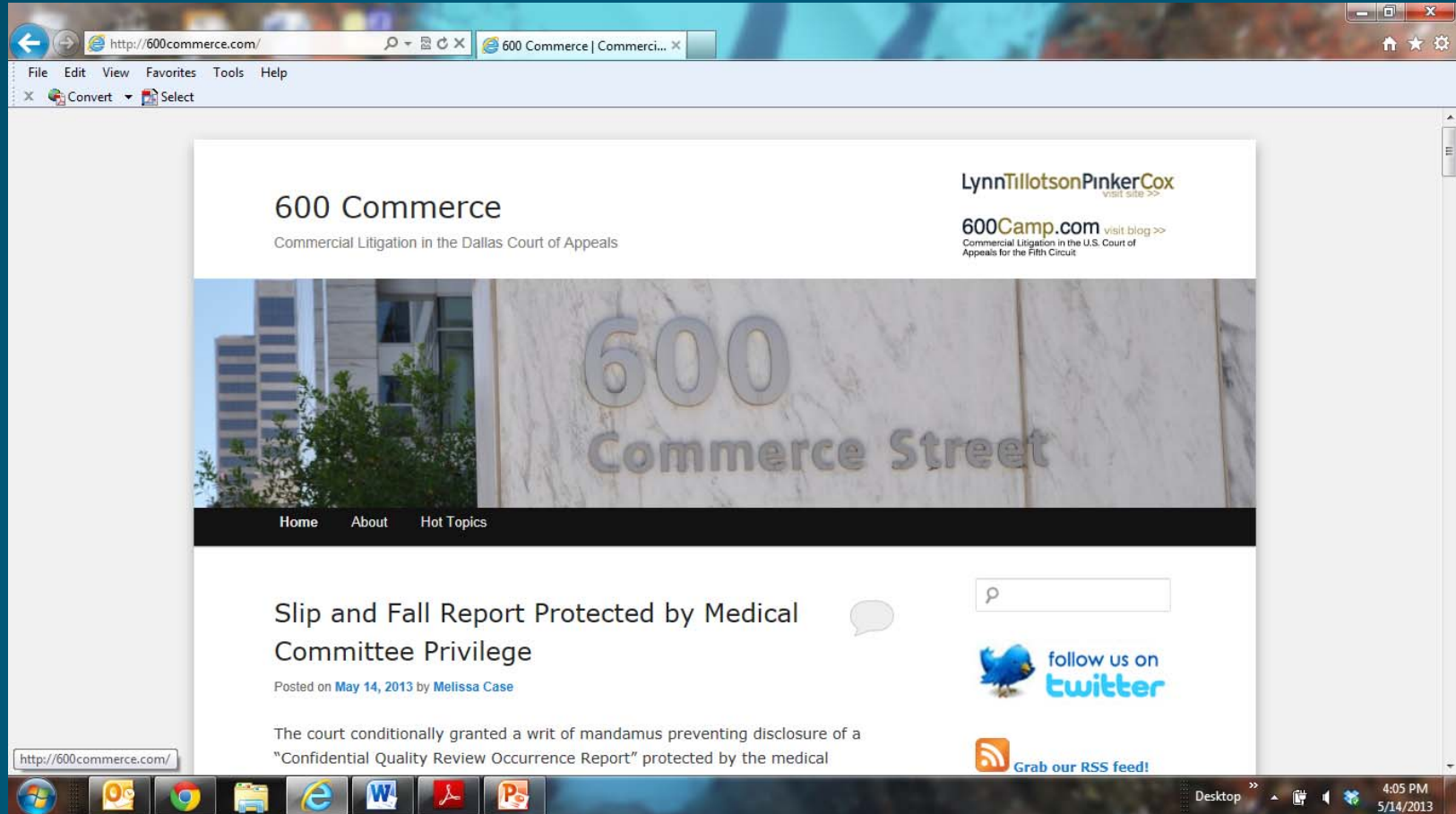
# 600 Commerce

Recent Developments at the Dallas Court of Appeals



Presented by Richard Smith  
DBA Appellate Section  
May 16, 2013

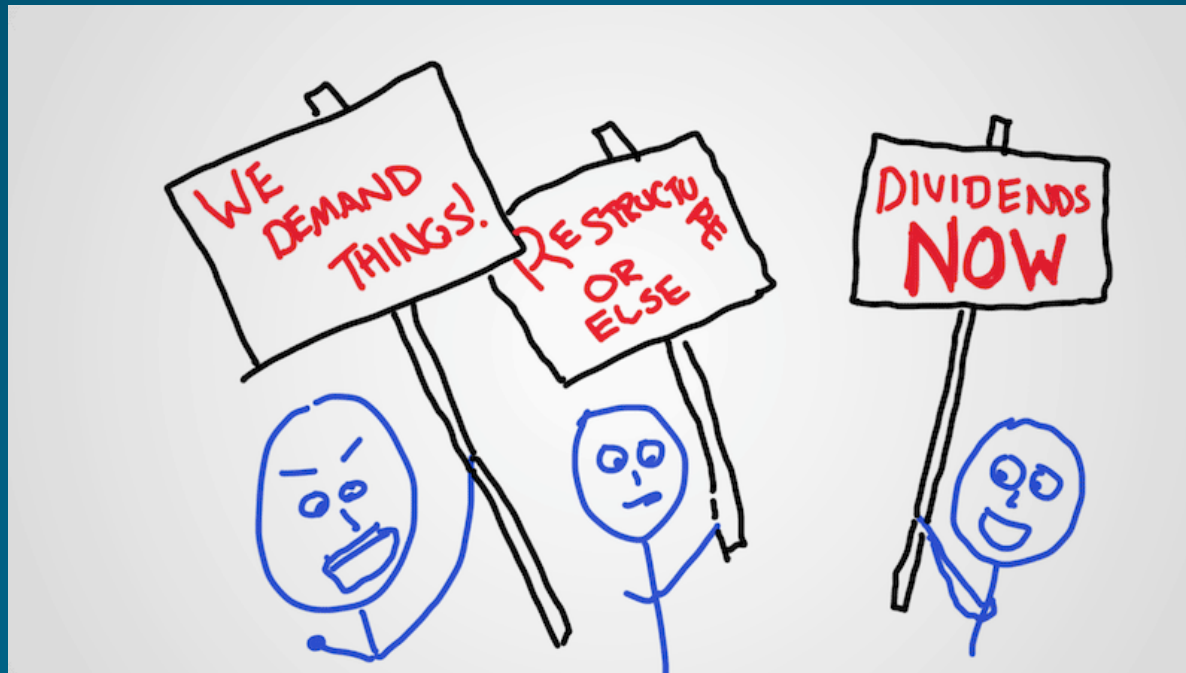
# Our Blog



LynnTillotsonPinkerCox

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# Shareholder Oppression



# Fair Value vs. Contract Price

Issue: How do you measure the value of an oppressed shareholder's stock?





# Fair Value vs. Contract Price



Held: Trial court did not abuse its discretion by ordering “fair value” buyout as remedy for shareholder oppression, instead of enforcing “book value” required by shareholders’ agreement.

*Cardiac Perfusion Servs., Inc. v. Hughes,*  
380 S.W.3d 198 (7/26/12, pet. filed)

# Fair Value vs. Contract Price



Held: “Fair value” for shareholder forced out of company was “enterprise value,” with no discounts for lack of control or marketability.

*Cardiac Perfusion Servs., Inc. v. Hughes,*  
380 S.W.3d 198 (7/26/12, pet. filed)

# Fair Value vs. Contract Price



*Held:* Departing minority shareholder was entitled to “fair market value” of her shares, including discounts for lack of control and marketability.

*Ritchie v. Rupe,*  
339 S.W.3d 275 (3/28/11, pet. granted)



# \$85 Million Judgment Wiped Out



Held: Majority's offer to buy out aggrieved minority at discounted FMV price was not oppressive, where minority was not forced to sell.

*ARGO Data Resource Corp. v. Shagrithaya*,  
380 S.W.3d 249 (8/29/12, pet. filed)



# \$85 Million Judgment Wiped Out



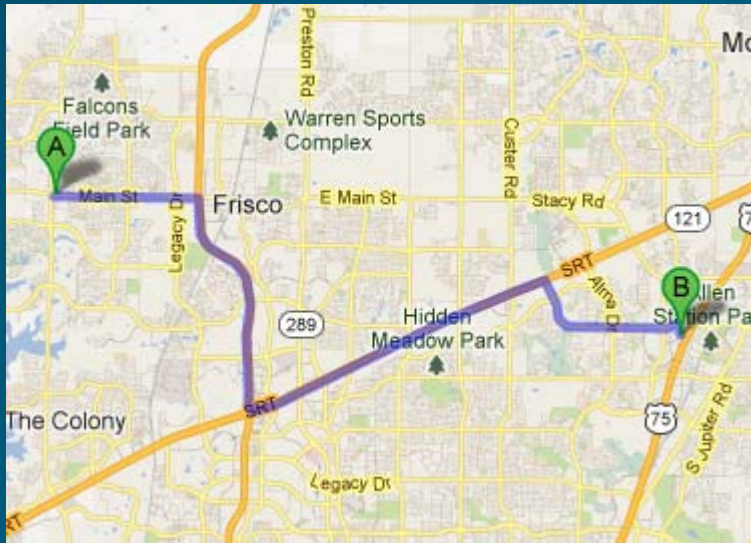
*Held:* Majority's offer to buy out aggrieved minority at discounted FMV price was not oppressive, where minority was not forced to sell.

*ARGO Data Resource Corp. v. Shagrithaya,*  
380 S.W.3d 249 (8/29/12, pet. filed)

# Covenants Not to Compete



# Injunctions Still Require Harm



Held: Covenants Not to Compete Act does not eliminate element of irreparable harm for injunction to prevent competition.

*Primary Health Physicians, P.A. v. Sarver,*  
390 S.W.3d 662 (12/6/12, no pet.)

# Non-Competes Only Restrain Actual Competition

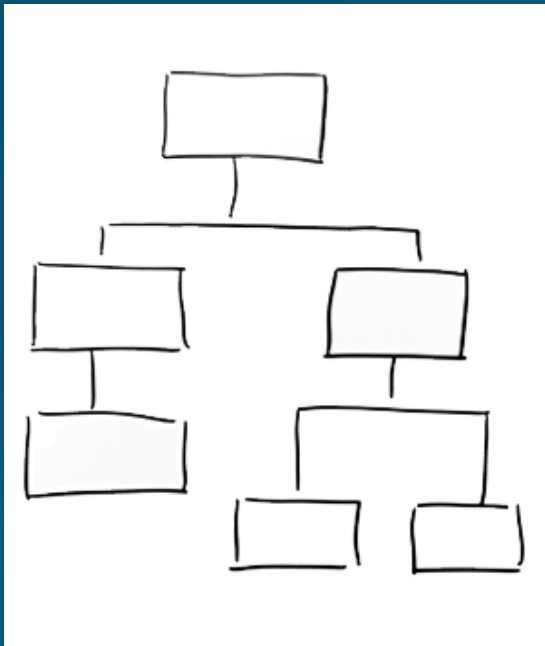


Held: Former employee's proof of difference in products defeated former employer's motion for summary judgment.

*Strange v. HR Smart, Inc.*,  
\_\_\_ S.W.3d \_\_\_ (4/5/13, no pet. filed)



# Hard to Compete With a Holding Company



*Held:* Former employee did not violate non-solicit provision, because employer was a holding company with no direct customers of its own.

*U.S. Risk Ins. Group, Inc. v. Woods,*  
\_\_\_ S.W.3d \_\_\_ (2/25/13, no pet.)

# Sanctions

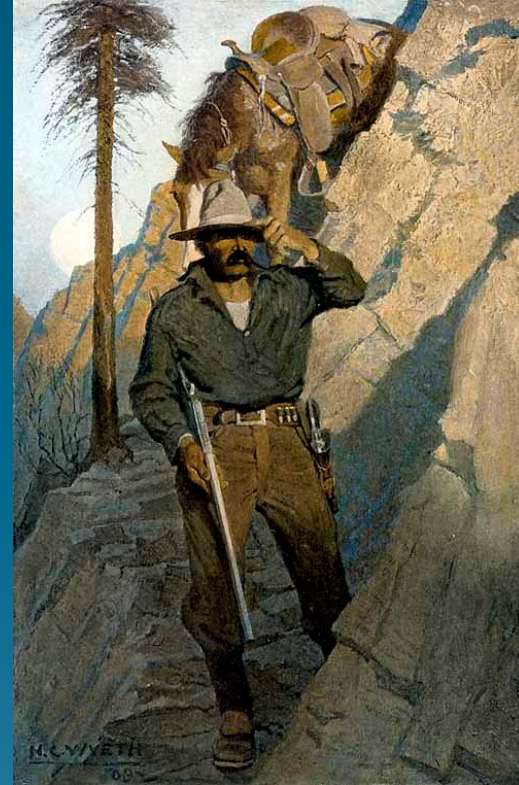


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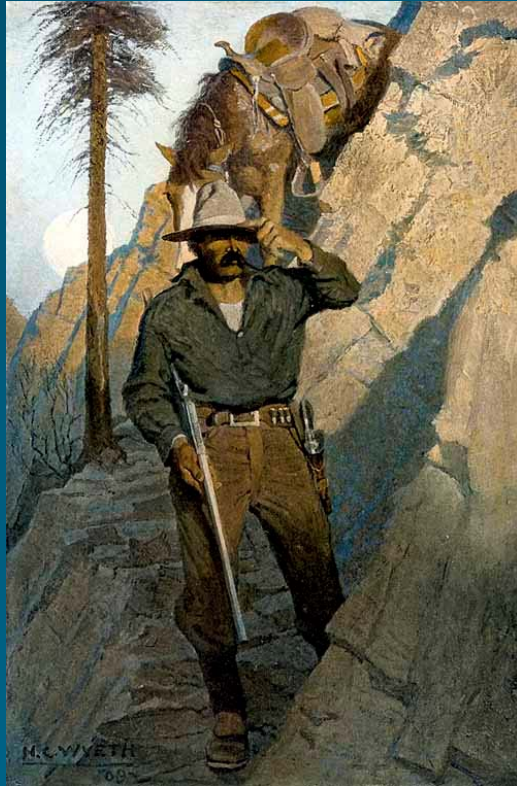
# *The Sheriff*

Supposed to have been  
on the cover of the  
*Saturday Evening Post*.  
It turned out to have been  
*Scribner's* instead.



N.C. Wyeth, 1912

# The Real Sheriff Is the Court of Appeals

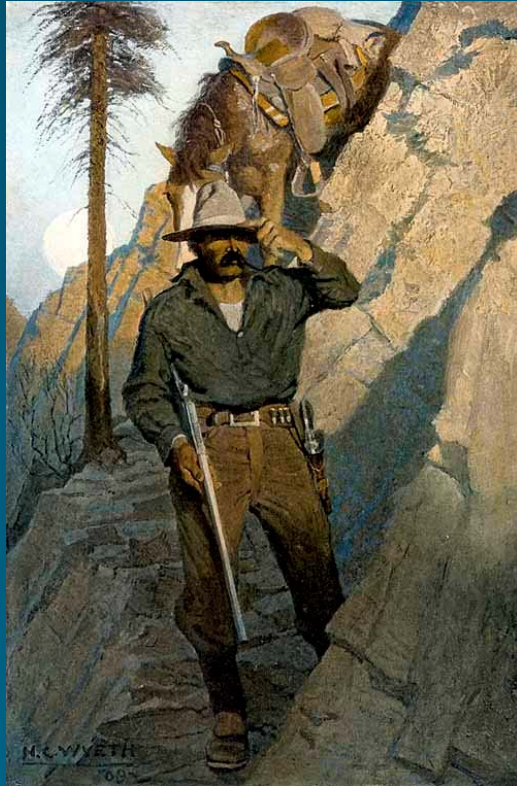


Held: \$7500 sanction could not be sustained because trial court's order did not adequately explain how plaintiff had violated CPRC § 10.001.

*Sell v. Peters Fine Art, Ltd.*,  
390 S.W.3d 622 (11/27/12, no pet.)



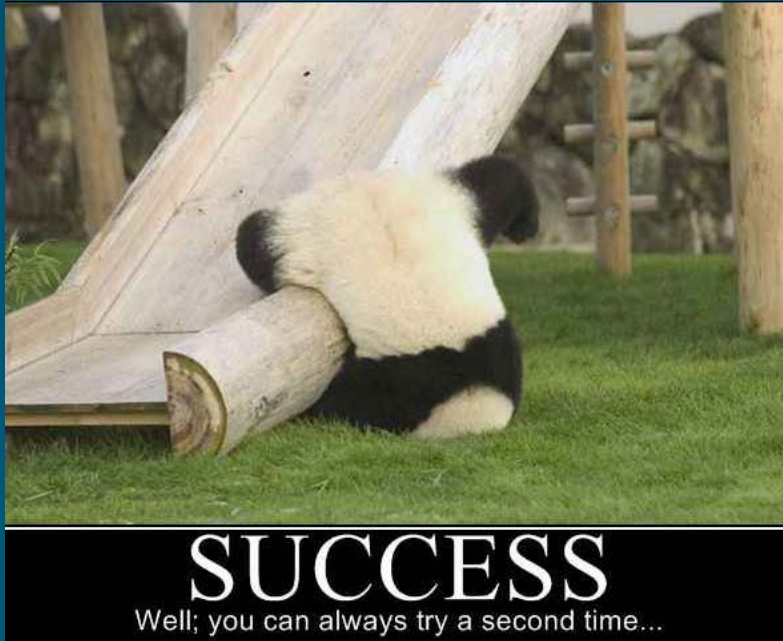
# The Real Sheriff Is the Court of Appeals



Footnoted: Court had “grave reservation” that a sanction could be based on asking for more damages than allowed by the statute underlying one claim. Proper response to such a defect is special exception, not sanctions.

*Sell v. Peters Fine Art, Ltd.*,  
390 S.W.3d 622 (11/27/12, no pet.)

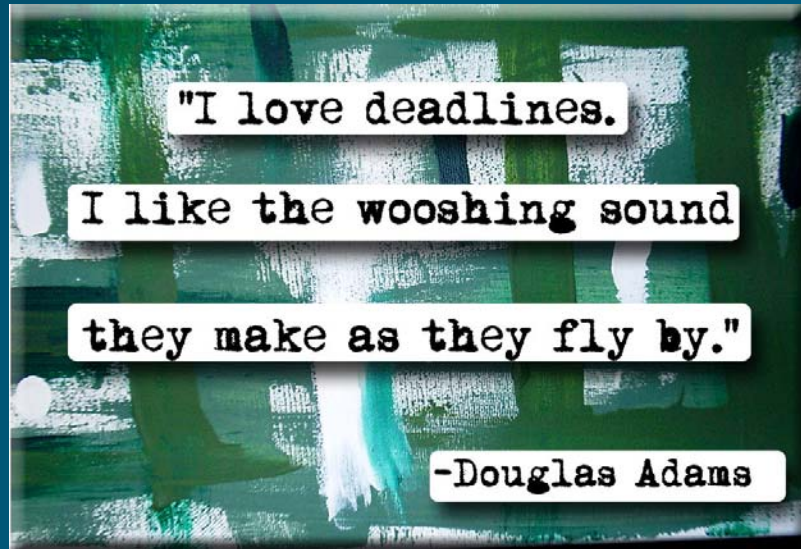
# If At First You Don't Succeed



Held: \$20,000 sanction was proper against attorney who brought claim the court of appeals had previously rejected . . . in a case brought by the same attorney.

*Owen v. Jim Allee Imports, Inc.*,  
380 S.W.3d 276 (8/29/12, no pet.)

# Sanctions vs. Deadlines



Held: District court abused its discretion by dismissing plaintiff's legal malpractice claims as a discovery sanction after her attorney missed multiple expert disclosure deadlines.

*Gunn v. Fuqua*,  
\_\_\_ S.W.3d \_\_\_ (4/11/13, no pet. h.)

# Mandamus

Some “routine” cases:

- Requiring trial court to explain basis for grant of new trial. *In re Whaley* (mem. op. 11/30/12)
- Vacating an order issued after trial court’s loss of plenary power. *In re Florance* (mem. op. 8/9/12)
- Preventing production of privileged documents. *In re Blackstone Medical, Inc.* (mem. op. 7/19/12); *In re Methodist Dallas Med. Ctr.*, \_\_\_ S.W.3d \_\_\_ (5/9/13, no pet. h.)



# Mandamus in a M&A Derivative Suit



*Held:* Mandamus will issue to vacate trial court's TRO preventing companies' use of "deal protection devices" because trial court had failed to rule on forum selection provision in company bylaws.

*In re MetroPCS Comms., Inc.,*  
391 S.W.3d 329 (1/8/13)

# Mandamus in a Recusal Proceeding



Held: Mandamus will issue to prevent administrative judge from granting motion for reconsideration of recusal filed by the recused judge herself.

*In re Amos,*  
\_\_\_ S.W.3d \_\_\_ (3/6/13)



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# Waiving the Right to Offset



- *Interstate 35/Chisam Road, L.P. v. Moayed*, (pet. filed)
- *King v. Park Cities Bank* (no pet.)
- *Toor v. PNC Bank, N.A.* (no pet.)
- *Smith v. Town North Bank* (pet. denied)
- *Cleveland v. Live Oak State Bank* (no pet. h.)



# SLAPPEd Down



## 4 TCPA Opinions:

- *Avila v. Larrea* (12/18/12)
- *Jain v. Cambridge Petroleum Group, Inc.* (2/7/13)
- *Better Business Bureau v. Ward* (5/15/13)
- *Better Business Bureau v. BH Dallas, Inc.* (5/15/13)

# Marriage Is a Partnership

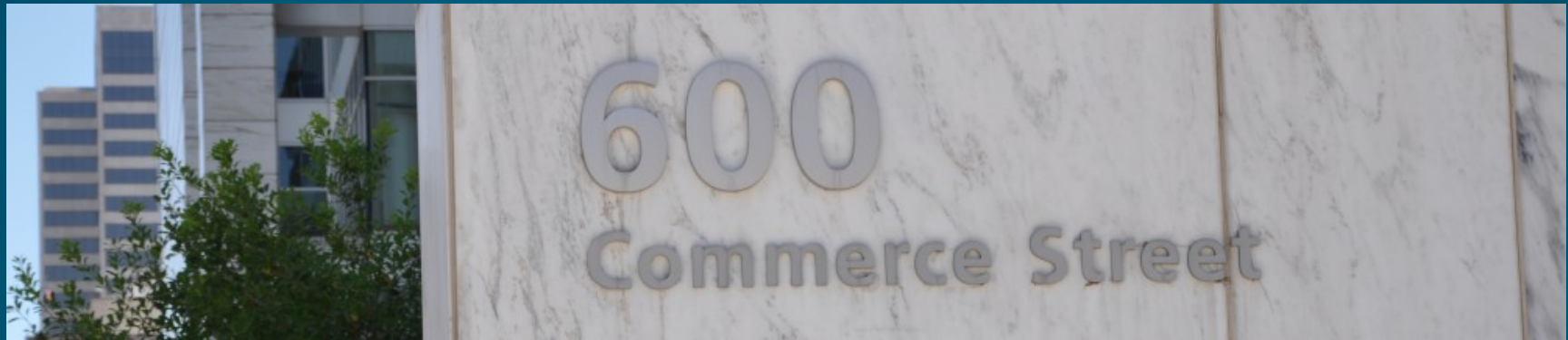


Held: Ex-almost-wife did not release interest in partnership by signing document that relinquished her personal interest in partnership property.

*Leighton v. Rebeles,*  
\_\_\_ S.W.3d \_\_\_ (5/1/13, no pet. h.)

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