

**“Fifth and Fifth” Update**  
**Dallas Bar Association Appellate Section— May 21, 2026**  
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**Introduction**

This paper reviews cases of general interest to civil litigators, decided by the U.S. Court of Appeals for the Fifth Circuit and the Fifth Texas Court of Appeals after June 1, 2025. Several of them are discussed on my blogs about those courts, [www.600Camp.com](http://www.600Camp.com) and [www.600Commerce.com](http://www.600Commerce.com), which are good general resources for civil litigators.

## 1. Forum, jurisdiction, and transfer

### 1.1 Specific jurisdiction

**Ethridge v. Samsung SDI Co.** On rehearing, the Fifth Circuit changed course from its earlier opinion. It now held that Texas lacked specific jurisdiction over a foreign battery manufacturer, as to a claim about an allegedly flammable battery. The revised opinion emphasized that Samsung had deliberately confined its Texas contacts to a closed set of approved industrial customers, and that the consumer plaintiff’s injury did not arise from those particular contacts. 163 F.4th 136 (5th Cir. 2025) (on rehearing).

**Polaris Elec. Co. v. Raspberry 353 LLC.** The Fifth Court vacated a default judgment of more than \$30 million against a Taiwanese manufacturer for lack of personal jurisdiction. Shipments made “FOB Taiwan” by a third party, combined with mere awareness that goods reached Texas through the stream of commerce, were insufficient to establish purposeful availment. No. 05-23-00382-CV (Tex. App.—Dallas Aug. 29, 2025, no pet.).

**Feed Energy Co. v. Rodriguez.** Obtaining a Texas feed license and paying inspection fees did not amount to purposeful availment by an Iowa feed manufacturer under the “stream-of-commerce-plus” test, where a third party unilaterally shipped product into Texas. No. 05-24-01121-CV (Tex. App.—Dallas July 11, 2025, no pet.)

### 1.2 Venue

**In re Media Matters for Am.** Elon Musk’s “X” company sued a news outlet about several unflattering articles. The Fifth Circuit granted mandamus relief because the district court did not fully analyze the *Volkswagen* venue-transfer factors, instead “bypassing the eight-factor inquiry by identifying some alternative consideration.” The trial court had focused on the petitioner’s litigation tactics, which the Fifth Circuit agreed could be relevant but only within the *Volkswagen* framework. 143 F.4th 631 (5th Cir. 2025).

**In re TruBridge, Inc.** A clause selecting Alabama courts was held to be unenforceable against a Louisiana public entity. A Louisiana statute established that state’s strong public policy against forum-selection clauses in public contracts. Once that clause was removed from the analysis, the venue question was resolved under the customary Section 1404(a) factors, and the Fifth Circuit found no abuse of discretion in the trial court’s denial of the petitioner’s transfer motion. No. 25-30727 (5th Cir. Jan. 30, 2026).



**In re Google LLC.** Mandamus relief issued to require the transfer of an antitrust case from the Eastern District of Texas to California. The district court had treated one factor—faster median time to disposition—as sufficient to overcome the others. The panel rejected that analysis, characterizing congestion as “the most ‘speculative’ of the *Volkswagen* factors, because ‘measuring congestion is easier said than done,’” and reminding that that no single factor should receive dispositive weight. 172 F.3d 450 (5th Cir. 2026).

**OSR Enterprises AG v. REE Automotive Ltd.** In a cross-border trade-secret dispute, the Fifth Circuit affirmed dismissal on forum non conveniens grounds in favor of litigation in Israel. The court treated Israel as an adequate alternative forum even though the plaintiffs raised concerns about the scope of remedies available there and the practical complications of producing certain witnesses in that forum. No. 24-50779 (5th Cir. Oct. 10, 2025).

### 1.3 Other forum issues

**Fugedi v. Initram, Inc.** The Fifth Circuit affirmed the district court’s rejection of jurisdiction when a trust arrangement was used as a sham to manufacture diversity:

“For instance, the [trial] court found that: Fugedi had met Elberger (the trust’s beneficiary) less than two months before being appointed trustee; Fugedi does only what his attorneys tell him to do such that he seemingly does not control the trust; Fugedi has no special experience to qualify him as trustee; a nondiverse individual would normally be expected to represent the interests at stake here; there is no

credible non-collusive reason to select an out-of-state trustee; and the suit is wholly local in nature.”

This maneuver was barred by 28 U.S.C. § 1359: “A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court. barred the effort.” 150 F.4th 690 (5th Cir. 2025).

*Storey Mountain LLC v. JPMorgan Chase Bank, N.A.* Describing LLC citizenship as an “evergreen problem,” this opinion (again) reminded litigants that alleging an LLC’s state of organization and principal place of business does not establish diversity. The citizenship of an LLC is the citizenship of every one of its members, traced through any intermediate entities until natural persons or corporations are reached. 159 F.4th 294 (5th Cir. 2025).

## **2. Pleadings, parties, and threshold defenses**

*Archer Western Contractors LLC v. McDonnell Group, LLC.* The Fifth Circuit held that a joint venture was not necessarily indispensable when each of its venturers was already before the court, and the trial court could shape relief to reduce prejudice to the absent entity. More precisely, the opinion distinguishes Fed. R. Civ. P. 17 and 19, in that the possibility that an absent entity may be the “real party in interest” under Rule 17 does not by itself make that entity necessary or indispensable under Rule 19. No. 25-30321 (5th Cir. Mar. 26, 2026).

*McLemore v. Lumen Techs., Inc.* This opinion held that the district court abused its discretion by dismissing a securities complaint with prejudice, without explaining why amendment would be futile. The court emphasized that the default practice is dismissal without prejudice or liberal leave to amend. Specifically, the court noted that Fed. R. Civ. P. 15(a)(2) “evinces a bias in favor of granting leave to amend,” and that an initial Rule 12(b)(6) dismissal should ordinarily be without prejudice unless it is clear the defects are incurable. No. 25-30264 (5th Cir. Jan. 30, 2026).

*Skibell v. Fobare.* Reversing a Rule 91a dismissal, the court reminded that fair notice does not require the plaintiff to name a specific cause of action so long as the pleading otherwise gives notice of the claim. No. 05-24-00723-CV (Tex. App.—Dallas Dec. 8, 2025, no pet.).

*MV Transp., Inc. v. GDS Transp., Inc.* Reversing the Fifth Court, the Texas Supreme Court held that the inadvertent omission from the appellate record of a contract central to a Rule 91a dismissal did not preclude appellate review where the contract was incorporated into the pleading under TRCP 59 and the parties agreed on its material terms. No. 24-0924 (Tex. May 8, 2026).

*African Contract Solutions, Inc. v. Bradley Arant Boult Cummings, LLP.* No. 05-24-01244-CV Affirming a Rule 91a dismissal, the court applied Texas's anti-fracturing rule to bar breach-of-fiduciary-duty and fraud claims against a law firm; the gravamen was legal malpractice and the claims were time-barred under the two-year limitations period. (Tex. App.—Dallas May 11, 2026, no pet. h.).

*Copa Room LLC v. MM Mercer Boardwalk LLC.* Under TRCP 106(b), substituted service requires evidence of where the defendant "can probably be found"; a process server's affidavit of failed attempts at vacant or unrelated addresses showed only where the defendant could *not* be found and was insufficient. No. 05-24-01428-CV (Tex. App.—Dallas Apr. 3, 2026, no pet. h.).

*United States v. Texas.* The Fifth Circuit held that organizations and a county lacked standing to challenge a state statute about immigration because their complaint amounted to grievance about the regulation of others and because they were attempting to bootstrap injury through voluntarily incurred costs and programmatic burdens. While this is a public-law case, it implements the Supreme Court's most recent general guidance about standing and organizations/entities. 173 F.4th 659 (5th Cir. 2026) (en banc).

### **3. Arbitration and other threshold procedural issues**

*Wheatfall v. HEB Grocery Co., LP* The Fifth Circuit held that, after *Badgerow v. Walters*, 596 U.S. 1 (2022), a court may not "look through" an action brought under Section 9 or 10 of the Federal Arbitration Act to find federal-question jurisdiction in the underlying dispute. The petition to confirm an award must, itself, independently present a basis for federal jurisdiction.

A footnote acknowledges (but does not resolve) the “jurisdictional anchor” theory, about a federal action reinstated after staying it to allow arbitration to proceed, that some other Circuits have addressed. No. 24-20257 (5th Cir. June 18, 2025).

**Barnett v. American Express Nat’l Bank.** The Fifth Circuit rejected the argument that a bank had waived arbitration of a Fair Credit Reporting Act claim simply because the bank had earlier sued the customer in state court to collect the underlying debt. The earlier suit was a straightforward state-law contract collection action; the later federal suit advanced a different claim under a different body of law; and the bank moved promptly to arbitrate the second suit. No. 24-60391 (5th Cir. July 29, 2025).

**Hill v. Jackson Offshore Holdings, LLC.** A seaman signed a wage and benefits agreement containing both an arbitration clause and a delegation clause, which said that “any dispute relating to the validity, interpretation, or application of this Agreement shall be submitted to the arbitrator for resolution.” Applying *Rent-A-Center*, the Fifth Circuit reminded that a party resisting arbitration must make arguments “specific to the delegation provision,” and not argue generally that “the contract as a whole (including its arbitration provision) is rendered invalid.”

Although the seaman’s briefing stated that he challenged “both the entire Agreement, as well as the arbitration language or ‘clause’ specifically,” the Court found these efforts insufficient because the seaman never explained how fraud or duress applied to the delegation clause differently than to the rest of the agreement. No. 24-30554 (5th Cir. May 5, 2026).

**Stein v. Beneficient.** Confirming an arbitration award under Texas’s deferential standard, the court held that the arbitrator’s damages methodology — based on SEC filings and internal valuations — reflected contract-based reasoning, not impermissible equitable relief. No. 05-24-00914-CV (Tex. App.—Dallas Oct. 10, 2025, no pet.).

**Wilson v. Centene Management Co., LLC.** The court vacated an order denying class certification, concluding that plaintiffs established Article III standing at the class-certification stage. Specifically, the court held that the named plaintiffs adequately established individual standing through allegations and evidence of injury-in-fact, causation, and

redressability. They alleged overcharges for a health insurance policy with materially inaccurate provider directories, the overcharges were fairly traceable to the discrepancy between the promised and actual network, and they would be refunded if successful.

The court further held that plaintiffs need not prove the precise dollar amount of damages at this stage, stating, “Although the Plaintiffs will ultimately have to prove whether and to what extent they were overcharged based on the inadequacy of the network, they do not need to prove how to measure that injury in dollars at the class-certification stage.”

This opinion differs from the Court’s now-withdrawn, July 2025 opinion, which had formally adopted the “class-certification approach” to determining standing and had held that once individual standing is established, the remaining analysis should occur under Rule 23. This revised opinion declined to resolve a circuit split on this point. No. 24-50044 (5th Cir. Feb. 19, 2026).

*In re Alliance Liftboats, LLC.* The Fifth Circuit denied a mandamus petition that sought review of a collective-action certification order in a Fair Labor Standards Act case. The petitioner argued that mandamus was its only available path to relief, because collective action is otherwise non-appealable, and that improper certification would cause irreparable harm.

On the merits, the Court held that an employer can preserve its challenge and raise the issue on ordinary appeal from final judgment. As for the harm from litigating as a collective action, the Court said that to obtain mandamus relief, “[t]here has to be a greater burden, some obstacle to relief beyond litigation costs that renders obtaining relief not just expensive but effectively unobtainable.” No. 26-30091 (5th Cir. March 11, 2026); *cf. In re JP Morgan Chase*, 916 F.3d 494 (5th Cir. 2019) (denying mandamus relief but staying the district court’s order about individual notice to allow reconsideration).

## 4. Discovery, privilege, and sanctions

### 4.1 Sanctions

***Trahan v. Unofficial Comm. of Unsecured Creditors.*** Based on confidential discovery material about decades-old abuse allegations from the Archdiocese of New Orleans’s internal investigation—concerning a priest not listed on the public “Credibly Accused List” and not named in any proof of claim—an attorney texted a high school principal to confirm the priest still served as chaplain and then emailed a reporter naming the priest, identifying his employment, and urging the reporter to “[k]eep this guy on your radar.”

The Fifth Circuit enforced a protective order and affirmed the trial courts’ substantial sanction on the attorney, holding that even if a person’s name or workplace are publicly knowable, linking that person to non-public abuse allegations learned through discovery is confidential under that order, and may not be disclosed absent consent or a court order. Emphasizing the protective order’s specified mechanism for challenging confidentiality designations, the Court rejected the notion that perceived “over-classification” permits unilateral disclosure, noting the proper course is to seek declassification from the court before dissemination. No. 23-30466 (5th Cir. Jan. 2, 2026)

***Fletcher v. Experian Information Solutions, Inc.*** Counsel used AI to draft substantial portions of a reply brief, failed to verify the resulting citations and quotations, and gave less-than-candid responses when asked to explain it. The panel imposed a \$2,500 sanction, stressing that existing rules already require lawyers to police AI output. In addition to its holding about AI, this opinion is (yet another) reminder that what happens after a mistake—here, evasive answers to questions from the Court—as even more important than the mistake itself in the sanctions context. 168 F.4th 231 (5th Cir. 2026).

***Savage v. La Salle Management Co.*** After cataloging a long sequence of missed deadlines, ignored discovery obligations, unpaid fee awards, failed depositions, and missed court appearances, the Fifth Circuit affirmed a sanction of dismissal. While this case is an “outer limit” of unfortunate litigation conduct, it is still a useful reference point for when “enough is enough” as to a party’s dilatory conduct. 169 F.4th 553 (5th Cir. 2026).

## 4.2 Appellate procedure

*Morrow v. Jones*. The Fifth Circuit addressed whether an appellate court may consider a forfeited issue—specifically, the failure to provide class-wide notice of a motion for attorney fees as required by Fed. R. Civ. P. 23(h). The panel emphasized that it may address a forfeited issue if it “involves a pure question of law, and our refusal to address it would result in a miscarriage of justice.” Here, the Court held that declining to address the lack of notice would “unjustly deprive class members of the opportunity to object to the fee motion—an opportunity to which they are entitled by statute.” No. 23-40546 (5th Cir. June 10, 2025).

*Ackerman v. Arkema, Inc.* Absent intervening state authority, an earlier panel’s prediction of state law remains binding under the “rule of orderliness”—even when the party offers reasons to think the prediction is now doubtful. No. 25-20006 (5th Cir. Oct. 31, 2025).

## 5. Summary judgment, proof, and preservation

### 5.1 Proof/pleading standarda

*Associated Prof. Educators of Louisiana v. EDU20/20, LLC*. This case involved claims about a former employee who had worked for his employer and a competitor at the same time.

On the employer’s Lanham Act claim, the court reversed summary judgment in favor of the defendants, holding that declarations from two attendees who assumed an affiliation between competing educational organizations, based on the defendant’s use of the plaintiff’s logo in presentations, constituted competent evidence of actual confusion. The Court emphasized that at the summary judgment stage, inferences must be drawn in favor of the nonmovant, and “misdirected inbound inquiries,” such as emails sent to the wrong organization, “are ‘indicia of actual confusion.’”

On the trade secret claims, the court affirmed summary judgment for the defendants. The Court held that the plaintiff’s mentor-training materials did not qualify as trade secrets because they were shared with training participants who had no confidentiality obligations. As to a client list that the plaintiff alleged was misappropriated, the Court held that the

plaintiff failed to demonstrate with competent summary judgment evidence that the list even existed. And as for a member database, the court determined that the information it contained—mostly, contact details of educators employed by Louisiana public schools—was readily ascertainable through public records requests and was thus not a protectable trade secret. No. 24-30640 (5th Cir. Feb. 16, 2026).

**Wright v. Honeywell Int’l Inc.** The Fifth Circuit found that a fact issue was raised in a case about a COVID vaccination requirement, observing:

“[A] reasonable jury could find that Wright held at least a mixed motive for his vaccine refusal: a bona fide religious belief alongside political beliefs and personal preference. Wright’s evidence demonstrates a ‘moral or ethical’ belief in bodily autonomy and freedom to choose what to put in his body. The fact that he gave additional reasons for his vaccine refusal does not show that his belief is ‘merely a preferred practice.’ Instead, it simply shows that his vaccine refusal is grounded on both religious and nonreligious reasons.”

Therefore, “[b]ecause a plaintiff’s sincerity in espousing a religious practice ‘is largely a matter of individual credibility,’ Wright’s evidence would be better weighed by a jury than by the court at the summary judgment stage.” 148 F.4th 779 (5th Cir. 2025).

**Legendre v. Harrah’s Casino New Orleans.** The Fifth Circuit held that a genuine fact issue existed as to negligence, requiring reversal of a summary judgment, where surveillance footage and testimony allowed a reasonable inference of inattentive conduct by an employee.



Specifically, a Harrah’s patron bumped into a casino employee on the casino floor. The record showed that the employee admitted he “was walking while looking down fixing [his] facemask” and did not see the patron before impact. A surveillance video, while brief, showed him not looking where he was going. As the Court summarized: “whether this momentary inattention

amounts to negligence is a fact issue, which the district court should not have

**Palms v. Texas Children's Hosp.** This case involved religious objections to a flu vaccine, and led to a difference of opinion as to whether the plaintiff's accommodation claim had been forfeited.

The majority held that the plaintiff had forfeited her argument by failing to adequately brief how the district court erred in granting summary judgment, emphasizing that she “never states that TCH's offered accommodation was unreasonable or explains why the district court could not dismiss her claim on this ground.”

A dissent contended that the plaintiff's opening brief sufficiently challenged the timing and adequacy of the hospital's accommodation, expressly arguing that the hospital's delay in granting an accommodation was unreasonable and resulted in her being “impermissibly ‘suspended without pay’ due to her religious beliefs.” No. 24-20174 (5th Cir. Aug. 11, 2025).

**Collingwood USA, Inc. v. Morgan Stanley & Co.** The Fifth Court affirmed Rule 91a dismissal of a negligent-supervision claim because the tort requires physical injury and the economic loss rule barred recovery for the contract-based economic damages alleged. A concurrence/dissent urged the legislature or supreme court to clarify exactly what Rule 91a demands. No. 05-24-00629-CV (Tex. App.—Dallas Apr. 10, 2026, no pet.).

**Czegledi v. Morrissey.** This case reversed a summary judgment because the plaintiffs' live petition failed to allege a violation of the relevant restrictive covenant, and the unpleaded allegation was not tried by consent. No. 05-24-00739-CV (Tex. App.—Dallas Dec. 15, 2025, no pet. h.).

## **5.2 Preservation**

**Burnett v. Aguilar Lozano.** The court catalogued summary-judgment evidentiary objections as form (hearsay, lack of authentication, lack of personal knowledge, interested-witness testimony) versus substance (conclusory affidavits, subjective belief), and reminded that form objections are waived absent a trial-court ruling. No. 05-24-01503-CV (Tex. App.—Dallas Feb. 12, 2026, no pet. h.).

**Rehab Squad General Contractors v. Phamily Captai Partners.**

Under TRCP 278, a party with the burden of proof must request and tender an omitted question in substantially correct form; mere objection is insufficient to preserve charge error. No. 05-25-00091-CV (Tex. App.—Dallas Mar. 17, 2026, no pet.).

**Shawnee Inc. v. Kaz Meyers Properties, LLC.** A request for a mitigation-of-damages instruction was insufficient to preserve error, reviving the longstanding distinction in Texas charge practice between “objecting” and “requesting.” No. 05-23-00507-CV (Tex. App.—Dallas July 10, 2025, no pet.)

**5.3 Misc.**

**In re Pillar Income Asset Management, Inc.** The court conditionally granted mandamus vacating a new-trial order based on “incurable” improper jury argument; though personal barbs, references outside the record, and brief local/religious appeals were improper, they were curable by instruction and did not justify a new trial. No. 05-25-00205-CV (Tex. App.—Dallas Jan. 14, 2026, orig. proceeding).

**In re Matter of Parker.** An appellant subject to a mandatory disinterment order was entitled to supersede a non-monetary judgment under TRAP 24.1(a); the court reversed the trial court’s refusal to set security and fixed security at zero. No. 05-24-00809-CV (Tex. App.—Dallas Aug. 27, 2025) (on motion to stay).

**Leal v. State.** Reversed a criminal conviction because the appellate record demonstrated only eleven jurors were empaneled and the State’s attempted record supplementation failed to establish a twelfth juror — a stark reminder that “the record matters.” No. 05-24-00446-CR (Tex. App.—Dallas Nov. 19, 2025, no pet.).



## 6. Substantive commercial law and remedies

### 6.1 Intellectual property

*Computer Sciences Corp. v. Tata Consultancy Services Ltd.* The Fifth Circuit modified a trade-secret injunction to match the damages theory that had already been awarded at trial. Because the plaintiff had recovered unjust-enrichment damages, measured by the defendant’s avoided development costs, the injunction could not separately forbid the defendant from using the post-misappropriation implementation in a way that would effectively duplicate or over-punish that recovery. 159 F.4th 429 (5th Cir. 2025).

*Trinseo Europe GmbH v. Kellogg Brown & Root, LLC.* In this trade-secret case, the court held, *inter alia*:

1. *Damages.* Where a plaintiff alleges multiple trade secrets, the jury must have a reasonable basis to award damages attributable only to the secrets actually found to be misappropriated—making the plaintiff’s “all-or-nothing” damages model premised on all ten alleged secrets fatally infirm.

2. *Trade-secret status.* Regarding reasonable measures to maintain secrecy, the court found sufficient evidence that Trinseo acted to protect its secrets—including demanding withdrawal of the SRI report, assigning employees to investigate rumored disclosures, and maintaining standing instructions to report suspicious activity. The court also noted that third parties such as KBR were still willing to pay for the information, indicating it was not generally known. 165 F.4th 399 (5th Cir. 2026).

*Trojan Battery Co. LLC v. Golf Carts of Cypress, LLC.* The Fifth Circuit affirmed the district court’s finding of a likelihood of confusion between the plaintiff’s TROJAN® marks for golf-cart batteries and the defendant’s TROJAN-EV mark for golf carts. The court applied the eight “digits of confusion” and held, *inter alia*:

1. *Mark strength.* The court held that the TROJAN® marks are strong due to “decades of use, marketing to a broad range of golf industry consumers, hundreds of millions in sales, a large market share, and the well-known reputation of the TROJAN® brand in the golf cart market.” The

court rejected the argument that third-party uses—such as Trojan condoms and the USC mascot—weakened the mark, finding no evidence that those uses diminished the public’s association of TROJAN® with Trojan Battery within the golf-product market.

*2. Similarity of the marks.* The court found the marks highly similar because they share the dominant word “TROJAN,” and even though the logos differ, the marks are used in a way in which “a reasonable person could believe the two products have a common origin or association.”

*3. Actual confusion.* The court found clear error here, holding that five instances of confusion over roughly two and a half years of concurrent sales, running into the millions of dollars were “insufficient to sustain a finding of likelihood of confusion.” No. 25-20243 (5th Cir. May 8, 2026).

## 6.2 Contracts and related doctrines

*Porch.com, Inc. v. Gallagher Re, Inc.* The court revived part of a contract claim because (1) the phrase “Administrative Services” in the parties’ contract was sufficiently ambiguous to survive dismissal, and (2) the question of what duties are “customarily performed” by a reinsurance intermediary-broker raises a fact issue about industry practice. The decision does not change the role that “industry custom” evidence plays in contract interpretation, as it focuses on the distinct issues raised when the express terms of a contract involve matters of industry practice. No. 25-10489 (5th Cir. Apr. 2, 2026).

(Longtime followers of 600Camp.com will recognize this case as the latest in a *lengthy* line of appellate opinions that differ from a trial court in the analysis of contract ambiguity.)

*Penthol LLC v. Vertex Energy Operating, LLC.* To establish anticipatory repudiation under Texas law, the refusal to perform must be clear, absolute, and unconditional. Hard bargaining, expressed uncertainty about future ability to perform, or the ordinary friction of commercial dealings will not, by themselves, cross the doctrinal line. 149 F.4th 504 (5th Cir. 2025).

*Al Jundi v. ElJindi.* A purported settlement agreement lacked consideration where the plaintiff made no promises, imposed no obligations on himself, and incurred no detriment — only the defendant promised to

pay a debt he did not personally owe. No. 05-23-01121-CV (Tex. App.—Dallas Aug. 11, 2025, no pet.).

**Conosir, LLC v. Santos.** Reliance on an oral misrepresentation is not justified when directly contradicted by an unambiguous written contract containing a merger clause; the statutory fraud claim failed as a matter of law. No. 05-23-01181-CV (Tex. App.—Dallas July 30, 2025, pet. denied).

**Crutcher v. City of Fort Worth.** A settlement-enforcement order was an abuse of discretion because the plaintiff's response signaled lack of consent; the court rejected the "acceptance of benefit" doctrine because the funds-acceptance was not voluntary and the appellee bore some blame. No. 05-24-01005-CV (Tex. App.—Dallas Mar. 4, 2026, no pet. h.).

**Alarcon v. Santoyo.** Reversing an individual tortious-interference judgment against a corporate officer; under *Holloway v. Skinner*, mixed motives (acts benefiting both officer and corporation) are insufficient to impose personal liability. No. 05-24-00297-CV (Tex. App.—Dallas Aug. 4, 2025, pet. denied).

**Layla's Day Spa, Inc. v. HD Salon Group, LLC.** Reversing tortious-interference judgments; no evidence showed solicitation or knowing inducement of breach, the technicians left on their own, and "a tortious interference claim cannot be premised merely on the hiring of an at-will employee." No. 05-24-00065-CV (Tex. App.—Dallas May 21, 2025, no pet.).

### 6.3 Immunity

**In re Hefflefinger P'ship.** Conditionally granting mandamus, the court held the turnover statute is a procedural collection device that does not authorize a trial court to adjudicate a non-party lienholder's substantive rights by voiding a deed of trust. No. 05-23-01091-CV (Tex. App.—Dallas Oct. 2, 2025, orig. proceeding).

**Megatel Homes v. City of Mansfield.** The Fifth Circuit held that Texas water-law policy displaced competition in favor of a certificated utility monopoly, but it also held that the city itself was not the beneficiary of that state-action immunity. The immunity ran to the utility district that held the certificate of convenience and necessity, not to the city, which had separately reserved consent power over service in its extraterritorial

jurisdiction by contract. The opinion reminds that litigation about immunity does not just ask *whether* the state has displaced competition, but also *who* may claim that displacement as a defense. 170 F.4th 954 (5th Cir. March 26, 2026).

**Jones v. City of Hutto.** Even when a city may be sued for breach of contract under Tex. Loc. Gov't Code Ch. 271, the recoverable damages remain cabined by the governing waiver statute's remedial limits. 154 F.4th 332 (5th Cir. 2025).

## 7. Torts, causation, and damages

### 7.1 Anchoring

**SL Nabors Commercial/Residential Roofing, Ltd. v. Allen.** Upholding \$665,000 in non-economic damages, the court held that *Gregory v. Chohan* does not require a "simple calculation" (per-hour or per-day) anchor; rational, evidence-grounded reasoning suffices to support such an award. No. 05-24-00854-CV (Tex. App.—Dallas Mar. 26, 2026, no pet.).

### 7.2 Dogs and ice

**Born v. Fielder.** Affirming summary judgment on a premises-liability claim by a prospective home buyer who fell down three stone steps; the steps were open and obvious as a matter of law, so the owner owed no duty to warn or make safe. No. 05-25-00239-CV (Tex. App.—Dallas Mar. 24, 2026, no pet.).

**Sanchez v. La Hacienda LLC.** Reaffirming Texas's "natural accumulation rule": a premises owner owes no duty to invitees to protect against naturally occurring ice, even when the owner has advance knowledge of an incoming winter storm. No. 05-25-00572-CV (Tex. App.—Dallas Mar. 10, 2026, no pet. h.).

**Latcher v. Edwards.** The court rejected a negligence claim against a dog owner; foreseeability evidence was legally insufficient because the dog had never escaped, the owner did not know the side gate had been opened, and the dog had no history of injuring anyone. No. 05-24-01259-CV (Tex. App.—Dallas Feb. 11, 2026, no pet. h.).

