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Biggest Texas Cases Of 2020

By **Michelle Casady**

Law360 (December 18, 2020, 12:05 PM EST) -- In 2020, Texas courts adapted nimbly to the realities of conducting the business of justice in the midst of a global pandemic and still managed to deliver key rulings on what constitutes a binding contract and when attorneys are immune from certain malpractice suits.

Here, Law360 takes a look back at some of the most impactful Texas rulings of 2020.

Clarity On When A Deal Is A Deal

The Texas Supreme Court early this year issued two major rulings in multimillion-dollar disputes that asked them to determine whether a partnership existed between the parties.

The court held that Enterprise Products Partners LP never had a binding pipeline deal with Energy Transfer Partners LP and so ETP couldn't resurrect a $535 million jury verdict. In a separate case, it held that an email exchange between parties in a $230 million oil and gas deal didn't constitute a final sale agreement.

The pair of rulings offer "breathing space" for parties to negotiate deals without the fear of ending up in an inadvertent agreement, said Brett Solberg of DLA Piper.

"If the question is what does it take to get around a definitive agreement clause, what the court is signaling pretty strongly is that it takes a lot. I mean, an awful lot," Solberg said. "The court is saying really clearly that unless you have that inked definitive agreement, if you have a prior contract that says you need one, then you don't have a deal."

In the ETP case in January, the court determined the parties hadn't met certain conditions that were laid out in a written agreement in order for a partnership to exist. Because the jury was never asked to determine if Enterprise had waived the so-called conditions precedent, there was no basis for the court to find a deal existed.

And in February, the court ruled that Chalker Energy Partners III LLC and other sellers were entitled to reject Le Norman Operating LLC's $230 million emailed offer for oil and gas assets in the Texas Panhandle. The court found the email exchange didn't constitute a meeting of the minds or a definitive agreement to sell.

The rulings are part of a trend that hasn't gone unnoticed by George Lugrin IV of Hall Maines Lugrin PC.

"The [Texas] Supreme Court has done this on several occasions where they render, as a matter of law, on what most lawyers would consider a fact issue," Lugrin said. "And that kind of dovetails with the whole state's move toward a business-friendly approach. … Certainty in business is what you want. And frankly, as a business, being subject to the whims of a jury is not a good position to be in."

The cases are Energy Transfer Partners LP v. Enterprise Products Partners LP, case number 17-0862, and Chalker Energy Partners III LLC et al. v. Le Norman Operating LLC, case number 18-0352, in the Texas Supreme Court.

Bad Faith Required To Get Attorney Sanctions

In deciding a closely watched legal malpractice lawsuit against litigation boutique founder Bill Brewer, the Texas Supreme Court held there must be evidence that an attorney's alleged harmful conduct was carried out in bad faith to prove sanctions.

The April ruling wiped out a $135,000 sanction against Brewer, who was found by a trial court judge to have conducted a "push poll" — a telephone survey conducted under the guise of being an unbiased opinion poll but that was actually meant to sway opinions and taint the jury pool.

Brewer was representing corrugated steel pipe manufacturer Titeflex Corp. against claims that its design led to a gas explosion that killed Brennen Teel. Though the case eventually settled, it was slated to go to trial in Lubbock in 2014.

The ruling sent a message to trial court judges that "there's an extremely strict test that needs to be met in order for sanctions," said Yvonne Ho of Bracewell LLP.

"What this Texas Supreme Court opinion shows is how high that threshold is," she said, explaining the court found no evidence Brewer's conduct was "intentional."

A broad coalition of trial lawyers weighed in as amicus curiae to urge the court to rehear the case, raising concerns that the ruling would encourage attorneys to cross the line from zealous representation to using "genuine inaccuracies" in an attempt to taint the jury pool. Those groups included the Texas Association of Defense Counsel, the Texas Association of Trial Lawyers and the American Board of Trial Advocates.

The amici were also granted time to participate in oral arguments, and David Gunn of Beck Redden LLP said he was struck by some of the "dramatic" argument that came from attorney Brian P. Lauten, who represented the lawyer groups and threatened to quit his job if the court ruled in Brewer's favor.

"He made a plea to think about the consequences in small communities," Gunn said. "That is really impassioned argument from somebody who has no dog in the fight in the sense of caring who wins or loses."

Those worries can still be addressed by the courts, Ho said.

"The court's opinion points out that there are federal courts that have local rules to govern surveys and

mock trials and require disclosures," she said. "I think concerns about this … should be addressed by rules, and each court can formulate its own local rules."

The case is Brewer v. Lennox Hearth Products LLC et al., case number 18-0426, in the Texas Supreme Court.

Guidance On Bounds Of Attorney Immunity

Building on prior rulings that allegedly improper attorney conduct can still be protected by immunity if the conduct falls within the range of what lawyers normally do for clients, the Texas Supreme Court in February ended a malpractice lawsuit against Quilling Selander Lownds Winslett & Moser PC.

The court found Cherlyn Bethel, who lost her case against a trailer manufacturer represented by Quilling Selander, is barred from suing the firm for dismantling the brakes she claimed were faulty and led to the crash that killed her husband. Noting that taking a "sledgehammer" to the brakes wouldn't have been protected conduct, the Texas Supreme Court explained that inspecting evidence in the manner at-issue in this case is covered by immunity.

Ho said the case should also be considered important because it's one of the few decisions from the Texas Supreme Court construing the state's Rule 91a dismissal mechanism, which provides an early avenue for defeating a case based on the claims in a plaintiff's petition.

"The court's conclusion is consistent with the approach in federal court with Rule 12(b)(6) under the federal rules of civil procedure," she said. "If on the face of the pleading it's clear that claims are precluded by affirmative defenses, then they can be dismissed. So now we know that the same is true under 91a."

The case is Cherlyn Bethel v. Quilling Selander Lownds Winslett & Moser PC and James H. Moody III, case number 18-0595, in the Texas Supreme Court.

State High Court Says Claims Structure Matters

A $287.5 million award for a unit of hedge fund Highland Capital Management LP was wiped out by the state's high court in April in a case that Lewis LeClair of McKool Smith told Law360 should serve as a cautionary tale to lawyers that in Texas, "it's critically important that you claim your relief exactly the way you want it."

The Texas Supreme Court found that the district judge who presided over a bench trial in 2015 overcompensated Claymore Holdings LLC by awarding rescission damages after finding Credit Suisse breached its contract with the investor related to a 2007 Las Vegas real estate deal. The court left intact a 2014 jury verdict that held Claymore was entitled to $40 million for a fraudulent land appraisal related to the deal.

"They got the jury verdict of $40 million … then went back to the judge to get equitable relief," he said. "But the Texas Supreme Court effectively said that $40 million was what you were entitled to."

The case can be read as a counterpoint to the Texas Supreme Court's March 2018 ruling in JPMorgan Chase Bank v. Orca Assets GP LLC, said David Coale of Lynn Pinker Hurst & Schwegmann LLP. In that case, the court tossed Orca's $400 million fraud suit alleging JPMorgan double-leased an oil and gas

property after finding Orca ignored "red flags" in the negotiations.

"What the court chose to focus on [in Credit Suisse], on rescission, is a basic tenet of contract law and they kept it simple," he said. "They say if you've got contract damages, you don't get those equitable remedies."

The case is Credit Suisse AG et al. v. Claymore Holdings LLC, case number 18-0403, in the Texas Supreme Court.

--Additional reporting by Katie Buehler and Jack Queen. Editing by Alyssa Miller.