



## Case Summaries March 13, 2026

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### DECIDED CASES

***Cockrell Inv. Partners, L.P. v. Middle Pecos Groundwater Conservation Dist.***, \_\_\_ S.W.3d \_\_\_, 2026 WL \_\_\_, (Tex. Mar. 13, 2026) [23-0593, 23-0742]

At issue is whether a landowner that sought party status in administrative proceedings about groundwater-production permits exhausted its administrative remedies before suing the groundwater district.

Cockrell twice sought party status in administrative proceedings challenging permit applications that Cockrell's neighbor, Fort Stockton Holdings, had submitted to the Middle Pecos Groundwater Conservation District. The District refused both party-status requests, and Cockrell sought judicial review each time. The trial court granted the District's plea to the jurisdiction in one case and granted the District's summary-judgment motion in the other. The court of appeals affirmed in both cases, holding that Cockrell had not exhausted its administrative remedies because it sued before allowing 90 days to elapse from the filing of its reconsideration requests with the District.

The Supreme Court reversed. The Court held that Cockrell exhausted its administrative remedies and properly invoked a waiver of the District's immunity in Section 36.251 of the Water Code. Under that section, Cockrell must have waited to file suit until the District's decisions became final. To render a decision "final," Cockrell was required to exhaust its administrative remedies, including waiting a certain amount of time after it requested reconsideration of the decision before suing. Section 36.412 of the Water Code imposes a 90-day rehearing period. But that section applies only to a permit applicant or a party to the administrative proceeding. Cockrell was not a party, so the 90-day period does not apply. Instead, Cockrell's reconsideration requests were governed by the 45-day period contained in Rule 4.9 of the District's local rules. Cockrell waited more than 45 days before filing each of its suits, so it exhausted its administrative remedies.

***Clifton v. Johnson***, \_\_\_ S.W.3d \_\_\_, 2026 WL \_\_\_ (Tex. Mar. 13, 2026) [23-0671]

The issues in this case are how to interpret a double fraction in an oil-and-gas deed and whether the presumed-grant doctrine applies.

A deed executed in 1951 granted “an undivided one-one hundred and twenty-eighth (1/128) interest” in oil and other minerals. It also granted “a 1/128 (1/16 of the usual 1/8 royalty) part of all of the oil, gas and other minerals taken and saved” under future leases. From 1951 to 2020, the original grantors and grantees, along with their successors-in-interest, agreed that the deed had conveyed a fixed 1/128 royalty. In 2020, Johnson sued the Cliftons, arguing that the deed actually provided for a floating 1/16 nonparticipatory royalty interest. The parties filed cross-motions for summary judgment. The trial court denied Johnson’s motion for summary judgment and granted the Cliftons’ motion.

While Johnson’s appeal was pending, the Supreme Court decided *Van Dyke v. Navigator Group*, 668 S.W.3d 353 (Tex. 2023). *Van Dyke* addressed both double fractions and the presumed-grant doctrine. In Johnson’s appeal, the court of appeals held that Johnson is entitled to a floating 1/16 royalty, rather than the fixed 1/128 royalty that had previously been received. The court declined to consider the Cliftons’ arguments regarding the presumed-grant doctrine because the Cliftons had not raised that issue in the trial court.

The Supreme Court reversed. It held that the *Van Dyke* presumption applies but was rebutted. The deed’s plain language showed that the parties used the fraction “1/8” in its ordinary arithmetical sense, not as a term of art. The trial court was thus correct that Johnson is entitled only to a fixed 1/128 royalty. The Court reiterated its explanation from *Van Dyke* that the presumed-grant doctrine is akin to adverse possession and is not a tool for deed interpretation. As in *Van Dyke*, applying the doctrine here could only lead to the same result as accurately construing the deed. Thus, the Court did not have to formally resolve the presumed-grant dispute to reinstate the trial court’s summary judgment in the Cliftons’ favor.

***NuStar Energy, L.P. v. Hancock***, \_\_\_ S.W.3d \_\_\_, 2026 WL \_\_\_ (Tex. Mar. 13, 2026) [24-0037]

This administrative-rule challenge involves the construction of a franchise-tax statute that allocates gross sales receipts to Texas if goods were “delivered or shipped to a buyer in this state.” The decisive question is whether the statute sources sales receipts to the place goods were delivered to a buyer or whether the buyer’s intended destination for the goods controls.

NuStar Energy requested a refund for franchise taxes paid on bunker fuel sold for use in foreign-registered vessels and delivered to the buyers at Texas ports. The company argued that the sales receipts should not be sourced to Texas because the nonresident buyers cannot legally use or dispose of the fuel in Texas or Texas waters. NuStar’s tax-refund suit attacked the facial validity of Comptroller rules that make the physical point of transfer determinative as to sourcing. NuStar argued that the tax statute employs an ultimate-destination test that looks beyond the delivery point to the location the buyer ultimately situates goods for consumption, use, or storage.

On cross-motions for summary judgment, the lower courts rejected NuStar's construction of the tax statute and upheld the Comptroller's point-of-delivery rules.

The Supreme Court affirmed, holding that the tax statute unambiguously sources receipts to Texas when a buyer takes possession and control within the state. NuStar's rule challenge incorrectly construed the statute and failed to overcome the presumption that the Comptroller's rules are valid.

***Equinor Energy LP v. Lindale Pipeline, LLC***, \_\_\_ S.W.3d \_\_\_, 2026 WL \_\_\_ (Tex. Mar. 13, 2026) [24-0425]

At issue is whether a fracking company breached a contract with its water supplier by purchasing water from other suppliers.

Lindale Pipeline contracted with Equinor Energy's predecessor to provide water to Equinor's predecessor for its fracking operations. Under the contract, Lindale provides and pumps the water through a pipeline that runs directly to the well sites. Relevant here, the contract makes Lindale the "exclusive water provider and pumper on the Pipeline." After Equinor acquired its predecessor, it began purchasing water for its wells from other suppliers that don't use the pipeline. Lindale sued Equinor for breach of contract, arguing that the contract gives Lindale the exclusive right to supply water for Equinor's fracking operations.

The district court deemed the exclusivity clause ambiguous and submitted the question of its meaning to a jury. The jury sided with Lindale, and court of appeals affirmed.

The Supreme Court reversed and rendered judgment for Equinor. The Court held that the exclusivity clause unambiguously applies only to pumping operations "on the Pipeline." Because Equinor's wells are not "on the Pipeline," they fall outside the scope of the exclusivity clause. As such, the district court erred in submitting the question of the clause's meaning to the jury.

***S&B Eng'rs & Constructors, Ltd. v. Scallon Controls, Inc.***, \_\_\_ S.W.3d \_\_\_, 2026 WL \_\_\_ (Tex. Mar. 13, 2026) [24-0525]

This case concerns whether settling defendants can recover partial indemnification from a non-settling party under a contract provision for proportional or comparative indemnity.

After a 2015 workplace accident, injured workers sued Sunoco (the facility's owner) and S&B (a general contractor). Those parties settled the workers' claims. In a third-party suit, S&B and Zurich (Sunoco's insurer) asserted that the negligence of Scallon (S&B's subcontractor) led to the injuries and, based on a proportional indemnification agreement, sought indemnification from Scallon for the settlement, equal to its proportionate liability. The trial court and the court of appeals held that the settlement, to which Scallon was not a party, covered only S&B's and Sunoco's negligence, thus entitling Scallon to summary judgment.

The Supreme Court reversed. First, while defendants cannot preserve common-law or statutory contribution rights by unilaterally settling a plaintiff's claim, that rule does not bar contractual allocations of risk through comparative

indemnity provisions. Second, the express-negligence doctrine does not preclude enforcing the provision here. Under that doctrine, only express language will allow a court to read an indemnification agreement as indemnifying a party for its own negligence. The indemnification provision here disclaims any duty for Scallon to indemnify S&B and Sunoco for those parties' negligence but instead requires Scallon to indemnify them for whatever portion of liability is attributable to its own negligence. On remand, the trial court will allow S&B and Zurich to pursue indemnification, requiring them to bear the burden of establishing the reasonableness of the settlement and Scallon's proportionate liability, if any. (Separately, the Court reversed the court of appeals' holding that Zurich's claims were time-barred.)

The Court therefore reversed the court of appeals' judgment and remanded the case to the trial court for further proceedings.

Justice Bland, dissenting, would hold that the parties' indemnity agreement in this case did not indemnify S&B and Sunoco for their own negligence committed against noncontracting parties. Because the dissent would hold that the settlement was in payment for S&B and Sunoco's proportionate share of liability and not Scallon's, it would affirm the judgments of the lower courts.

***City of San Antonio v. Realme***, \_\_\_ S.W.3d \_\_\_, 2026 WL \_\_\_ (Tex. Mar. 13, 2026) [24-0864]

At issue in this case is whether a holiday-themed footrace is "recreation" under Texas's Recreational Use Statute.

While participating in a Turkey Trot 5K held in San Antonio, Nadine Realme tripped over a metal pole fragment and broke her arm. She sued the City of San Antonio for negligence and premises liability. The City moved for summary judgment, arguing that Realme's negligence claim is barred under the Recreational Use Statute, which immunizes the City from ordinary negligence claims when a person "engages in recreation" on City property. The trial court denied the motion, and the court of appeals affirmed. The City petitioned the Supreme Court for review.

The Supreme Court reversed and held that Realme's ordinary negligence claim fails as a matter of law because participation in a holiday-themed footrace plainly falls within the ordinary meaning of "recreation." Community fun runs like a Turkey Trot 5K bear the hallmarks of recreation, as participants run in these races for enjoyment and amusement. It is inappropriate to abandon this ordinary meaning in an attempt to shoehorn the activity into one of the many illustrative examples of "recreation" enumerated in the statute. Rather, such illustrative lists serve as an error-check to ensure the scope of a defined term is appropriately construed. Nothing in the statute's list suggests "recreation" should be so narrowly construed to exclude a community fun run.

The Supreme Court remanded to the court of appeals to decide in the first instance whether Realme should prevail on her gross-negligence claim.

***Off. of Atty. Gen. v. PFLAG, Inc.***, \_\_\_ S.W.3d \_\_\_, 2026 WL \_\_\_ (Tex. Mar. 13, 2026) [24-0892]

At issue is whether the trial court erred by ruling that PFLAG did not need to comply with a civil investigative demand issued by the Consumer Protection Division of the Office of the Attorney General.

The Office of the Attorney General is investigating whether medical providers are violating the State’s ban on transgender treatment of minors, including whether they are defrauding insurers under the Deceptive Trade Practices Act. PFLAG is a nonprofit that describes itself “as a resource for LGBTQ people, families, and allies.” The executive director of PFLAG had filed an affidavit in another case describing certain activities of PFLAG families in response to a new state law prohibiting medical treatments for transitioning a child’s biological sex. The DTPA authorizes the Attorney General to issue civil investigative demands as part of an investigation of possible violations of the Act. The Attorney General issued a CID to PFLAG and then later issued a revised CID with a narrower scope and that permitted the redaction of information identifying PFLAG members. PFLAG resisted the CIDs by seeking injunctive and other pretrial relief. The case proceeded to trial. The district court rendered a final judgment holding that PFLAG did not need to produce documents under any of the eight categories set out in the original CID that it had not already produced. The Attorney General brought a direct appeal to the Supreme Court.

The Court reversed the judgment, holding that (1) the district court should have analyzed the revised CID instead of the original CID; (2) the court failed to credit the Attorney General’s reasonable interpretation of the affidavit and to appreciate its connection to the office’s investigation; and (3) PFLAG should produce documents responsive to several of the document categories set out in the revised CID. The Court explained that on remand, PFLAG’s obligation to produce documents is subject to its right to produce a privilege log and establish the existence of a recognized privilege for individual documents.