



Case Summaries May 8, 2026

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DECIDED CASES

Hancock v. RJR Vapor Co. LLC, ___ S.W.3d ___, 2026 WL ___ (Tex. May 8, 2026) [24-0052]

In this tax-refund case, the parties dispute whether RJR Vapor’s VELO pouches are taxable as “tobacco product[s]” under the Tax Code.

RJR Vapor sells oral nicotine pouches, which users place between the cheek and gum. When RJR Vapor introduced the pouches to the Texas market, it asked the Comptroller for a general information letter explaining whether the pouches were taxable under the Cigars and Tobacco Products Tax. The Comptroller concluded that the pouches were taxable. RJR paid the tax under protest and filed this suit, seeking a refund and a declaration that the pouches are not taxable tobacco products. RJR also challenged the constitutionality of the tax statute and its application.

The trial court granted summary judgment for RJR, holding that the pouches were not taxable tobacco products. After a bench trial, it ruled that the language of the Tax Code is unconstitutional both facially and as applied. The court of appeals affirmed and held the pouches are not taxable tobacco products but did not reach the constitutional challenges.

The Supreme Court reversed. In an opinion by Justice Busby, the Court concluded that VELO pouches are taxable tobacco products because they are “made of . . . a tobacco substitute.” The pouches’ blend of plant matter and nicotine take the place and function of taxable pulverized tobacco in pouched tobacco products. The Court remanded RJR Vapor’s constitutional challenges to the court of appeals.

Justice Sullivan concurred *dubitante*, expressing doubt as to whether the inclusion of plant matter in VELO pouches should inform the Court’s analysis.

JPMorgan Chase Bank, N.A. v. City of Corsicana, ___ S.W.3d ___, 2026 WL ___ (Tex. May 8, 2026) [24-0102]

The Court addressed whether agreements pledging sales-tax revenue to a private retailer’s landlord are permitted under the Constitution’s Gift Clauses.

The City of Corsicana and Navarro County wanted a private outdoor retailer,

Gander Mountain, to build an anchor store at a shopping center in Corsicana. The Corsicana Industrial Foundation, a non-profit corporation, owned the land where the center would be constructed. Under several agreements, the Foundation obtained a construction loan, some City and County sales-tax revenue generated by the center was diverted to the Foundation, and Gander Mountain's base rent was pegged to quarterly loan payments minus the sales-tax grants. In 2015, the Gander Mountain store closed, although the shopping center continued to operate. The City and County sued the Foundation and Gander Mountain, seeking a declaratory judgment that the agreements were unenforceable under the Gift Clauses. Lender JP Morgan Chase intervened. The trial court granted summary judgment declaring the agreements unconstitutional. The court of appeals affirmed, holding that the public purpose of the agreements was extinguished when the store closed and the agreements lacked adequate controls to ensure the public purpose was accomplished.

The Supreme Court reversed the court of appeals and remanded the case to the trial court for further proceedings. The Court discussed article III, section 52-a of the Constitution, which authorizes "loans and grants of public money" made "for the public purposes of development and diversification of the economy." The Court held the agreements must meet Gift Clause requirements, established by precedent, that (1) the expenditure is not gratuitous but instead brings a public benefit; (2) the predominant objective is to accomplish a legitimate public purpose, not to provide a benefit to a private party; and (3) the government retains control over the funds to ensure that the public purpose is in fact accomplished. Section 52-a was adopted primarily to establish that development and diversification of the economy would qualify as a legitimate public purpose under existing precedent. The Court concluded that section 52-a and general Gift Clause requirements were likely met, despite the eventual closure of the Gander Mountain store, meaning that summary judgment for the City and County was improper.

Busse v. S. Tex. Indep. Sch. Dist., ___ S.W.3d ___, 2026 WL ___ (Tex. May 8, 2026) [24-0782]

The issue in this case is whether individual taxpayers and a school district have standing to contest the collection of an ad valorem tax.

South Texas Independent School District was originally formed under a statute permitting the creation of specialized districts to provide services for students with disabilities. Willacy County voters authorized South Texas to levy annual ad valorem taxes on county residents. South Texas later expanded its purpose and began enrolling students without disabilities. Several years later, a group of Willacy County taxpayers and a school district within Willacy County brought suit challenging South Texas's constitutional authority to levy the tax.

South Texas filed a plea to the jurisdiction, which the trial court denied. The court of appeals reversed and rendered judgment for South Texas, holding the taxpayers lacked standing under the taxpayer standing doctrine because their lawsuit would significantly disrupt South Texas's operations and disturb the settled

expectations of other taxpayers. The court also held that the school district lacked standing.

The Supreme Court reversed as to the taxpayers. The Court held the court of appeals erred in relying on taxpayer standing doctrine because the individual taxpayers' alleged pocketbook injury established their constitutional standing. But the Court agreed that the school district lacked standing because its alleged injury was speculative and not traceable to South Texas or redressable by a court. The Court remanded the case to the court of appeals to consider South Texas's other jurisdictional arguments.

Justice Young concurred, emphasizing that any determination of a party's standing must be rooted in our Constitution.

MV Transp., Inc v. GDS Transp., LLC, ___ S.W.3d ___, 2026 WL ___ (Tex. May 8, 2026) [24-0924]

The primary issue is whether the Transportation Code and Rule 91a require dismissal of a fraud claim brought against a defendant who was performing the function of a regional transportation authority. A preliminary issue concerns how courts should review a Rule 91 claim when important documents are omitted from the record.

The Dallas Area Rapid Transit Authority contracted with MV Transportation to operate certain services for mobility-impaired users. MV's subsidiary then subcontracted with GDS Transport to provide the services under MV's management. GDS later terminated the contract and sued MV for fraud, other torts, and breach of contract.

MV moved to dismiss the fraud claim under Rule 91a. The motion was based in part on section 456.052(d) of the Transportation Code, which limits the damages liability of an independent contractor for a regional transportation authority, to the extent of the authority's liability, when the contractor performs a function of the authority. The trial court granted the motion, but the court of appeals reversed.

A "master agreement" between MV and DART lies at the heart of the case and is the focus of GDS's live pleading. But it was not included in the appellate record.

The Supreme Court cautioned parties to ensure the accuracy and completeness of the records but held that the record's absence from the record does not foreclose appellate review. When an original petition invokes or excerpts a document, that document is not mere "evidence" but may instead be regarded as part of the petition itself. If a court deems it necessary to see the document's full contents to resolve the motion, the court can demand the document's production without undermining its status as part of the petition. When the parties agree on the document's relevant text, it is even less essential for the document to be in the record. GDS's allegations describe and quote the master agreement; neither party contests what it says. Appellate courts can test the legal viability of claims under these circumstances.

The Supreme Court further observed that the live pleading unambiguously depicts MV as having total control over the relevant operations. Thus, the fraud claim is barred by section 452.056(d) because GDS could not have recovered from DART for

that claim. The Court reversed the court of appeals' judgment, reinstated the trial court's judgment of dismissal as to the fraud claim, and remanded the case to that court for further proceedings.

Bryant Law Firm v. Walker, ___ S.W.3d ___, 2024 WL ___ (Tex. May 8, 2026) (per curiam) [25-0131]

The issue in this case is whether the affirmative defense of accord and satisfaction applies when a client strikes through conspicuous release language before depositing a check tendered in settlement of a legal malpractice dispute.

Robert Walker hired Deborah Bryant to terminate his child support obligations. Walker later terminated Bryant as counsel and demanded a refund, complaining he had paid thousands of dollars in legal fees and child support with "nothing to show for it." Bryant responded by sending Walker a fee refund check bearing a conspicuous statement of release and asked him to sign and return an accompanying release agreement. Walker crossed out the release language on the check, deposited it, and never signed the release agreement. Walker later sued for malpractice. Bryant asserted accord and satisfaction as an affirmative defense, but the trial court directed a verdict for Walker on the defense. The jury awarded actual and exemplary damages to Walker. The court of appeals affirmed.

The Supreme Court reversed and rendered judgment for Bryant, holding that she conclusively established accord and satisfaction under both the common law and the Texas Business and Commerce Code. The Court held that a bona fide dispute existed between the parties. The Court further held that even though Walker had crossed out the release language, mutual assent was satisfied when he deposited the refund check with knowledge that it was conditioned upon a release of claims arising under the parties' attorney-client relationship.

In re ACE Am. Ins. Co., ___ S.W.3d ___, 2026 WL ___ (Tex. May 8, 2026) [25-0461]

The issue in this case is whether the trial court abused its discretion by denying a motion to compel an appraisal under an insurance policy.

A group of insurers provided commercial-property policies covering a warehouse. After the warehouse flooded, the insured property owner and the insurers disagreed about the scope and cost of the repairs, so the insurers invoked the policies' appraisal provision. When the insured refused to participate, the insurers filed suit and moved to compel appraisal. The trial court denied the motion, and the court of appeals denied mandamus relief.

The Supreme Court conditionally granted the insurers' petition for writ of mandamus. Appraisal clauses provide a means for insurers and insureds to resolve disputes about the amount of loss for a covered claim and are generally enforceable absent illegality or waiver. The Court explained that, although questions of coverage and liability must be resolved by the court, prohibiting appraisal as an initial matter is justified only if the amount of loss will never be needed. Here, the parties' dispute was at least in part about the amount of loss, i.e., whether the insured paid more than

was necessary to return the warehouse to its pre-flood state, so the Court held that preemptive intervention by the courts was improper.

Next, the Court rejected the insured's argument that the insurers' shifting position on the amount of loss meant that the parties had no genuine disagreement on that issue and that the insurer therefore had no right to appraisal. The Court explained that, to the extent the insurers' valuation of the claim had changed over time, the record nevertheless confirmed that the insurers valued the amount of loss as significantly less than the insured did, triggering either party's right to appraisal.

Finally, the Court held that the insurers' alleged bad-faith handling of the claim did not excuse the insured from complying with the appraisal provision. Such conduct did not fall within the Court's recognized exceptions to the enforcement of appraisal provisions, and allowing an insured to avoid appraisal by alleging a dispute over coverage or claims handling would render appraisal clauses largely inoperative.