



Case Summaries October 9, 2026

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DECIDED CASES

Conduent State Healthcare, LLC v. M&M Orthodontics, P.A., ___ S.W.3d ___, 2026 WL ___ (Tex. Oct. 9, 2026) [24-0802]

The issue in this case is whether the court of appeals had jurisdiction over a private government contractor's interlocutory appeal from the denial of its plea to the jurisdiction.

The Texas Health and Human Services Commission contracted with Conduent to review prior-authorization requests for orthodontic services under the Medicaid program. The State later sued Conduent for Medicaid fraud, alleging that it had rubber-stamped dentists' requests, and Conduent settled. In a separate case, the State brought similar claims against the Malones (two dentists and their orthodontic practice), who also settled. The Malones also sued Conduent and the State, alleging that Conduent injured them by approving their requests without rigorously reviewing for medical necessity. The trial court granted the State's plea to the jurisdiction but denied Conduent's, which invoked derivative sovereign immunity and the Tort Claims Act's election-of-remedies provision. Conduent filed an interlocutory appeal. A divided court of appeals affirmed.

The Supreme Court vacated the court of appeals' judgment and remanded to the trial court. The Court held that the court of appeals lacked jurisdiction. Section 51.014(a)(8) of the Civil Practice and Remedies Code allows a person to appeal an interlocutory order that grants or denies a plea to the jurisdiction filed by "a governmental unit." The Court reasoned that Conduent, as a governmental *contractor*, is not a governmental unit. Although the Court has treated some private entities as governmental units if their status and authority derive from a statute, Conduent's status and authority, to the extent it has any, derive only from its contract with HHSC.

The Court held that Section 51.014(a)(5) does not provide jurisdiction either. That provision allows an interlocutory appeal of the denial of a summary judgment

motion “based on an assertion of immunity by an individual who is an officer or employee of the state.” “Individual” ordinarily means a natural person, so a company like Conduent does not qualify.

RECENTLY GRANTED CASES

Zurich Am. Ins. Co. v. Burlington N. & Santa Fe Ry. Co. (pets. granted Oct. 2, 2026) [25-0511]

This case arises from a railway’s claims against an insurer to defend and indemnify the railway for asbestos-injury suits against it. The insurer contends any coverage provided in the relevant policies has been exhausted.

Burlington Northern transported vermiculite from Libby, Montana, while insured by Zurich American. Libby residents named Burlington Northern as a defendant in hundreds of asbestos-exposure lawsuits. Zurich agreed to defend Burlington Northern and funded a settlement with over a thousand claimants but eventually asserted exhaustion of the relevant policies. In the ensuing coverage suit, Zurich moved for summary judgment, arguing (1) that the injuries did not occur on the premises covered in the policies; and (2) because there was only a single accident or occurrence, the settlement payments Zurich made exhausted policy limits, resulting in Zurich’s entitlement to recoup some defense costs. Burlington Northern sought partial summary judgment on Zurich’s duty to defend and argued that each plaintiff’s exposure constituted a separate accident or occurrence under the policies.

The trial court granted Burlington Northern’s motion and denied Zurich’s motion. The court of appeals reversed in part, holding that the Libby lawsuits allege injuries that occurred on covered premises but that the Libby claims constitute a single causative event. However, it held that Zurich did not conclusively establish that its settlement payments had exhausted the policy limits or that Zurich had a right to recoupment.

The parties cross-petitioned for review. Burlington Northern argues that the Libby exposures resulted from multiple acts and failures and therefore are multiple accidents or occurrences under the policies. Zurich argues that the court of appeals misplaced the burden to show exhaustion, that the Libby claimants’ references to the covered premises are too slight to implicate coverage, that the continuous exposures resulted in one claim or occurrence, and that the conditions for recoupment have been met.

[CA Opinion: ___ S.W.3d ___, 2025 WL 807496 (Tex. App.—Fort Worth 2025)]

Bailey Cowan Heckaman, PLLC v. Clark, Love & Hutson, GP (pet. granted Oct. 2, 2026) [25-0534]

The issues in this case are (1) whether the personal-injury exemption in the Texas Citizens Participation Act applies to a claim for breach of an agreement to litigate personal-injury claims; and (2) whether courts must determine the applicability of the Act before determining the applicability of a statutory exemption.

GlaxoSmithKline began manufacturing Paxil, an antidepressant drug, in the 1990s. After public reports alleged personal injuries arising from Paxil's use, numerous lawsuits were filed nationwide. In 2007, the Bailey firm and the Clark firm signed a letter agreement to share the costs of, and fees from, litigating Paxil claims against GSK. The firms brought hundreds of cases together that settled in 2010. The parties disagree whether the 2007 agreement remained in place after that first round of settlements. In 2017, Bailey settled a number of additional Paxil cases but did not share its fees with Clark.

Clark sued Bailey, alleging that under the 2007 agreement, it is entitled to half of Bailey's attorney's fees from the 2017 settlements. Bailey moved to dismiss the claim under the TCPA, asserting that the 2007 letter agreement and the 2017 settlement agreements are communications protected by the Act. In response, Clark argued that its claim meets the statutory exemption for "a legal action seeking recovery for bodily injury, wrongful death, or survival or to statements made regarding that legal action."

The trial court denied Bailey's motion to dismiss. The court of appeals affirmed. Because it held that the personal-injury exemption applies to Clark's breach-of-contract claim, the court found it unnecessary to undertake the three-step analysis ordinarily required to determine the Act's applicability and the defendant's entitlement to dismissal. Bailey filed a petition for review.

[CA Opinion: 710 S.W.3d 423 (Tex. App.—Eastland 2025)]

Tex. Tech Univ. v. Espinoza (pet. granted Oct. 2, 2026) [25-0762]

The issue in this case is whether a tort claim against a university was timely under Section 101.106(f) of the Texas Tort Claims Act and the statute of limitations.

Sonia Espinoza alleges that she was in a car accident with Madyson Leita, an employee of Texas Tech University. Espinoza originally sued only Leita, who filed a motion to dismiss. More than 30 days after Leita filed her motion, Espinoza amended her petition to name Texas Tech as a defendant. The trial court signed an agreed order dismissing Leita. Texas Tech then filed a plea to the jurisdiction, which the trial court granted. The court of appeals reversed the trial court's order and remanded the case for further proceedings.

In its petition for review, Texas Tech argues that Espinoza missed two decisive deadlines. First, she failed to sue Texas Tech within the two-year statute of limitations for personal-injury suits. Second, she failed to substitute Texas Tech as the proper defendant within the 30-day window provided by Section 101.106(f). Espinoza argues in response that the court of appeals correctly applied Supreme Court precedent. According to Espinoza, her suit was timely because she filed suit within the limitations period and properly substituted Texas Tech under Section 101.106(f).

[CA Opinion: ___ S.W.3d ___, 2025 WL 2046135 (Tex. App.—Amarillo 2025)]

City of Westworth Village v. Burgess (pets. granted Oct. 2, 2026) [25-0836]

At issue in this case is whether a city's taking of a tract of land to expand a city-owned, privately-operated golf course is a taking for "park" use under Texas Government Code Section 2206.001(c)(4) capable of being acquired by eminent domain.

In 2021, the City of Westworth Village entered into a 99-year lease agreement with UnderPar Life, LLC, under which UnderPar would acquire and develop a four-acre tract of land privately owned by Jim Burgess that is encircled by a public golf course. The leasing parties planned for UnderPar to purchase the property, convey it to the City, and then operate a for-profit business on the property under the lease terms. After the lease's execution, the city council adopted a resolution declaring that the City "desires to expand and operate" the publicly-accessible golf course "to serve existing and future development in the City," the four-acre tract is necessary for that purpose, and the property's acquisition is "a public use for a public purpose." UnderPar then unsuccessfully tried to purchase the property. The City made two offers to purchase the property directly, but when both offers were declined, the City initiated condemnation proceedings.

The trial court granted the City's partial summary-judgment motion, determining that the City's property acquisition was for public use. After a jury trial, the court rendered a condemnation judgment awarding the City title to the property and awarding the property's value plus court costs to Burgess. The court of appeals reversed and remanded, holding that (1) the condemnation falls within the general scope of use for a "park" under Section 2206.001(c)(4), but statutory compliance does not render the taking constitutional; (2) no legislative deference applies to the City's public-use declaration; and (3) summary judgment was improper because there are fact issues as to the taking's "primary" purpose.

Both parties filed a petition for review in the Supreme Court. The City argues that the trial court's public-use holding is dispositive, legislative deference applies, and the primary purpose of the taking is not a fact question. Burgess argues that the taking is not for park use and thus violates Section 2206.001.

[CA Opinion: ___ S.W.3d ___, 2025 WL 1717142 (Tex. App.—Fort Worth 2025)]

Ellis v. Prince (pet. granted Oct. 2, 2026) [25-0939]

The issue in this case is whether a parent appearing as next friend may represent his or her minor child in a personal injury action or whether the absence of an attorney requires dismissal of the action.

Eric Ellis, as next friend to his minor child H.D.E., sued Courtney Prince, LVTRise, Inc., and Above the Clouds, Inc., for an alleged injury to H.D.E. Ellis, who is not a licensed attorney, appeared on his daughter's behalf. The trial court dismissed the claims against each defendant on the ground that, as a non-attorney, Ellis could not prosecute them on H.D.E.'s behalf. The court of appeals agreed that Ellis's status as his daughter's next friend did not allow him to represent her interest because he is not an attorney. The court affirmed the trial court's final order but

modified the dismissal to be without prejudice.

In the Supreme Court, Ellis argues that Section 151.001 of the Texas Family Code and Texas Rule of Civil Procedure 44 give parents the right to represent their children's legal interests. Ellis further argues that to deny a parent the right to seek redress for injuries to his child would violate the parent's fundamental right to care for his child and the child's constitutional right to access Texas courts. LVTRise and Above the Clouds argue in response that Ellis is conflating his right to serve as his daughter's next friend and to make legal decisions for her with a right to practice law. They also contend that Ellis waived his constitutional arguments and that those arguments lack merit.

[CA Opinion: ___ S.W.3d ___, 2025 WL 2370582 (Tex. App.—Fort Worth 2025)]

WCJ Assets, Ltd. v. US Trinity Bridgeport, LLC (pet. granted Oct. 2, 2026) [26-0353]

The issue in this case is whether an interlocutory order that lacks decretal language is effective to adjudicate a claim for purposes of error preservation.

WCJ brought a suit against US Trinity for allegedly violating a ranch sale contract. US Trinity filed counterclaims. The trial court granted various motions filed by US Trinity to dispose of WCJ's claims, but the trial court's order on the motions did not include decretal language. US Trinity nonsuited its claims but reserved its claim for attorney's fees as the prevailing party on WCJ's declaratory judgment action. The trial court granted US Trinity's application for attorney's fees. After a jury determined the fee amount, the trial court signed a final judgment awarding attorney's fees to US Trinity. The judgment specified that it disposes of all parties and claims and is appealable.

WCJ appealed, asserting errors related to the orders granted before the final judgment. The court of appeals held that errors related to the partially dispositive interlocutory orders were not preserved because they did not merge into the final judgment. WCJ seeks relief from the Supreme Court, alleging that the court of appeals erred in declining to reach the merits of the appeal on procedural default grounds. Alternatively, WCJ argues that the law of the case established that the earlier orders were adjudicated before the final judgment. Specifically, WCJ points to its earlier interlocutory appeal, which was dismissed because the court of appeals concluded the appeal was mooted by an order granting US Trinity's motion for summary judgment on WCJ's breach of contract claim.

[CA Opinion: ___ S.W.3d ___, 2025 WL 3723942 (Tex. App.—Fort Worth 2025)]

In re Walgreen Co. (argument granted on pet. for writ of mandamus Oct. 2, 2026) [26-0763]

The issue is whether a supervisor may be held personally liable for failing to correct workplace sexual harassment under a 2021 amendment defining "employer" in Chapter 21 of the Texas Labor Code.

While working for Walgreens, Valerie Sepulveda reported to her supervisor, Robert Alvarez, that a coworker had sexually harassed her. Walgreens later terminated her employment, allegedly for violating its timekeeping policy. Sepulveda then sued Walgreens and Alvarez for employment discrimination and retaliation under Chapter 21. Before 2021, Chapter 21 did not impose personal liability on supervisors for failing to correct workplace sexual harassment. Sepulveda contends that the 2021 amendment changed that by defining “employer” to include a person who “employs one or more employees” or “acts directly in the interests of an employer in relation to an employee.” Disagreeing with that interpretation, Walgreens and Alvarez moved under Rule 91a to dismiss the claims against Alvarez. The trial court denied the motion, and the court of appeals denied mandamus relief.

In the Supreme Court, Walgreens and Alvarez argue that the Legislature enacted the amendment to extend sexual-harassment protections to employees of businesses with fewer than fifteen employees—not to create a new cause of action against individual supervisors. In their view, the amendment, when read alongside the rest of Chapter 21, provides for liability against the employer entity, not individual supervisors. They also contend that mandamus is necessary because the recurring legal question is of statewide importance and has evaded meaningful review. Sepulveda responds that the amendment’s language expressly covers people who act directly in an employer’s interest, including supervisors like Alvarez. To support her interpretation, she points to federal court decisions, similar federal statutes, and the Texas Pattern Jury Charge. She also argues that mandamus is improper because the issue is reviewable on appeal after final judgment.

[CA Opinion: ___ S.W.3d ___, 2026 WL 1776719 (Tex. App.—El Paso 2026)]