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Dorsaneo, Texas Litigation Guide

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HIGHLIGHTS

100th Release

- This 100th release continues the 33-year tradition of keeping *Texas Litigation Guide* current with the very latest developments in Texas law. Some of the significant developments incorporated in this release are summarized below.

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Pretrial, Trial, and Appellate Practice

Civil Case Information Sheets: Effective September 1, 2010, attorneys must now complete and file a civil case information sheet with any original petition or

application, except in justice and small claims courts and juvenile justice proceedings. Tex. R. Civ. P. 78a. A copy of the required form is reproduced in Ch. 11, *Plaintiff's Original Petition*. See § 11.103. Drafting Guides throughout the publication have been updated to reflect this requirement.

Dismissal on Forum Non Conveniens Grounds. The Texas Supreme Court decided two cases that further develop the law of forum non conveniens. In *Quixtar Inc. v. Signature Management Team, LLC*, 315 S.W.3d 28, 31–33 (Tex. 2010), the court discussed the common law doctrine and ruled that this doctrine affords substantially less deference to the plaintiff's choice of forum when the plaintiff is a nonresident of Texas. In *In re Ensco Offshore Int'l Co.*, 311 S.W.3d 921, 928–929 (Tex. 2010) the Court interpreted the statute governing forum non conveniens in personal injury cases. See § 61.30.

Effect of Defense Request to Compel Arbitration on Plaintiff's Right to Non-suit. The Fort Worth Court of Appeals,

disagreeing with two other courts of appeals, held that a defendant's request to compel arbitration is not an independent claim for affirmative relief that would survive a dismissal when a nonsuit is taken. See *In re Riggs*, 315 S.W.3d 613, 615–616 & n.2 (Tex. App.—Fort Worth 2010, orig. proceeding); see § 103.01[1][b].

Res Judicata Effect of Nonsuit. In *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 863866 (Tex. 2010), the Texas Supreme Court held that, because a court has jurisdiction to issue an order dismissing a case with prejudice after a nonsuit, such an order is not void even if mistaken; the order is merely voidable and if not attacked directly becomes a final determination on the merits with res judicata effect. See §§ 103.01[3][b], 131.07[1][b].

Disqualification of Counsel. In *In re Columbia Valley Healthcare System, L.P.*, 320 S.W.3d 819, 53 Tex. Sup. Ct. J. 1106 (Tex. 2010), the Texas Supreme Court discussed the screening procedures a law firm must take with respect to a non-lawyer employee who has previously worked for opposing counsel, in order to prevent disqualification of the firm. See § 110A.11[5].

Attorney's Fees and Costs

Party Seeking Attorney's Fees Has Duty to Segregate Fees Owed by Different Parties. In *DMC Valley Ranch, L.L.C. v. HPSC, Inc.*, 315 S.W.3d 898, 906 (Tex. App.—Dallas 2010, no pet. h.), the court held that if a plaintiff must prove different facts to recover against different defendants, the plaintiff cannot recover the fees spent to prosecute claims against one defendant from the other defendant, and vice versa. See § 22.41A.

Court May Not Award Costs Not Permitted by Statute or Rule. In *Hatfield v. Solomon*, 316 S.W.3d 50, 67 (Tex. App.—Houston [14th Dist.] 2010, no pet.

h.), the court of appeal held that a trial court does not have discretion under Tex. R. Civ. P. 141 to assess as costs items that are not within the scope of taxable court costs under Texas statutes, rules, and common law. See § 30.04[5][b].

Prerequisites to Award of Contractual Attorney's Fees. In *Franco v. Lopez*, 307 S.W.3d 551, 555 (Tex. App.—Dallas 2010, no pet. h.), the court of appeals held that there is no requirement that a prevailing party present evidence that its attorney is licensed to practice in Texas or that it presented its request for fees to the other party in order to be entitled to an award of fees based on contract. See § 21.20[1].

Attorney Signature on Contingent Fee Agreement Not Required. In *Chambers v. O'Quinn*, 305 S.W.3d 141, 151 (Tex. App.—Houston [1st Dist.] 2009, pet. denied), the court of appeal held that a contingent fee agreement need be signed only by the party to be charged—i.e., the client, not necessarily the attorney—to be enforceable. See § 3.100[1][c].

Arbitration

First-Filed Arbitration Allowed to Stand. In *BHP Billiton Petroleum (Americas) Inc. v. Atlantia Offshore Ltd.*, 312 S.W.3d 813, 820–823 (Tex. App.—Houston [1st Dist.] 2009, no pet.), the court of appeal held that the first-filed principle of dominant jurisdiction applied to arbitrations. See § 2.01[6].

Manifest Disregard for Law Not Ground for Vacating Arbitration Award Under FAA. In *Royce Homes, L.P. v. Bates*, 315 S.W.3d 77, 90 (Tex. App.—Houston [1st Dist.] 2010, no pet.), the court of appeal held that the statutory grounds listed in the FAA for judicial vacation and modification or correction of an arbitration award are exclusive and cannot be supplemented by contract. See

§ 44.06[3][c].

Employment Litigation Chapter Revised to Cover Cases Discussing Scope of Contractual Arbitration of Employment Claims. Chapter 203 is revised to reflect several recent federal and Texas cases discussing the arbitrability of various claims in the employment context. For example, although determining whether a claim is within the scope of an arbitration agreement is a matter of contract interpretation and is, therefore, generally a question of law for the court [see *In re Helix Energy Solutions Group, Inc.*, 303 S.W.3d 386, 397 (Tex. App.—Houston [14th Dist.] 2010, no pet. h.)], an employer and an employee may agree to submit matters of substantive arbitrability to arbitration rather than to the court, i.e., whether they agreed to arbitrate and whether a particular claim or dispute is within the scope of their agreement [see *Rent-A-Center, West, Inc. v. Jackson*, ___ U.S. ___, 130 S. Ct. 2772, 2777, 177 L. Ed. 2d 403 (2010)]. Furthermore, defenses that attack the validity of the employment contract as a whole and that are not specifically aimed at the arbitration provision (e.g., whether the agreement was revoked), must be decided by the arbitrator, not the court. See *In re Permian Tank & MFG., Inc.*, 306 S.W.3d 338, 340 (Tex. App.—Eastland 2010, no pet. h.). See § 203.48[1], [6]; see also § 44.07[3][c][ii].

Personal Injury Litigation

Texas Supreme Court Clarifies Scope of Statutory Indemnity for Products Liability Cases. In *Fresh Coat, Inc. v. K-2, Inc.*, 53 Tex. Sup. Ct. J. 1046 (Tex. 2010), the Texas Supreme Court once again applied the statutory indemnity provisions of Chapter 82 of the Civil Practices and Remedies Code and held that: (1) a “product” is something distributed or otherwise placed, for any commercial purpose, into the stream of commerce for use or consump-

tion; (2) a product used in construction that becomes a component of a home or other real property nevertheless maintains its status as a product; (3) a contractor that both supplies a product and installs it according to the manufacturer’s instructions and training is a “seller” of the product, not a mere service provider; and (4) the independent liability exception to the manufacturer’s indemnity obligation under Tex. Civ. Prac. & Rem. Code § 82.002(a) applies only when the seller is guilty of some culpable conduct, and does not apply merely because the seller has contractual liability to a third party. See §§ 291.05[2][c], 320.10[2][a].

Medical Malpractice Statute Applied to Defective Equipment Provided in Connection With Medical Treatment. In *Marks v. St. Luke’s Episcopal Hosp.*, 53 Tex. S. Ct. J. 1077 (Tex. 2010), the Texas Supreme Court held that any claim of injury from an unsafe or defective condition of equipment provided to a patient as part of that patient’s care, such as a hospital bed, is a health care liability claim covered by Chapter 74 of the Civil Practices and Remedies Code. See § 321.02[2].

Standard of Accountant Liability for Negligent Misrepresentation Clarified. The Texas Supreme Court held, in *Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 918–920 (Tex. 2010), that an accountant may incur liability for negligent misrepresentation to a non-client third party investor, but only if: (1) the accountant is aware of the investor and intends for the investor to rely on the financial statements or other information provided; and (2) the investor both actually and justifiably relies on that information. See §§ 322.01[2][c], [3][b], 322.03[1].

Supreme Court Applies Standards for Review of Exemplary Damages Awards.

In *Bennett v. Reynolds*, 315 S.W.3d 867 (Tex. 2010), the Texas Supreme Court reviewed an award of exemplary damages in a case involving theft and conversion of cattle and held that: (1) the statutory prerequisite of malice based on specific intent to harm the plaintiff was supported by the evidence; (2) the entry of an award against both an individual and a corporation was proper under Tex. Civ. Prac. & Rem. Code § 41.005(c)(1) because the individual was a corporate principal who authorized the conduct; but (3) under due process analysis, an award that exceeded 4:1 ratio to economic damages was unconstitutionally excessive. See §§ 20.01[2][c], [d], 334.08[9].

Courts of Appeals Hold That Statutory Caps on Exemplary Damages Are a Waivable Affirmative Defense. *SJW Prop. Commerce, Inc. v. Southwest Pinnacle Props.*, 314 S.W.3d 166 (Tex. App.—Corpus Christi 2010, no pet.), and *Wackenhut Corr. Corp. v. De La Rosa*, 305 S.W.3d 594 (Tex. App.—Corpus Christi 2009, no pet.), each held that the statutory caps on exemplary damages imposed by Tex. Civ. Prac. & Rem. Code § 41.008 constitute an affirmative defense to an award, so that the defendant’s failure to plead or otherwise raise the issue in a timely manner waives the application of the caps. See § 20.01[2][d].

Supreme Court Discusses Notice Requirements Under Government Tort Claims Statute. In *Colquitt v. Brazoria County*, 54 Tex. Sup. Ct. J. 25 (Tex. 2010) (per curiam), the Texas Supreme Court held that a lawsuit itself may constitute actual notice under the Tort Claims Act when it contains all the information required by Tex. Civ. Prac. & Rem. Code § 101.101(a), and is served on governmental unit within six months of the incident. By contrast, the Court held, in *City of Dallas v. Carbajal*, 53 Tex. Sup. Ct. J. 715

(Tex. 2010) (per curiam), that because a police report of an auto accident did not state or imply that the city was at fault, there was no actual notice under the Tort Claims Act, and the claimant’s failure to provide notice required dismissal. See § 293.16[1].

Supreme Court Holds Attorney’s Fee Award Mandatory When Medical Malpractice Case Dismissed for Failure to Serve Expert Report. In *Garcia v. Gomez*, 53 Tex. Sup. Ct. J. 1146 (Tex. 2010), the Texas Supreme Court held that when a defendant in a medical malpractice case secures dismissal for failure to serve an expert report under Tex. Civ. Prac. & Rem. Code § 74.351, an accompanying award of costs and attorney’s fees is mandatory, so that the failure to make an award was error when the defendant filed a motion and submitted some evidence that the attorney’s fees requested were both incurred and reasonable. See § 321.15[7][a].

Courts of Appeals Interpret Time Limit for Filing Expert Reports on Newly Added Defendants in Medical Malpractice Cases. Two different courts of appeals have held that when an amended petition adds new defendants in a medical malpractice case, the 120-day period for serving an expert report on the newly added defendants runs from the date the amended petition was filed, though the period for serving the originally named defendants remains unaltered. *Hayes v. Carroll*, 314 S.W.3d 494 (Tex. App.—Austin 2010, no pet.); *Padre Behavioral Health Sys., LLC v. Chaney*, 310 S.W.3d 78 (Tex. App.—Corpus Christi 2010, no pet.). See § 321.15[1][a].

Claimant May Be Granted Extension to Cure Timely Expert Report’s Deficiencies, Regardless of Extent of Deficiencies. The courts of appeals in *Fagadau*

v. Wenkster, 311 S.W.3d 132 (Tex. App.—Dallas 2010, no pet.), and Morris v. Umberson, 312 S.W.3d 763 (Tex. App.—Houston [1st Dist.] 2009, pet. denied), each held that an expert report in a medical malpractice action must be either (1) completely absent, or (2) timely but merely deficient, and that there is no third category of reports that are so inadequate as to constitute no report at all. Under this construction, an extension order may be granted to the claimant irrespective of the degree of a timely report’s deficiencies. See § 321.15[5][b].

Courts of Appeals Split on Whether Laser Hair Removal Constitutes “Health Care.” Ghazali v. Brown, 307 S.W.3d 499 (Tex. App.—Fort Worth 2010, pet. filed), and, Kanase v. Dodson, 303 S.W.3d 846 (Tex. App.—Amarillo 2009, no pet.), have created a split of authority among the courts of appeals over whether cosmetic hair removal by laser constitutes “health care” under Chapter 74 of the Civil Practices and Remedies Code. See § 321.02[6].

Property Owner Held Not Liable for Outdoor Accumulation of Naturally Occurring Substances. In Scott & White Mem. Hosp. v. Fair, 310 S.W.3d 411, 412–414 (Tex. 2010), a premises liability action, the Texas Supreme Court held that the routine accumulation of a naturally occurring substance such as water, ice, or mud on an outdoor surface of the premises does not pose an unreasonable risk of harm as a matter of law. See § 310.05[3].

Application of Provision Lifting Statute of Limitations Bar in Cases Involving Multiple Defendants. In Villarreal v. Wells Fargo Brokerage Servs., LLC, 315 S.W.3d 109 (Tex. App.—Houston [1st Dist.] 2010, no pet.), the court of appeals distinguished between direct liability claims and vicarious liability claims in the

context of lifting the limitations bar against a designated responsible third party under Tex. Civ. Prac. & Rem. Code § 33.004(e), holding that designation lifts the bar only as to active tortfeasors, not as to defendants alleged to be vicariously liable. The court also held that the limitations bar as to the active tortfeasor is lifted by designation even if the limitations period had already expired before the suit was filed. See § 291.03[2][b].

“Learned Intermediary” Defense Does Not Apply When Drug Manufacturer Advertises Directly to Public. In Centocor, Inc. v. Hamilton, 310 S.W.3d 476 (Tex. App.—Corpus Christi 2009, pet. filed), the court of appeals held that the “learned intermediary” doctrine is inapplicable when a prescription drug manufacturer directly advertises to the public, so that the manufacturer may not rely on the alleged adequacy of its warnings to prescribing doctors to avoid liability to the ultimate user. See § 320.03[5][f].

Courts of Appeals Discuss Certificate of Merit Requirements in Actions Against Design Professionals. In DLB Architects, P.C. v. Weaver, 305 S.W.3d 407 (Tex. App.—Dallas 2010, pet. denied), the court of appeals in Dallas held that the “certificate of merit” requirement in litigation against architects, engineers, and other licensed professionals applies irrespective of whether: (1) the professional holds a license or registration from the state of Texas or from some other state; or (2) the claim is asserted by the plaintiff or by the defendant as a third-party claim. In WCM Group, Inc. v. Brown, 305 S.W.3d 222, 230 (Tex. App.—Corpus Christi 2009, pet. dismissed), the Corpus Christi court of appeals also applied the “certificate of merit” requirement and held that the extension provision of Tex. Civ. Prac. & Rem. Code § 150.002(c) contains two separate clauses,

one that is automatic due to the imminent expiration of the limitations period, and a second that permits the court to exercise its discretion to extend the period for filing when good cause is shown, irrespective of the time that the petition was filed. See § 322.04[2][d].

Federal Statute Protects Website Operator from Defamation Liability. In *Milo v. Martin*, 311 S.W.3d 210 (Tex. App.—Beaumont 2010, no pet.), the court of appeals held that a defendant website operator sued for defamation was entitled to summary judgment under 47 U.S.C. § 230(c)(1), which protects operators from suit based merely on the operator acting as an intermediary between the user and the actual content provider. See § 333.04[3].

Insurance and Workers' Compensation Litigation

Texas Supreme Court Applies “Producing Cause” Standard to Death Benefits Under Workers’ Compensation Law. In *Transcontinental Ins. Co. v. Crump*, 53 Tex. Sup. Ct. J. 1124 (Tex. 2010), a workers’ compensation case, the Texas Supreme Court held that: (1) Tex. Lab. Code § 408.181(a) requiring death benefits when death “results” from a compensable injury requires that the injury be a producing cause of death; (2) on judicial review of benefits award, the carrier bears the burden of showing by a preponderance of the evidence that the injury was not a producing cause of death; (3) *producing cause* should be defined for the jury as “a substantial factor in bringing about an injury or death, and without which the injury or death would not have occurred.” The Court also held that when a claimant’s attorney’s fees are not deducted from the benefits awarded, but are instead paid by the carrier under Tex. Lab. Code § 408.221(c), the carrier has a right to jury trial on the appropriate amount of any fee

award. See §§ 122.131, 340.12, 340.30[4], 340.33[1].

Workers’ Compensation Carrier May Still Dispute Whether Preauthorized Care Was Related to a Compensable Injury. In *Zenith Ins. Co. v. Ayala*, 53 Tex. Sup. Ct. J. 842 (Tex. 2010) (per curiam), the Texas Supreme Court held that although a workers’ compensation carrier’s decision to grant preauthorization precludes any dispute over the medical necessity of the preauthorized services under Tex. Lab. Code § 413.014(e), it does not preclude the carrier from arguing that the condition treated is not related to the compensable injury. See §§ 340.11[1], 340.21.

Court of Appeals Decisions Discuss Scope of Judicial Review of Impairment Ratings in Workers’ Compensation Cases. Two court of appeals decisions construed Tex. Lab. Code § 410.306(c), which requires a trial court exercising judicial review in a worker’s compensation case to adopt the specific impairment rating arrived at by one of the doctors in the administrative proceedings. In *Bell v. Zurich Am. Ins. Co.*, 311 S.W.3d 507 (Tex. App.—Dallas 2010, pet. denied), the court held that because only one valid impairment rating was presented, the court must adopt that rating and has no discretion to adopt some other rating or remand to the division for further proceedings. In contrast, in *Tex. Builders Ins. Co. v. Molder*, 311 S.W.3d 513 (Tex. App.—El Paso 2009, no pet.), the court held that when *all* of the impairment ratings offered in the administrative process are invalid, the trial court cannot adopt any of them, and the appropriate remedy is to remand to the division for further proceedings. See § 340.30[4][c].

Insurer That Erroneously Pays Workers’ Compensation Benefits Can File

Claim for Reimbursement from Proper Carrier. In *Service Lloyds Ins. Co. v. American Alternative Ins. Corp.*, 306 S.W.3d 414 (Tex. App.—Austin 2010, no pet.), the court of appeals held that when one insurer erroneously pays worker’s compensation benefits to an injured worker despite the fact that another insurer is the carrier for the employer, the former carrier qualifies as a “subclaimant” under Tex. Lab. Code § 409.009, and may file a claim with the Division of Workers’ Compensation seeking reimbursement from the proper carrier, irrespective of whether the employee has a pending claim for benefits. See § 340.22.

Supreme Court Interprets Mold Exclusion in Homeowners Policy. In *State Farm Lloyds v. Page*, 315 S.W.3d 525 (Tex. 2010), a property insurance case, the Texas Supreme Court construed Texas Homeowners Form B, which contains both a mold exclusion and an exclusion repeal provision for plumbing leaks, and held that when a plumbing leak results in mold contamination, there is coverage for mold damage to *personal property*, but not to the real property itself. See § 343.04.

Supreme Court Interprets Common Exclusions in CGL Policies. In a pair of decisions, the Texas Supreme Court interpreted two common exclusions that appear in standard form commercial general liability (CGL) policies. In *Gilbert Tex. Constr., L.P. v. Underwriters at Lloyd’s London*, 53 Tex. Sup. Ct. J. 780 (Tex. 2010), the Court interpreted the “contractually assumed liability” exclusion of the standard CGL policy used in the construction industry, and held that the exclusion applies irrespective of whether the liability is (1) the insured’s own liability for breach of contract or (2) the liability of another. In *Mid Continent Cas. Co. v. Global Enercom Mgmt., Inc.*, 54 Tex. Sup. Ct. J. 28 (Tex.

2010) (per curiam), the Court interpreted the auto “use” exclusion of a CGL policy, and held that when a truck secured equipment and provided the power for a pulley system at a job site, the exclusion was applicable as a matter of law and precluded recovery under the policy. See § 341.10[1].

Business and Commercial Litigation

Courts Discuss Requirements for Recovery of Lost Profits for Breach of Contract Under Texas Law. In *B & W Supply, Inc. v. Beckman*, 305 S.W.3d 10, 17 (Tex. App.—Houston [1st Dist.] 2009, pet. denied), a Texas court of appeals held that lost profits are recoverable only if the evidence shows that the loss of profits was a material and probable consequence of the breach and the amount due is shown with sufficient certainty. However, as the 5th Circuit has indicated in a case applying Texas law, unless the issues concerning lost profits are highly technical, expert testimony is not required to prove lost profits, and for an established business, “copious” evidence of lost profits is unnecessary. *Meaux Surface Protection, Inc. v. Fogleman*, 607 F.3d 161, 171 (5th Cir. [Tex.] 2010). See § 21.11[1][c]. Furthermore, a witness may prove lost profits by testifying as to what his or her profit would have been, based on the witness’s knowledge of the cost of performance of each element of the contract and subtracting the total of these costs from the contract price. *B & W Supply, Inc. v. Beckman*, 305 S.W.3d 10, 17 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). See § 210A.42[2][c][i].

Price Quote as Offer Under UCC, Article 2. A federal district court applying Texas law held that a price quotation that is sufficiently detailed may constitute an offer that is capable of acceptance. For a price quotation to create a binding offer, it must reasonably appear from the quotation that the buyer’s assent to the quotation is all that

is needed to ripen the offer into a contract. *J.D. Fields & Co., Inc. v. U.S. Steel Intern.*, 690 F. Supp. 2d 487, 498 (S.D. Tex. 2009). See § 210.02[2][a].

Requirements for Avoiding Contract Based on Duress. In *McCord v. Goode*, 308 S.W.3d 409, 413 (Tex. App.—Dallas 2010, no pet. h.), the court of appeals held that duress must be shown from the acts or conduct of the party accused of duress and not from the emotions of the purported victim. See § 210A.04[3][e][i].

Recent Cases Analyze Rules Regarding Disregard of Corporate Form. In *Wilson v. Davis*, 305 S.W.3d 57, 69 (Tex. App.—Houston [1st Dist.] 2009, no pet. h.), the court of appeals discussed the requirements for disregarding the corporate form, and noted that each of the bases for doing so involves some type of wrongdoing or injustice or inequity, i.e., the kinds of abuse specifically identified that the corporate structure should not shield—fraud, evasion of existing obligations, circumvention of statutes, monopolization, criminal conduct, and the like. See § 165.01[2][a][i]. And in *Biopolymer Engineering v. Immudyne, Inc.*, 304 S.W.3d 429, 442 (Tex. App.—San Antonio 2009, no pet. h.), the court held that the remedy of “reverse piercing” is available to hold a corporation liable for the debts of its controlling shareholders when the shareholders have formed or used the corporation to secrete assets and thereby avoid preexisting personal liability. See § 165.01[4].

Propriety of Permanent Injunction as Remedy in Trade Secret Litigation. In *Calce v. Dorado Exploration, Inc.*, 309 S.W.3d 719, 738 (Tex. App.—Dallas 2010, no pet. h.), the court of appeals held that if too few facts exist to permit the trier of fact to calculate proper damages for the misappropriation of a trade secret, then a perma-

nent injunction is a proper remedy for the breach of a confidential relationship, because a reasonable remedy in law is unavailable. See § 200.08[1][d].

Availability of Declaratory Relief for Trademark Infringement. A federal district court in Texas has held that when the holder of a trademark asserts rights based on ongoing or planned activity by another party and that party contends that it has the right to engage in this activity without license, a justiciable controversy exists and the party need not risk a suit for infringement by engaging in the activity before seeking a declaration of its legal rights. *Poly-America, L.P. v. Stego Industries, L.L.C.*, 694 F. Supp. 2d 600, 605–606 (N.D. Tex. 2010). See § 200.26[3].

Employment Litigation

Statutory Remedies for Sexual Harassment Under TCHRA Held to Preempt Common-Law Negligence Claims. In *Waffle House, Inc. v. Williams*, 313 S.W.3d 796 (Tex. 2010), a case of first impression, the Texas Supreme Court held that the statutory remedies for workplace sexual harassment under the Texas Commission on Human Rights Act (TCHRA) are exclusive, preempting any common law claim against the employer for negligent supervision or retention. See §§ 203A.25[1], 290.32[1][b][ii].

Relation Back of Amendment of Administrative Complaint Under TCHRA. In *University of Texas v. Poindexter*, 306 S.W.3d 798, 809 (Tex. App.—Austin 2009, no pet. h.), a court of appeals held that an amendment that raises a new legal theory does not relate back to the original charge of discrimination. For example, an employee’s retaliation charge does not relate back to a prior charge that only alleged racial discrimination, because retaliation is a different legal theory from race-based dis-

crimination. See § 203A.21[3][e].

Requirements for Proof of Age Discrimination Claim under TCHRA. In *Mission Consol. Independent Sch. v. Garcia*, 314 S.W.3d 548, 555–557 (Tex. App.—Corpus Christi 2010, no pet. h.), the court of appeals held that a plaintiff can show age discrimination in a wrongful discharge case under the TCHRA by showing that he or she was terminated because of his or her age, regardless of whether the plaintiff was replaced by someone younger. Furthermore, the defendant’s proof that the plaintiff was replaced by someone *older* is insufficient to conclusively negate the plaintiff’s claim. See § 203A.21[4][b][v].

Notice of Whistleblower Claim. In *Tarrant County v. McQuary*, 310 S.W.3d 170, 174, 177–178 (Tex. App.—Fort Worth 2010, pet. denied), the court of appeals held that, as a prerequisite to bringing a whistleblower claim, a government employee must provide the employer with reasonable notice that he or she is making a whistleblower claim in the initiation of the grievance or appeal procedures related to the suspension or termination or employment or other adverse personnel action. Merely asking the employer to reconsider termination by making alternative suggestions is insufficient to provide the required notice. See § 203A.22[1][c][i].

Courts Discuss What Constitutes Reasonable and Unreasonable Noncompetition Agreements in Employment Contracts. In *EMS USA, Inc. v. Shary*, 309 S.W.3d 653, 660 (Tex. App.—Houston [14th Dist.] 2010, no pet. h.), the court of appeals held that a restraint on client solicitation in a personal services contract is overbroad and unreasonable if it extends to clients with whom the employee had no dealings during his or her employment. See § 201.04[3][a]. By contrast, a noncompeti-

tion covenant restraining sales agents from calling on any customer from whom they solicited orders or to whom they sold competitive products on the seller’s behalf during the last year of their employment for a period of two years after their termination was held to be reasonable by a federal district court applying Texas law. *Drummond American, LLC v. Share Corp.*, 692 F. Supp. 2d 650, 655 (E.D. Tex. 2010). See § 201.04[3][d].

Refusal to Perform Illegal Act as Exception to At-Will Employment. In *Physio GP, Inc. v. Naifeh*, 306 S.W.3d 886, 887–888 (Tex. App.—Houston [14th Dist.] 2010, no pet. h.), the court of appeals reaffirmed the rule that an employer cannot fire an at-will employee for the sole reason that the employee refuses to perform an illegal act. This common law exception to the employment at will doctrine promotes the public policy of preventing employees from being forced to choose between keeping their jobs and facing criminal liability. See § 203.06[1].

Effect of Employee Handbook in Wrongful Discharge Action. In *Fort Worth Transp. Authority v. Thomas*, 303 S.W.3d 850, 858 (Tex. App.—Fort Worth 2009, pet. filed), the court of appeals held that a court must consider an employee handbook with the employment agreement to determine whether the employer had grounds for discharging the employee, based on the generally accepted principles of contract interpretation that all writings pertaining to the same transaction must be considered together, even if they were executed at different times and do not expressly refer to one another. See § 203.10[3][a].

Per Diem Included in Employee’s Regular Rate of Pay Under FSLA. In *Gagnon v. United Technisource, Inc.*, 607

F.3d 1036, 1040–1042 (5th Cir. [Tex.] 2010), the 5th Circuit held that an employee's per diem may be included in the calculation of the employee's regular rate of pay for purposes of determining the amount of overtime compensation due under the FSLA. When the amount of per diem varies with the amount of hours worked, the per diem payments are considered part of the employee's regular rate in their entirety. See § 203.22[1][f].

U.S. Supreme Court Discusses Standard of Review of Administrator's Interpretation of Benefit Plan Under ERISA.

In *Conkright v. Frommert*, ___ U.S. ___, 130 S. Ct. 1640, 1646–1647, 1651, 176 L. Ed. 2d 469 (2010), the U.S. Supreme Court held that under the deferential standard of review, a plan administrator's interpretation of the plan will not be disturbed if it is reasonable, and there is no exception to this standard when the administrator's previous construction of the same plan terms was found to violate ERISA. However, an administrator's multiple erroneous interpretations of the same plan provision, even if issued in good faith, might support a finding that the administrator is too incompetent to exercise his or her discretion honestly and fairly. See § 203.24[2].

Running of Statute of Limitations in Section 1983 Action.

A Texas court of appeals has held that in wrongful discharge case based on 42 U.S.C. § 1983, the two-year statute of limitations begins to run on the date of termination, not on the date on which the plaintiff discovers the defendant's discriminatory intent. *Ogletree v. Glen Rose Independent School*, 314 S.W.3d 450, 454–455 (Tex. App.—Waco 2010, no pet. h.). See § 203A.12[2].

Real Estate Litigation

Lessee's Option to Buy Leased Property. In *Taylor v. Carbajal*, 304 S.W.3d 585

(Tex. App.—Beaumont 2010, pet. denied), the court of appeals held that when a lease contains an option to purchase the leased premises, but no time for exercising the option is provided, the option survives through all renewals or extensions of the lease. See § 252.01[2][c].

Scope of Justice Court's Authority in Action to Enforce Deed Restrictions.

In *Nash v. Peters*, 303 S.W.3d 359 (Tex. App.—El Paso 2009, no pet.), the court of appeals held that a justice court's authority to enforce deed restrictions under Tex. Gov't Code § 27.034(a) includes the power to issue appropriate declaratory relief, and therefore prevails over the limitation of Tex. Civ. Prac. & Rem. Code § 37.003(a) that only a court of record may enter a declaratory judgment. See § 285.02[6].

Court of Appeals Construes Statute Providing for Daily Penalty for Violation of Restrictive Covenant.

In *Uptegraph v. Sandalwood Civic Club*, 312 S.W.3d 918 (Tex. App.—Houston [1st Dist.] 2010, no pet.), the court of appeals construed Tex. Prop. Code § 202.004(c) authorizing penalties of \$200 for each day of a violation of a covered restrictive covenant and held: (1) whether to assess such damages is discretionary, not mandatory; and (2) an assessment essentially constitutes liquidated punitive damages, so that the court may make an award without considering or determining whether there were any actual damages. See § 285.02[9].

Justice Court's Exclusive Jurisdiction Over Forcible Detainer Actions Precluded District Court Injunction in Rent Dispute Case.

In *Kassim v. Carlisle Interests, Inc.*, 308 S.W.3d 537 (Tex. App.—Dallas 2010, no pet.), the court of appeals held that a district court properly dissolved its temporary injunction issued in a rent dispute that precluded a landlord

from terminating the lease or interfering with the tenant's rights because the landlord had already locked the tenant out and retaken possession of the premises, so the injunction was in the nature of a right of reentry and the justice court had exclusive jurisdiction. See §§ 282.24[2], 282.41[3].

Attorney's Fees Based on Declaratory Relief Precluded When Action is in Nature of Trespass to Try Title. In *Ramsey v. Grizzle*, 313 S.W.3d 498 (Tex. App.—Texarkana 2010, no pet.), a court of appeals held that because a suit over whether a mineral lease had expired determined title to the mineral estate, a trespass to try title action was the exclusive remedy and the trial court erred in awarding attorney's fees based on a request for alternative declaratory relief. See § 251.05[1].

Family Law Proceedings

Characterization of Corporate Assets in Divorce Proceedings. The court of appeals in *Mandell v. Mandell*, 310 S.W.3d 531, 539 (Tex. App.—Fort Worth 2010, no pet. h.) held that property owned by a corporation is neither separate nor community property of the corporate shareholders. For property characterization purposes, the court held that a professional association is treated the same as a for-profit corporation. See § 363.09[3].

Characterization of Trust Income Distributions During Marriage. In *Sharma v. Routh*, 302 S.W.3d 355, 364–366 (Tex. App.—Houston [14th Dist.] 2009, no pet. h.), the court of appeals held that, the context of a distribution of trust income under an irrevocable trust during marriage, income distributions are community property only if the recipient has a present possessory right to part of the corpus. See § 363.09[6].

Certain Veterans Disability Benefits Held Not Divisible in Divorce Proceed-

ings. Combat-Related Special Compensation received in lieu of full retirement pay, and Concurrent Retirement Disability Pay, are excluded from the definition of “disposable retired pay” and are not divisible on divorce. *Sharp v. Sharp*, 314 S.W.3d 22, 24–25 (Tex. App.—San Antonio 2009, no pet. h.). See § 363.57[2][d].

Standing to File SAPCR Discussed. The chapter on SAPCR procedures has been revised to provide expanded discussion of the various courts of appeals' diverging views as to the meaning of the “actual care, control, and possession” language in the statute that gives standing to persons who have had possession of the child for at least six months. See § 370.02[1][a].

Probate Proceedings

Bill of Review by Decedent's Illegitimate Child. The Texas Supreme Court has held that a decedent's child born out of wedlock has standing to bring a bill of review asking the court to set aside a prior judgment negating intestacy and distributing the decedent's property under the terms of the decedent's will. The district court that rendered the original judgment has exclusive jurisdiction over the subject matter of the bill of review. *Frost Nat. Bank v. Fernandez*, 315 S.W.3d 494, 502–504 (Tex. 2010). See § 391.02[3].

Action for Tortious Interference With Inheritance Recognized. The court of appeals in *In re Estate of Russell*, 311 S.W.3d 528, 535 (Tex. App.—El Paso 2009, no pet. h.) held that Texas courts recognize a cause of action for tortious interference with inheritance rights. A person who by fraud, duress, or other tortious means intentionally prevents another from receiving an inheritance or gift from a third person that he or she would otherwise have received may be liable to the other person for loss of

the inheritance or gift. See § 392.08[9].

Fees of Attorney ad Litem. Because Tex. Prob. Code § 34A, which provides for the appointment of an attorney ad litem in a probate proceeding to represent a person who has a legal disability, does not specify who is obligated to pay the attorney's fees, the court has the same discretion regarding assessment of these fees as in any civil case. In re Estate of Frederick, 311 S.W.3d 127, 129–131 (Tex. App.—Fort Worth 2010, no pet. h.). See § 392.12[1].

Sons Who Substituted Themselves in Testator's Pending Litigation Were Suitable Executors. The court of appeals held that sons of a testator, who were named as independent co-executors in his will, were held suitable to serve and were not rendered "unsuitable" by substituting themselves in their father's federal litigation on

his death. By stepping into their deceased father's shoes, they were benefiting their father's estate by successfully defending the federal case. In re Estate of Gay, 309 S.W.3d 676, 680 (Tex. App.—Houston [14th Dist.] 2010, no pet. h.). See § 393.02[2][b].

Construing Will Drafted by Lay Testator. The court of appeals, in In re Estate of Craigen, 305 S.W.3d 825, 827 (Tex. App.—Beaumont 2010, no pet. h.), held that when a will has been drafted by a layperson who is not familiar with legal terms, a court will not place too great an emphasis on the precise meaning of the language used. Instead, in arriving at the meaning the layperson-testator intended, a court will refer to the popular meaning of the words the testator chose to use. See § 394.02[5][a].

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Publication 719 Release 100

March 2011

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Special Alert

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Revision

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Revision

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VOLUME 13

Special Alert

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Revision

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|--------------------------|----------------------------------|---------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 250-59 thru 250-71 | 250-59 thru 250-69 |
| <input type="checkbox"/> | 251-16.1 thru 251-16.7 | 251-16.1 thru 251-16.7 |
| <input type="checkbox"/> | 251-32.1 thru 251-33 | 251-33 |
| <input type="checkbox"/> | 251-59 thru 251-63 | 251-59 thru 251-61 |
| <input type="checkbox"/> | 252-13 thru 252-14.1 | 252-13 thru 252-14.3 |
| <input type="checkbox"/> | 252-61 | 252-61 thru 252-62.1 |
| <input type="checkbox"/> | 252-70.3 | 252-70.3 thru 252-70.4(1) |
| <input type="checkbox"/> | 252-73 thru 252-75 | 252-73 thru 252-75 |
| <input type="checkbox"/> | 253-75 thru 253-79 | 253-75 thru 253-79 |
| <input type="checkbox"/> | 254-23 thru 254-24.1 | 254-23 thru 254-24.1 |

Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
<input type="checkbox"/>	254-36.1 thru 254-37	254-37 thru 254-38.1
<input type="checkbox"/>	254-57 thru 254-62.1	254-57 thru 254-62.1
<input type="checkbox"/>	255-19	255-19 thru 255-20.1
<input type="checkbox"/>	255-27	255-27
<input type="checkbox"/>	255-55 thru 255-72.5	255-55 thru 255-72.6(1)
<input type="checkbox"/>	255-107 thru 255-113	255-107 thru 255-111
<input type="checkbox"/>	256-63 thru 256-67	256-63 thru 256-67
<input type="checkbox"/>	256-87 thru 256-95	256-87 thru 256-93
<input type="checkbox"/>	257-21 thru 257-22.1	257-21 thru 257-22.1
<input type="checkbox"/>	257-39	257-39
<input type="checkbox"/>	257-61 thru 257-65	257-61 thru 257-65
<input type="checkbox"/>	260-5.	260-5 thru 260-6.1
<input type="checkbox"/>	260-38.1 thru 260-39	260-39 thru 260-40.1
<input type="checkbox"/>	260-82.9 thru 260-82.13	260-82.9 thru 260-82.14(1)
<input type="checkbox"/>	260-82.35 thru 260-82.39	260-82.35 thru 260-82.40(1)
<input type="checkbox"/>	260-89 thru 260-92.1	260-89 thru 260-92.1
<input type="checkbox"/>	260-106.1 thru 260-109	260-107 thru 260-111
<input type="checkbox"/>	261-45 thru 261-46.3	261-45 thru 261-46.3
<input type="checkbox"/>	261-66.7 thru 261-66.13	261-66.7 thru 261-66.13
<input type="checkbox"/>	261-68.9 thru 261-73	261-69 thru 261-74.3

VOLUME 18

Special Alert

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|--------------------------|--|-----------------------|
| <input type="checkbox"/> | Special Alert page SAvol18-1 | Material not replaced |
|--------------------------|--|-----------------------|

Revision

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|--------------------------|----------------------------------|------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 270-15 thru 270-20.3 | 270-15 thru 270-20.3 |
| <input type="checkbox"/> | 270-87 thru 270-90.1 | 270-87 thru 270-90.1 |
| <input type="checkbox"/> | 270-127 | 270-127 thru 270-128.1 |
| <input type="checkbox"/> | 271-36.3 thru 271-36.5 | 271-36.3 thru 271-36.5 |
| <input type="checkbox"/> | 271-55 | 271-55 thru 271-56.1 |
| <input type="checkbox"/> | 271-79 thru 271-83 | 271-79 thru 271-83 |
| <input type="checkbox"/> | 280-19 thru 280-21 | 280-19 thru 280-21 |
| <input type="checkbox"/> | 280-56.7 | 280-56.7 |
| <input type="checkbox"/> | 280-65 | 280-65 |
| <input type="checkbox"/> | 280-77 | 280-77 |
| <input type="checkbox"/> | 280-113 | 280-113 |
| <input type="checkbox"/> | 281-19 | 281-19 |
| <input type="checkbox"/> | 281-51 thru 281-52.3 | 281-51 thru 281-52.3 |
| <input type="checkbox"/> | 281-79 thru 281-87 | 281-79 thru 281-87 |
| <input type="checkbox"/> | 282-11 | 282-11 thru 282-12.1 |
| <input type="checkbox"/> | 282-67 | 282-67 |

Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
<input type="checkbox"/>	282-82.5 thru 282-82.6(1)	282-82.5 thru 282-82.6(1)
<input type="checkbox"/>	282-98.1 thru 282-112.1	282-99 thru 282-112.1
<input type="checkbox"/>	283-88.7 thru 283-97	283-89 thru 283-98.1
<input type="checkbox"/>	283-111 thru 283-113	283-111 thru 283-113
<input type="checkbox"/>	283-129 thru 283-131	283-129 thru 283-131
<input type="checkbox"/>	284-22.1 thru 284-31	284-23 thru 284-31
<input type="checkbox"/>	285-15 thru 285-24.3	285-15 thru 285-24.3
<input type="checkbox"/>	285-38.1 thru 285-39	285-39 thru 285-40.1
<input type="checkbox"/>	285-47 thru 285-49	285-47 thru 285-49
<input type="checkbox"/>	285-57 thru 285-63	285-57 thru 285-61

VOLUME 19

Special Alert

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|--------------------------|--|-----------------------|
| <input type="checkbox"/> | Special Alert page SAvol19-1 | Material not replaced |
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Revision

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|--------------------------|---------------------------------------|------------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 290-29 | 290-29 |
| <input type="checkbox"/> | 290-77 | 290-77 thru 290-78.1 |
| <input type="checkbox"/> | 290-93 | 290-93 thru 290-94.1 |
| <input type="checkbox"/> | 290-127 | 290-127 |
| <input type="checkbox"/> | 290-211 thru 290-215 | 290-211 thru 290-213 |
| <input type="checkbox"/> | 291-21 thru 291-30.7 | 291-21 thru 291-30.7 |
| <input type="checkbox"/> | 291-61 thru 291-66.3 | 291-61 thru 291-66.4(1) |
| <input type="checkbox"/> | 291-75 | 291-75 |
| <input type="checkbox"/> | 291-135 thru 291-137 | 291-135 thru 291-139 |
| <input type="checkbox"/> | 292-29 thru 292-30.1 | 292-29 thru 292-30.1 |
| <input type="checkbox"/> | 293-11 thru 293-16.1 | 293-11 thru 293-16.1 |
| <input type="checkbox"/> | 293-45 thru 293-47 | 293-45 thru 293-47 |
| <input type="checkbox"/> | 293-77 thru 293-80.1 | 293-77 thru 293-80.2(1) |
| <input type="checkbox"/> | 293-121 thru 293-136.4(2)(a). | 293-121 thru 293-136.4(2)(c) |
| <input type="checkbox"/> | 293-147 | 293-147 |
| <input type="checkbox"/> | 293-169 thru 293-181 | 293-169 thru 293-179 |
| <input type="checkbox"/> | 300-53 | 300-53 |
| <input type="checkbox"/> | 300-92.1 | 300-92.1 |
| <input type="checkbox"/> | 301-25 thru 301-27 | 301-25 |
| <input type="checkbox"/> | 301-39 thru 301-45 | 301-39 thru 301-43 |
| <input type="checkbox"/> | 302-34.1 | 302-34.1 |
| <input type="checkbox"/> | 310-21 thru 310-22.3 | 310-21 thru 310-22.5 |
| <input type="checkbox"/> | 310-56.1 thru 310-56.3 | 310-56.1 thru 310-56.4(1) |
| <input type="checkbox"/> | 310-69 thru 310-71 | 310-69 thru 310-71 |
| <input type="checkbox"/> | 310-105 thru 310-113 | 310-105 thru 310-113 |
| <input type="checkbox"/> | 311-29 | 311-29 |

Check
As
Done

Remove Old
Pages Numbered

Insert New
Pages Numbered

VOLUME 20

Special Alert

- Special Alert page SAvol20-1 Material not replaced

Revision

- | | | |
|--------------------------|-------------------------------------|------------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 320-8.1 thru 320-12.1 | 320-9 thru 320-12.1 |
| <input type="checkbox"/> | 320-35 | 320-35 |
| <input type="checkbox"/> | 320-64.5 thru 320-64.13 | 320-64.5 thru 320-64.14(1) |
| <input type="checkbox"/> | 320-79 thru 320-81 | 320-79 thru 320-81 |
| <input type="checkbox"/> | 320-117 thru 320-118.1 | 320-117 thru 320-118.1 |
| <input type="checkbox"/> | 321-13 thru 321-25 | 321-13 thru 321-26.7 |
| <input type="checkbox"/> | 321-95 thru 321-97 | 321-95 thru 321-98.1 |
| <input type="checkbox"/> | 321-104.5 thru 321-104.13 | 321-104.5 thru 321-104.14(5) |
| <input type="checkbox"/> | 321-127 thru 321-129 | 321-127 thru 321-130.1 |
| <input type="checkbox"/> | 321-179 thru 321-181 | 321-179 thru 321-181 |
| <input type="checkbox"/> | 322-7 thru 322-21 | 322-7 thru 322-22.1 |
| <input type="checkbox"/> | 322-30.1 thru 322-31 | 322-31 thru 322-32.1 |
| <input type="checkbox"/> | 322-45 thru 322-46.1 | 322-45 thru 322-46.3 |
| <input type="checkbox"/> | 322-54.3 thru 322-54.4(3) | 322-54.3 thru 322-54.4(3) |
| <input type="checkbox"/> | 322-63 | 322-63 thru 322-64.1 |
| <input type="checkbox"/> | 322-91 thru 322-97 | 322-91 thru 322-97 |
| <input type="checkbox"/> | 323-17 thru 323-19 | 323-17 thru 323-19 |
| <input type="checkbox"/> | 330-32.1 thru 330-33 | 330-33 |
| <input type="checkbox"/> | 331-32.1 | 331-32.1 |
| <input type="checkbox"/> | 332-3. | 332-3 |
| <input type="checkbox"/> | 332-24.5 thru 332-41 | 332-25 thru 332-41 |
| <input type="checkbox"/> | 333-25 | 333-25 thru 333-26.1 |
| <input type="checkbox"/> | 333-51 | 333-51 thru 333-52.1 |
| <input type="checkbox"/> | 333-89 thru 333-91 | 333-89 thru 333-91 |
| <input type="checkbox"/> | 333-139 | 333-139 |
| <input type="checkbox"/> | 334-12.1 thru 334-15 | 334-13 thru 334-16.3 |
| <input type="checkbox"/> | 335-55 | 335-55 |
| <input type="checkbox"/> | 335-75 thru 335-81 | 335-75 thru 335-79 |
| <input type="checkbox"/> | 335A-97 thru 335A-113 | 335A-97 thru 335A-114.3 |
| <input type="checkbox"/> | 336-19 | 336-19 thru 336-20.1 |
| <input type="checkbox"/> | 336-33 thru 336-35 | 336-33 thru 336-35 |
| <input type="checkbox"/> | 336-45 thru 336-46.1 | 336-45 thru 336-46.1 |
| <input type="checkbox"/> | 336-55 thru 336-57 | 336-55 thru 336-57 |
| <input type="checkbox"/> | 336-71 thru 336-77 | 336-71 thru 336-77 |
| <input type="checkbox"/> | 337-29 thru 337-31 | 337-29 thru 337-31 |

VOLUME 21

Check As Done	<i>Remove Old Pages Numbered</i>	<i>Insert New Pages Numbered</i>
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Special Alert

Special Alert page SAVol21-1 Material not replaced

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	340-15 thru 340-23	340-15 thru 340-24.1
<input type="checkbox"/>	340-37 thru 340-65	340-37 thru 340-66.3
<input type="checkbox"/>	340-75 thru 340-84.9	340-75 thru 340-84.10(3)
<input type="checkbox"/>	340-101	340-101
<input type="checkbox"/>	340-123 thru 340-129	340-123 thru 340-129
<input type="checkbox"/>	341-39 thru 341-40.1	341-39 thru 341-40.1
<input type="checkbox"/>	341-69	341-69 thru 341-70.1
<input type="checkbox"/>	341-77	341-77
<input type="checkbox"/>	341-113 thru 341-114.1	341-113 thru 341-114.1
<input type="checkbox"/>	341-125	341-125
<input type="checkbox"/>	341-161 thru 341-170.1	341-161 thru 341-170.1
<input type="checkbox"/>	342-31	342-31
<input type="checkbox"/>	343-15 thru 343-23	343-15 thru 343-24.1
<input type="checkbox"/>	343-31 thru 343-33	343-31 thru 343-33
<input type="checkbox"/>	343-49 thru 343-51	343-49 thru 343-51
<input type="checkbox"/>	344-73 thru 344-75	344-73 thru 344-75
<input type="checkbox"/>	345-105 thru 345-117	345-105 thru 345-117
<input type="checkbox"/>	345-177	345-177

VOLUME 22

Special Alert

Special Alert page SAVol22-1 Material not replaced

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	360-65	360-65 thru 360-66.1
<input type="checkbox"/>	361-7 thru 361-12.1	361-7 thru 361-12.1
<input type="checkbox"/>	361-23 thru 361-25	361-23 thru 361-26.1
<input type="checkbox"/>	362-91	362-91 thru 362-92.1
<input type="checkbox"/>	363-19 thru 363-29	363-19 thru 363-30.3
<input type="checkbox"/>	363-93 thru 363-99	363-93 thru 363-100.1
<input type="checkbox"/>	363-117 thru 363-121	363-117 thru 363-122.1
<input type="checkbox"/>	363-135	363-135 thru 363-137
<input type="checkbox"/>	364-4.1 thru 364-14.1	364-5 thru 364-14.1
<input type="checkbox"/>	364-29 thru 364-35	364-29 thru 364-36.1
<input type="checkbox"/>	370-9 thru 370-14.1	370-9 thru 370-14.1
<input type="checkbox"/>	370-63 thru 370-67	370-63 thru 370-67
<input type="checkbox"/>	371-11 thru 371-14.1	371-11 thru 371-14.1

Check As Done	<i>Remove Old Pages Numbered</i>	<i>Insert New Pages Numbered</i>
<input type="checkbox"/>	371-71 thru 371-79	371-71 thru 371-80.1
<input type="checkbox"/>	371A-39 thru 371A-45	371A-39 thru 371A-46.1
<input type="checkbox"/>	371A-61 thru 371A-63	371A-61 thru 371A-65

VOLUME 23

Special Alert

- Special Alert page SAvol23-1 Material not replaced

Revision

- | | | |
|--------------------------|--------------------------------|------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 372-71 thru 372-73 | 372-71 thru 372-74.1 |
| <input type="checkbox"/> | 372-115 thru 372-125 | 372-115 thru 372-126.1 |
| <input type="checkbox"/> | 373-91 thru 373-93 | 373-91 thru 373-94.1 |
| <input type="checkbox"/> | 380-45 thru 380-53 | 380-45 thru 380-53 |
| <input type="checkbox"/> | 381-37 thru 381-48.1 | 381-37 thru 381-48.1 |
| <input type="checkbox"/> | 381-91 thru 381-93 | 381-91 thru 381-93 |
| <input type="checkbox"/> | 381-125 thru 381-129 | 381-125 thru 381-129 |
| <input type="checkbox"/> | 382-23 thru 382-27 | 382-23 thru 382-27 |
| <input type="checkbox"/> | 382-83 thru 382-91 | 382-83 thru 382-91 |

VOLUME 24

Special Alert

- Special Alert page SAvol24-1 Material not replaced

Revision

- | | | |
|--------------------------|--------------------------------|------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 390-10.3 | 390-10.3 |
| <input type="checkbox"/> | 391-9. | 391-9 thru 391-10.1 |
| <input type="checkbox"/> | 391-22.1 thru 391-35 | 391-23 thru 391-35 |
| <input type="checkbox"/> | 391-45 thru 391-47 | 391-45 thru 391-47 |
| <input type="checkbox"/> | 392-5 thru 392-6.1 | 392-5 thru 392-6.1 |
| <input type="checkbox"/> | 392-21 thru 392-27 | 392-21 thru 392-28.1 |
| <input type="checkbox"/> | 392-61 thru 392-67 | 392-61 thru 392-68.1 |
| <input type="checkbox"/> | 392-77 thru 392-100.3. | 392-77 thru 392-100.11 |
| <input type="checkbox"/> | 392-111 | 392-111 |
| <input type="checkbox"/> | 392-163 thru 392-173 | 392-163 thru 392-173 |
| <input type="checkbox"/> | 393-10.1 thru 393-11 | 393-11 |
| <input type="checkbox"/> | 393-45 thru 393-57 | 393-45 thru 393-57 |
| <input type="checkbox"/> | 394-9 thru 394-13. | 394-9 thru 394-14.1 |
| <input type="checkbox"/> | 394-24.1 thru 394-35 | 394-25 thru 394-35 |
| <input type="checkbox"/> | 394-67 | 394-67 thru 394-68.1 |
| <input type="checkbox"/> | 394-79 thru 394-88.1 | 394-79 thru 394-85 |

Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
<input type="checkbox"/>	402-23 thru 402-28.1	402-23 thru 402-27
<input type="checkbox"/>	410-63 thru 410-67	410-63 thru 410-67
<input type="checkbox"/>	415-9.	415-9 thru 415-10.1
<input type="checkbox"/>	415-25 thru 415-27	415-25 thru 415-28.1
<input type="checkbox"/>	415-61	415-61

VOLUME 25

Special Alert

<input type="checkbox"/>	Special Alert page SAvol25-1	Material not replaced
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Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	420-1 thru 420-3	420-1 thru 420-3
<input type="checkbox"/>	421-1 thru 421-31	421-1 thru 421-33
<input type="checkbox"/>	422-13	422-13
<input type="checkbox"/>	422-23 thru 422-33	422-23 thru 422-31
<input type="checkbox"/>	422-51	422-51
<input type="checkbox"/>	423-3 thru 423-4.1	423-3 thru 423-4.1
<input type="checkbox"/>	423-17 thru 423-35	423-17 thru 423-36.1
<input type="checkbox"/>	423-47 thru 423-51	423-47 thru 423-51
<input type="checkbox"/>	424-11	424-11 thru 424-12.1
<input type="checkbox"/>	424-21	424-21
<input type="checkbox"/>	425-11 thru 425-12.1	425-11 thru 425-12.1

VOLUME 26

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	I-1 thru I-129	I-1 thru I-130.1
<input type="checkbox"/>	I-373 thru I-391	I-373 thru I-392.1
<input type="checkbox"/>	I-455 thru I-481	I-455 thru I-482.1
<input type="checkbox"/>	I-507 thru I-553	I-507 thru I-554.1
<input type="checkbox"/>	I-617 thru I-673	I-617 thru I-674.1
<input type="checkbox"/>	I-703 thru I-707	I-703 thru I-707
<input type="checkbox"/>	I-739 thru I-777	I-739 thru I-778.1
<input type="checkbox"/>	I-825 thru I-841	I-825 thru I-842.1
<input type="checkbox"/>	I-875 thru I-913	I-875 thru I-913
<input type="checkbox"/>	I-951 thru I-957	I-951 thru I-958.1

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