

PUBLICATION UPDATE

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Dorsaneo, Texas Litigation Guide

Publication 719 Release 110

August 2013

HIGHLIGHTS

- **Dismissal Chapter Completely Revised.** Ch. 103, *Dismissal*, has been completely revised to reflect new Texas rules authorizing dismissal of claims that have no basis in law or fact.
- **Condemnation Chapter Completely Revised.** Ch. 261, *Condemnation*, has been thoroughly revised, updated, and reorganized to provide updated and expanded coverage of eminent domain and inverse condemnation actions, including recent Texas Supreme Court cases.
- **Special Alerts Added Regarding New “Expedited Actions” Process and New Justice Court Rules.** Special Alerts have been added throughout the set regarding significant new and amended provisions of the Texas Rules of Civil Procedure, which will be incorporated into the publication in an upcoming release.

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Release 110 of *Texas Litigation Guide* includes two completely revised chapters, plus miscellaneous revisions and updates to other chapters. The release also contains a completely revised subject matter index.

Dismissal Chapter Updated and Revised to Reflect New Texas Civil Rule on Dismissal of Baseless Causes of Action. Chapter 103, *Dismissal* has been thoroughly revised and updated to reflect the Texas Supreme Court’s adoption of new Civil Procedure Rule 91a, which authorizes a court to dismiss a cause of action on the grounds that it has no basis in law or fact. This rule was adopted in response to 2011 legislation [*see* Act of May 25, 2011, 82nd Leg., R.S., ch. 203, § 1.01 (HB 274)] and became effective March 1, 2013. The new Rule 91a applies to all cases, including

those pending on the effective date [see Misc. Docket No. 13-9022, ¶¶ 2, 3 (Feb. 12, 2013)]. In addition, the chapter's coverage of nonsuit and of other types of involuntary dismissal has been extensively revised to reflect current Texas practice. Related revisions have also been made to Chapter 70, *Answer*.

Condemnation Chapter Completely Revised, Expanded, and Reorganized.

Chapter 261, *Condemnation*, is completely revised and reorganized for this release. The revised chapter is restructured to improve organizational clarity, with many additional subsections added to assist the reader in locating topics of interest. These expanded discussions include the public use (§ 261.13) and necessity (§ 261.12) elements of condemnation proceedings, as well as the requirements for an inverse condemnation claim based on an alleged regulatory taking (§ 261.22). The chapter also contains more comprehensive coverage of the issue of adequate compensation (§§ 261.30–261.35). Finally, the revised chapter contains new or expanded discussions of recent cases from the Texas Supreme Court, including:

- *TxDOT v. A.P.I. Pipe & Supply*, 2013 Tex. LEXIS 268, *5–*6 (Tex. Apr. 5, 2013), which held that a claim for inverse condemnation is unavailable when all of the purported owner's rights in the property were terminated in previous eminent domain proceedings. Though the trial court entered a nunc pro tunc judgment awarding the condemnor an easement only, that judgment was void and had no effect on the prior judgment awarding fee simple to the condemnor (§§ 261.21[1][a], 261.45 [9]).
- *El Dorado Land Co., L.P. v. City*

of McKinney, 56 Tex. Sup. Ct. J. 415 (Tex. 2013), which held that a grantor's reversionary interest in a tract sold on the condition that it be used as a park was a property interest sufficient to support a claim for inverse condemnation (§§ 261.04[2][b], 261.21[1]).

- *Kopplow Dev., Inc. v. City of San Antonio*, 56 Tex. Sup. Ct. J. 354 (Tex. 2013), which held that a regulatory takings claim was ripe for review because it was based on alteration of vested development rights established by a permit and did not depend on any future contingencies (§ 261.22[1]).
- *City of Austin v. Whittington*, 384 S.W.3d 766 (Tex. 2012), which held that when a landowner challenges a condemnor's determination of public use or necessity: (1) the landowner bears the burden to plead and prove the affirmative defenses of fraud, bad faith, or arbitrary and capricious conduct; and (2) these defenses present issues of law for resolution by the courts and may be submitted to the jury only when the underlying facts are disputed (§ 261.14).
- *West Hardin County Consol. Indep. Sch. Dist. v. Poole*, 384 S.W.3d 816 (Tex. 2012) (per curiam), which held that foreclosure of a tax lien on the property terminates the owner's interest in the land and precludes a later claim for inverse condemnation (§ 261.21[1][a]).

Maritime and Railroad Injuries Chapters Revised to Reflect Recent Case Law.

Chapter 350, *Federal Employers' Liability*, and Chapter 351, *Injuries to Seamen*, have been updated to reflect recent federal and

state case law. For example, Chapter 350 includes discussion of *Kansas City Southern Ry. Co. v. Oney*, 380 S.W.3d 795 (Tex. App.—Houston [14th Dist.] 2012, no pet. h.), holding that the FELA preempts provisions of the Texas Civil Practice and Remedies Code requiring the plaintiff in an asbestos injury case to serve a physician’s report containing specified information within 30 days of the defendant’s answer or first appearance. And Chapter 351 includes discussion of *Weeks Marine, Inc. v. Garza*, 371 S.W.3d 157 (Tex. 2012), discussing the applicability of comparative fault principles in actions under the Jones Act.

Special Alerts Reflect New and Amended Civil Rules Governing “Expedited Actions.” Special Alerts have been added at the beginning of several chapters throughout the set to reflect new Civil Procedure Rule 169, setting forth a new “expedited actions” process for suits in which all claimants, other than counter claimants, affirmatively plead that they seek only monetary relief aggregating \$100,000 or less, including damages of any kind, penalties, costs, expenses, prejudgment interest, and attorney fees [Tex. R. Civ. P. 169(a)(1)]. These new procedures do not apply to claims governed by the Family Code, Property Code, Tax Code, or Chapter 74 of the Civil Practice and Remedies Code [Tex. R. Civ. P. 169(a)(2)]. At the same time, the Texas Supreme Court also adopted conforming amendments to Civil Procedure Rules 47, 190.2, and 190.5, and added a new Evidence Rule 902(10)(c). The expedited actions rules and amendments apply to cases filed on or after March 1, 2013 [see Misc. Docket No. 13-9022, ¶ 2, 3 (Feb. 12, 2013)]. These new and

amended rules will be incorporated into the relevant chapters in an upcoming release.

All-New Justice Court Rules Adopted.

In response to 2011 legislation [see Act of June 29, 2011, 82nd Leg., 1st C.S., ch. 3, §§ 5.02, 5.07, as amended by Act of April 2, 2013, 83rd Leg., R.S. (HB 1263)], the Texas Supreme Court has adopted all-new rules governing proceedings in the justice courts [see Tex. R. Civ. P. 500–510]. The new rules are in response to the Legislature’s abolition of the small claims courts and the transfer of their jurisdiction to the justice courts, effective August 31, 2013. These rules completely replace former Civil Procedure Rules 523–591 and 737–755, which are repealed. The new rules become effective August 31, 2013 and apply to cases filed on or after the effective date, except to the extent that, in the opinion of the court, their application to a case pending on August 31, 2013 would not be feasible or would work injustice, in which event the formerly applicable procedure applies. Any action taken under the former rules before August 31, 2013 in a case pending on that date must be treated as valid [see Misc. Docket No. 13-9049, ¶ 1, 3 (April 15, 2013)]. A Special Alert noting these rules has been added at the beginning of Chapter 46, *Justice Court Proceedings*. The new justice court rules will be incorporated into that chapter and other appropriate chapters in an upcoming release.

Completely Revised Index. This release also contains a complete revision of the subject matter index to reflect the revisions to *Texas Litigation Guide* made in this release and in Releases 107 to 109.

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August 2013

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