

**PUBLICATION UPDATE**

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# Dorsaneo, Texas Litigation Guide

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**HIGHLIGHTS**

- **Recent Case Law Developments Affecting Procedural and Substantive Topics**
- **Amended Evidence Rule 902(10) on Self-Authentication of Business Records Incorporated**

This release updates *Texas Litigation Guide* with recent Texas Supreme Court and court of appeals decisions, U.S. Supreme Court and other federal cases, rule amendments, and other significant developments occurring since Release 114. Some of the significant developments and revisions included in this release are summarized below. The release also contains revised pages updating the subject matter index.

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**Pretrial, Trial, and Appellate Practice**

**Authentication of Business Records by Affidavit Under Amended Evidence Rule 902(10).** The forms and legal background in Ch. 120A, *Presentation of Proof*, have been revised to incorporate discussion of amended Evidence Rule 902(10), governing self-authentication of business records through an affidavit procedure. The amended rule became effective on September 1, 2014.

**Direct Appeal to Supreme Court.** Discussion of *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646, 649–650 (Tex. 2013), which appears to broaden the Texas Supreme Court’s jurisdiction to hear direct appeals of decisions granting or denying a permanent injunction based on the constitutionality of a statute, has been added to Ch. 50, *Injunction*, and Ch. 151, *Appellate Proceedings in Supreme Court* (see § 50.05[2][d];

§ 151.02[3]).

**Requirements for Issuance of Injunction.** Ch. 50, *Injunction*, has been revised to include *Conlin v. Haun*, 419 S.W.3d 682, 686–687 (Tex. App.—Houston [1st Dist.] 2013, no pet. h.), in which the court ruled that injunction orders that do not adhere to the requirements of Civil Procedure Rule 683 are void, disagreeing with some other courts that have held that the requirements of Rule 683 may be waived (§ 50.05[2][d]).

**Sanctions Based on Spoliation of Evidence.** The discussion of spoliation sanctions in Ch. 98, *Discovery Sanctions*, has been completely rewritten to incorporate *Brookshire Bros., Ltd. v. Aldridge*, \_\_\_ S.W.3d \_\_\_, 2014 Tex. LEXIS 562 (Tex. July 3, 2014), in which the Texas Supreme Court set out a complete framework for analyzing spoliation problems and determining whether a spoliation instruction or other sanctions may be imposed (*see* § 98.04[6]). Portions of Ch. 99, *Electronic Discovery*, have also been revised to incorporate the Court’s decision in *Brookshire* (*see* §§ 99.02[4][a], 99.190).

**No Discovery Privilege for “Self-Critical Analysis.”** This release includes discussion of the Dallas Court of Appeals’ decision in *In re Fisher & Paykel Appliances, Inc.*, 420 S.W.3d 842, 848 (Tex. App.—Dallas 2014, orig. proceeding), in which the court declined to create a new common-law “self-critical analysis” privilege, stating that privileges must be grounded in the Texas Constitution, statutes, or rules. *See* Ch. 90, *Discovery: Scope and Limitations*, § 90.06[3][a].

**Dismissal on Forum Non Conveniens Grounds.** In *In re Ford Motor Co.*, \_\_\_ S.W.3d \_\_\_, 2014 Tex. LEXIS 573, at \*9–\*19 (July 3, 2014), the Texas Supreme Court discussed the Texas forum non conveniens statute and interpreted the term

“plaintiff” for purposes of the provision requiring that a court may not stay or dismiss a plaintiff’s claim on forum non conveniens grounds if the plaintiff is a legal resident of Texas. Discussion of this case has been added to Ch. 61, *Venue* (*see* § 61.30[2][b]).

**Jurisdiction Over Class Representative.** In *Nat’l Fire Ins. Co. v. CE Design*, 429 S.W.3d 806, 814–815 (Tex. App.—Dallas 2014, no pet. h.), the court of appeals held that the fact that a large percentage of class members resided in Texas did not subject the class representative to personal jurisdiction as a defendant in Texas. *See* Ch. 32, *Personal Jurisdiction and Service on Nonresidents*, § 32.03.

**Tag-Along Actions in Multidistrict Litigation.** Ch. 64, *Multidistrict Litigation*, has been updated with discussion of *Wellington Ins. Co. Hailstorm Litig.*, 427 S.W.3d 581, 584 (Tex. Jud. Pan. Mult. Lit. 2014), in which the Texas Judicial Panel on Multidistrict Litigation set out standards for determining when a case may be transferred to an existing multidistrict litigation as a “tag-along” case (§ 64.07[1]).

**Appeal of Order Regarding Deposition Before Suit.** This release includes a discussion two recent court of appeal decisions regarding presuit depositions under Civil Procedure Rule 202. In *In re Prairiesmarts LLC*, 421 S.W.3d 296, 304 (Tex. App.—Fort Worth 2014, orig. proceeding), the court of appeals held that a party to a Civil Procedure Rule 202 petition for presuit deposition against whom a suit is anticipated may seek mandamus review of an allegedly improper order on the deposition. However, the court of appeals in *In re Reassure Am. Life Ins. Co.*, 421 S.W.3d 165, 171 n.3 (Tex. App.—Corpus Christi 2013, orig. proceeding), a different court of appeals held that presuit deposition orders

are appealable only if sought from someone against whom suit is not anticipated. *See* Ch. 10, *Depositions Before Suit*, § 10.06.

**Statutory Construction—Undefined Terms in Statutes.** This release includes discussion of *Ritchie v. Rupe*, \*22, 57 Tex. Sup. J. 771, 2014 Tex. LEXIS 500 (Tex. 2014), in which the Texas Supreme Court held that when an undefined statutory term has multiple common meanings, the definition most consistent within the context of the statute’s scheme applies. *See* Ch. 4, *Statutory Construction*, § 4.03[3][a].

## Arbitration

**What Constitutes an Unconscionable Arbitration Agreement.** The Texas Supreme Court held in *Venture Cotton Coop. v. Freeman*, 57 Tex. Sup. Ct. J. 730, 2014 Tex. LEXIS 471, \*23 (Tex. 2014), that the crucial inquiry in determining unconscionability in an arbitration agreement is whether the arbitral forum in a particular case is an adequate and accessible substitute to litigation, a forum where the litigant can effectively vindicate his or her rights. *See* Ch. 44, *Arbitration*, § 44.02[1][b].

**Defense that Entire Contract Fraudulently Induced Subject to Arbitration.** Included in this release is a discussion of *Glassell Producing Co. v. Jared Res., Ltd.*, 422 S.W.3d 68, 76 n.8 (Tex. App.—Texarkana 2014, no pet.), in which the court of appeals held that only a claim of fraudulent inducement specific to the arbitration clause is a defense to arbitration; a claim that the entire contract was induced by fraud is within the scope of arbitration. *See* Ch. 44, *Arbitration*, § 44.04[1][b].

**Standards for Determining Waiver of Arbitration.** This release includes a discussion of *Kennedy Hodges, L.L.P. v. Gobellan*, 57 Tex. Sup. Ct. J. 584, 2014 Tex. LEXIS 393 (Tex. 2014), in which the Texas Supreme Court held that a party who

litigated one claim with an opponent does not substantially invoke the litigation process for a related yet distinct claim against another party with whom it had an arbitration agreement. *See* Ch. 44, *Arbitration*, § 44.02[3][a].

**Parties May Specify Required Arbitrator Qualifications.** Discussed in this release is *Americo Life v. Myer*, 57 Tex. Sup. Ct. J. 831, 2014 Tex. LEXIS 501, \*\*11–14 (Tex. 2014), in which the Texas Supreme Court held that the AAA arbitrator impartiality rule conflicted with the parties’ agreement in which the parties specified that the arbitrator be “independent,” and that parties may agree that the arbitrator need only be independent, as distinguished from impartial. *See* Ch. 44, *Arbitration*, § 44.04[2].

**No Waiver of Arbitrator Bias Claim Based on Unknown Facts.** In *Tenaska Energy, Inc. v. Ponderosa Pine Energy, LLC*, 57 Tex. Sup. Ct. J. 617, 2014 Tex. LEXIS 427, \*\*25–29 (Tex. 2014), the Texas Supreme Court held that parties to an arbitration agreement may not waive their evident partiality challenge by proceeding to arbitration based upon information they were unaware of at that time. *See* Ch. 44, *Arbitration*, § 44.06[2][c][ii].

## Attorney’s Fees

**Parties Must Plead Specific Ground for Recovery of Attorney’s Fees.** In *Shaw v. Lemon*, 427 S.W.3d 536, 539–541 (Tex. App.—Dallas 2014, pet. filed), the court of appeals held that when a party pleads a specific ground of recovery of attorney’s fees, the party is limited to that ground and cannot recover attorney’s fees on another, unpleaded ground. *See* Ch. 11, *Plaintiff’s Original Petition*, § 11.02[7][b].

**Attorney’s Fees Under Civil Practice and Remedies Code Section 38.001 Recoverable Against Only Individual or**

**Corporation.** In *Fleming & Assocs., L.L.P. v. Barton*, 425 S.W.3d 560, 575 (Tex. App.—Houston [1st Dist.] 2014, pet. filed), the court of appeals held that under the plain language of Civil Practice and Remedies Code Section 38.001, a person may not recover attorney’s fees against a partnership. See Ch. 22, *Attorney’s Fees*, § 22.20[1][b].

**Proving Reasonableness and Necessity of Attorney’s Fees Requires Expert Testimony.** This release includes a discussion of *Woodhaven Partners, Ltd. v. Shamoun & Norman, L.L.P.*, 422 S.W.3d 821, 829–830 (Tex. App.—Dallas 2014, no pet.), in which the court of appeals held that lay witness testimony regarding the reasonableness and necessity of attorney’s fees is not competent evidence. See Ch. 22, *Attorney’s Fees*, § 22.20[3][b].

## Personal Injury and Tort Litigation

**Recent Case Law Addresses Products Liability Issues.** Ch. 320, *Products Liability*, has been revised to include numerous recent cases from the Texas Supreme Court and courts of appeals, including:

- *Petroleum Solutions v. Head*, 57 Tex. Sup. Ct. J. 1132 (Tex. 2014), which applied the statutory indemnity provisions of Chapter 82 of the Civil Practice and Remedies Code in the context of claims against both a component part manufacturer and a finished product manufacturer. The Texas Supreme Court held that although each manufacturer originally owed the other a reciprocal indemnity obligation, when the finished product manufacturer nonsuited all its claims, it remained subject to the duty to indemnify the component part manufacturer (see §§ 291.05[2][c], 320.10[2][a]).
- *Fresh Coat, Inc. v. Parexlahabra, Inc.*, 424 S.W.3d 237 (Tex. App.—Beaumont 2014, no pet.), in which the court of appeals held that although the statutory duty to indemnify extends to settlements, the settlement must have occurred after a lawsuit was filed, because settling a claim prior to suit means there is no product liability “action” necessary to invoke the duty to indemnify (see §§ 291.05[2][c], 320.10[2][a]).
- *Man Engines & Components, Inc. v. Shows*, 57 Tex. Sup. Ct. J. 661 (Tex. 2014), in which the Texas Supreme Court held that: (1) privity of contract is not required to sue a manufacturer for breach of the implied warranty of merchantability, even as to used goods; and (2) any warranty of merchantability or disclaimer of that warranty is effective at the time the goods leave the manufacturer or seller, so when the goods are later sold downstream, the warranty or disclaimer passes with them (see § 320.21[2]).
- *Union Carbide Corp. v. Synatzske*, 57 Tex. Sup. Ct. J. 980 (Tex. 2014), which applied Chapter 90 of the Civil Practice and Remedies Code governing claims of exposure to asbestos or silica, and held that regardless of whether a claimant submits the detailed report typically required by the statute or instead invokes the “safety valve” provision of Civil Practice and Remedies Code Section 90.010(f)(1), pulmonary function testing must be performed on the exposed person and interpreted in

making the required diagnosis of impairment. If that testing cannot be done because the exposed person died before Chapter 90 was enacted, recovery is barred (*see* § 320.09[2][a]).

- *Bostic v. Georgia Pacific Corp.*, 57 Tex. Sup. Ct. J. 1091 (Tex. 2014), which held that: (1) the causation standards for asbestos exposure previously established in *Borg-Warner Corp. v. Flores*, 232 S.W.3d 765 (Tex. 2007) for asbestosis cases also apply to injuries from mesothelioma; and (2) the claimant is not required to demonstrate “but for” causation; instead, a jury question is presented when scientifically reliable evidence in the form of epidemiological studies is introduced that shows that the established levels of exposure more than doubled the plaintiff’s risk of injury (*see* §§ 290.03[3][a], 320.07).

**Recent Cases on Design Professional Malpractice.** Ch. 322, *Professional Malpractice*, has been revised to include recent cases from the Texas Supreme Court and courts of appeals, concerning malpractice liability of design professionals, including:

- *Jaster v. Comet II Constr.*, 57 Tex. Sup. Ct. J. 1005 (Tex. 2014), which held that the certificate of merit requirement in actions against design professionals applies only to the original plaintiff who commences the action by filing a petition, and does not apply to a defendant or third-party defendant who asserts a cross-claim or third-party claim arising out of the provision of professional services (*see* § 322.04[2][d][v]).
- *Found. Assessment, Inc. v.*

*O’Connor*, 426 S.W.3d 827 (Tex. App.—Fort Worth 2014, pet. filed), in which court of appeals held that claims of fraud and civil conspiracy against an engineer in failing to perform as required by contract were subject to the certificate of merit requirement because providing engineering reports constitutes professional services even if the reports are alleged to be fraudulent (*see* § 322.04[2][d][i]).

- *LAN/STV v. Martin K. Eby Constr. Co.*, 57 Tex. Sup. Ct. J. 816 (Tex. 2014), which held that the economic loss rule precludes a general contractor on a construction project from bringing negligence claims against the project architect for alleged errors in the designs and specifications for the project because the architect does not act with the necessary intent to invite reliance so as to permit tort liability for pure economic loss (§§ 322.01[3][b], 322.04[2][b]; *see also* Ch. 290, *Negligence*, §§ 290.04[1]).

**Cases Analyze Scope of Tort Claims Act and Related Statutes.** Ch. 293, *Claims Against Governmental Entities*, has been revised to include several recent cases from the Texas Supreme Court and courts of appeals, including:

- *City of Watauga v. Gordon*, 57 Tex. Sup. Ct. J. 683 (Tex. 2014), which construed the intentional tort exception to the Tort Claims Act, and held that: (1) because a person arrested or detained by a law enforcement officer must comply, cooperation is not legal consent and does not remove the officer’s conduct from the excep-

tion for intentional torts; and (2) a claim of excessive force by the officer states a battery claim that is barred by the exception, regardless of whether the officer intended to use excessive force, or whether the injuries were inflicted deliberately or accidentally (*see* §§ 293.12[11], 330.01).

- *Alexander v. Walker*, 57 Tex. Sup. Ct. J. 657 (Tex. 2014) (per curiam), which held that a governmental employee’s conduct falls outside the scope of employment for purposes of the election of remedies provision of the Tort Claims Act only when it occurs “within an independent course of conduct not intended by the employee to serve any purpose of the employer” (*see* § 293.16[3][a][iv]).
- *Cervantes v. McKellar*, 424 S.W.3d 226 (Tex. App.—Texarkana 2014, no pet.), which joined a developing consensus and held that a claimant’s injury relating to the use of medical equipment must be inflicted by the equipment itself to fall within the waiver of the Tort Claims Act, and any allegation that information derived from the equipment was misused is an error in diagnosis or medical judgment that is not within the waiver (§ 293.10[5][d]).
- *City of Leon Valley Econ. Dev. Corp. v. Little*, 422 S.W.3d 37 (Tex. App.—San Antonio 2013, no pet.), which held that because a city’s economic development corporation derived its status and authority from Chapter 501 of the Local Government Code, it was a

government unit under Tex. Civ. Prac. & Rem. Code § 101.001(3)(D), and could appeal the denial of its plea to the jurisdiction (§ 293.10[3][a]).

**Premises Liability and Negligence Chapters Updated to Reflect Recent Cases Regarding Duties of Land Owners.** This release includes discussion of recent cases from the Texas Supreme Court and courts of appeals, regarding premises liability and related issues, including:

- *Graham Cent. Station, Inc. v. Peña*, 57 Tex. Sup. Ct. J. 858 (Tex. 2014) (per curiam), which held that because the plaintiff bears the burden to show that the defendant owned the property and therefore owed a duty of care, the plaintiff’s failure to produce any evidence of ownership precluded liability (*see* §§ 310.02[1], 310.06[4]).
- *Boerjan v. Rodriguez*, 57 Tex. Sup. Ct. J. 902 (Tex. 2014) (per curiam), which held that because an owner or occupier of land has no duty toward a trespasser, other than to refrain from injuring them wilfully, wantonly, or through gross negligence, an owner or occupier can never be liable to a trespasser for simple negligence (*see* §§ 290.02[3][b][iii], 310.03[1], [3]).
- *Brookshire Bros., Ltd. v. Aldridge*, 57 Tex. Sup. Ct. J. 947 (Tex. 2014), in which the Texas Supreme Court held that a surveillance video of a slip-and-fall incident and the preceding several minutes were legally sufficient evidence of the owner’s constructive notice of the condition (*see* § 310.05[3][b][iii]).

- *Rodriguez v. Sandhill Cattle Co., L.P.*, 427 S.W.3d 507 (Tex. App.—Amarillo 2014, no pet.), in which the court of appeals held that Agriculture Code Section 143.074, stating that an owner cannot “permit” livestock to roam free, requires a demonstration of owner negligence in allowing livestock to escape their enclosure, and does not create strict liability for owners of wandering livestock (*see* §§ 290.30[1][a], 300.02[4]).

**Texas Supreme Court Opinion Discusses Scope of Defamation Per Se.** Ch. 333, *Libel and Slander*, has been revised to include *Waste Mgmt. of Tex., Inc. v. Tex. Disposal Sys. Landfill, Inc.*, 57 Tex. Sup. Ct. J. 531 (Tex. 2014), in which the Texas Supreme Court held that: (1) a corporation has a reputation and may therefore sue for defamation that injures its reputation, even if the statements at issue were defamatory per se; and (2) though injury may be presumed in cases of defamation per se, both the existence of damages and the amount awarded must be supported by sufficient evidence, even in cases of actual malice (*see* §§ 333.03[1], 333.10[2], 333.30[1]).

**Court of Appeals Addresses Negligence Claims Between Sports Participants.** Ch. 290, *Negligence*, has been revised to include discussion of the court of appeals decision in *Dunagan v. Coleman*, 427 S.W.3d 552 (Tex. App.—Dallas 2014, no pet.), which held that the elimination of any negligence duty as between sports participants extends only to the inherent risks of participation (*see* § 290.02[3][b][ii]).

**Recent Cases on Health Care Liability Discussed.** Ch. 321, *Medical Malpractice*,

has been revised to include recent cases from the Texas Supreme Court and courts of appeals, including:

- *Rio Grande Valley Vein Clinic, P.A. v. Guerrero*, 57 Tex. Sup. Ct. J. 484 (Tex. 2014) (per curiam), in which the Texas Supreme Court held that its prior decision in *Bioderm Skin Care, LLC v. Sok*, 426 S.W.3d 753, 759–762 (Tex. 2014), that laser hair removal constitutes “health care,” applies regardless of whether the procedure is performed by a physician personally or by a nurse or other technician employed by the physician’s professional association (*see* § 321.02[6]).
- *Morrison v. Whispering Pines Lodge I, L.L.P.*, 428 S.W.3d 327 (Tex. App.—Texarkana 2014, pet. filed), *E. Tex. Med. Ctr. Reg’l Health Care Sys. v. Reddic*, 426 S.W.3d 343 (Tex. App.—Tyler 2014, pet. filed), *Weatherford Tex. Hosp. Co. v. Smart*, 423 S.W.3d 462 (Tex. App.—Fort Worth 2014, pet. filed), and *Good Shepherd Med. Ctr.—Linden, Inc. v. Twilley*, 422 S.W.3d 782 (Tex. App.—Texarkana 2013, pet. denied), each of which concerned a slip-and-fall claim by a visitor or employee in a publicly accessible area of a hospital. The *Smart* and *Twilley* cases held that these allegations state a health care liability claim (HCLC), while both *Morrison* and *Reddic* held that these were routine premises liability claims and not subject to the statutes governing HCLCs (*see* § 321.02[2][c], [f], [h]).
- *Hill Country San Antonio Management Servs. v. Trejo*, 424 S.W.3d

203 (Tex. App.—San Antonio 2014, pet. filed), which held that an adult day care facility subject to Human Resources Code Chapter 103 is not a health care provider because it is not staffed or overseen by medical professionals, and does not provide any health care services, so a claim against the facility is not a health care liability claim (*see* § 321.02[2], [3]).

- *Christus Santa Rosa Health Care Corp. v. Botello*, 424 S.W.3d 117 (Tex. App.—San Antonio 2013, no pet.), which held that when claims against a particular defendant are nonsuited and later refiled, service of expert reports after the date of the nonsuit but before refiling is insufficient, because the defendant is not a “party” to the suit at that time (*see* § 321.15[1][c], [f], [g]).

**Settlement of Claims Discussed by Recent Supreme Court Cases.** Ch. 102, *Settlement*, has been revised to include recent cases from the Texas Supreme Court, including:

- *Amedisys, Inc. v. Kingwood Home Health Care, LLC*, 57 Tex. Sup. Ct. J. 547 (Tex. 2014), which held that: (1) Civil Practice and Remedies Code Chapter 42 and Civil Procedure Rule 167 are applicable only when a party seeks to recover litigation costs, so whether a settlement offer made under those provisions was validly accepted is governed by common law principles of contract law; and (2) an immaterial variation between an offer and acceptance does not prevent the formation of an enforceable settlement agreement (*see*

§§ 102.02[1], [3], 102.03[1]).

- *McAllen Hosps., L.P. v. State Farm County Mut. Ins. Co.*, 57 Tex. Sup. Ct. J. 579 (Tex. 2014), which held that when a hospital or emergency medical services provider has a lien under the hospital lien statute, the lien claimant is not “paid” in conjunction with a release of the claim unless the claimant actually receives the disbursed funds (*see* § 102.05[5]).
- *In re Vaishangi, Inc.*, 57 Tex. Sup. Ct. J. 690 (Tex. 2014) (per curiam), which held that if a Rule 11 agreement is also the court’s judgment disposing of the action, the trial court has continuing jurisdiction to enforce that judgment. If, however, the judgment of the court is a separate order from the Rule 11 agreement, the trial court may not enforce the agreement after expiration of the court’s plenary power (*see* § 102.02[5]).

**Exemplary Damage Issues Analyzed by Courts.** Ch. 20, *Damages in Tort*, has been updated to discuss recent Texas cases analyzing various issues relating to exemplary damage awards. For example, in *Finley v. P.G.*, 428 S.W.3d 229 (Tex. App.—Houston [1st Dist.] 2014, no pet.), the court of appeals held that although the statutory definitions of “malice,” “fraud,” and “gross negligence” as a basis for the recovery of exemplary damages are distinct, they are not mutually exclusive, so that a jury’s determination that a defendant’s conduct was both malicious and grossly negligent is not internally inconsistent (*see* § 20.01[2][c][ii]). And in *Zorrilla v. AY-PCO Constr. II, LLC*, 421 S.W.3d 54 (Tex. App.—Corpus Christi 2013, pet. filed), the court held that the statutory cap on exemplary damages constitutes an affirmative



defense, so that the defendant's failure to plead or otherwise raise the issue in a timely manner waives the application of the cap (*see* § 20.01[2][d][iii]).

**Texas Law Governs Liability for Service of Alcohol in Navigable Waters.** Ch. 323, *Liquor Liability*, has been revised to include *Schlumberger Tech. Corp. v. Arthey*, 57 Tex. Sup. Ct. J. 840 (Tex. 2014), which held that the mere fact that alcoholic beverages were served in navigable waters did not establish admiralty jurisdiction when that conduct had no connection with any maritime activity. Because federal admiralty jurisdiction was absent, Texas law precluding liability of a social host barred the plaintiff's claims (*see* § 323.02[1]).

### **Insurance and Workers' Compensation Litigation**

**Recent Cases Address Workers' Compensation Law Issues.** Ch. 340, *Workers' Compensation*, has been revised to include recent cases from the Texas Supreme Court and courts of appeals, including:

- *State Office of Risk Mgmt. v. Carty*, 57 Tex. Sup. Ct. J. 861 (Tex. 2014), in which the Texas Supreme Court held that when a carrier is entitled to an offset for future benefit payments owed to a deceased employee's legal beneficiaries arising from a claim against a third-party settlement, the carrier's rights are determined by treating the settlement as a single, collective recovery rather than separate recoveries by each beneficiary (*see* § 340.41).
- *Seabright Ins. Co. v. Lopez*, 427 S.W.3d 442 (Tex. App.—San Antonio 2014, pet. filed), which held that when an employee was driving a company car from a motel to

work and was residing in the motel in order to be nearer to the remote worksite, the employee's travel both originated in and furthered the business of the employer and was therefore in the course and scope of employment (*see* § 340.04[3][b]).

- *In re Mid-Century Ins. Co.*, 426 S.W.3d 169 (Tex. App.—Houston [1st Dist.] 2012, orig. proceeding), which held that because the Division of Workers' Compensation has exclusive jurisdiction over medical fee disputes brought by non-network providers, a hospital seeking enhanced payment for its services to an injured employee had not exhausted its administrative remedies and dismissal was required (*see* § 340.30[3]).

**Courts Discuss Life Insurance Issues.** Ch. 344, *Life, Health, and Accident Insurance*, has been updated to include recent cases from the Texas courts of appeals addressing various issues relating to claims under life insurance policies. For example, in *Branch v. Monumental Life Ins. Co.*, 422 S.W.3d 919 (Tex. App.—Houston [14th Dist.] 2014, no pet.), the court held that when a former wife's designation as a beneficiary of a life insurance policy is terminated by divorce under statute, her continued payment of the premiums had no effect on the termination (*see* § 344.03[3][b]). And in *Mut. of Omaha Life Ins. Co. v. Costello*, 420 S.W.3d 873 (Tex. App.—Houston [14th Dist.] 2014, no pet.), the court held that the two-year incontestability period for life insurance policies refers to how long the insured must survive after issuance of the policy, not the time within which the insurer must contest the policy (*see* § 344.08[3][c]).

## Business and Commercial Litigation

**No Common Law Action for Shareholder Oppression.** Ch. 160A, *Corporate Management*, has been updated to reflect the Texas Supreme Court's recent decision in *Ritchie v. Rupe*, \_\_\_ S.W.3d \_\_\_, 57 Tex. Sup. Ct. J. 771, 774–792 (Tex. 2014), in which the Court refused to adopt a common-law cause of action for shareholder oppression to protect minority corporate shareholders from majority shareholders and narrowly interpreted Business Organizations Code Section 11.404, which allows a court to appoint a receiver for a business entity's business or property if the actions of its governing persons are "illegal, oppressive, or fraudulent," to provide only for the remedy of a rehabilitative receivership and to provide this remedy only if "all other available legal and equitable remedies . . . are inadequate." In so holding, the Court overruled numerous previous court of appeals decisions that had recognized a shareholder oppression cause of action (*see* § 160A.01[2][b][ii]).

**Limitations on Class Actions Under Securities Litigation Uniform Standards Act.** The United States Supreme Court has held in *Chadbourne & Parke LLP v. Troice*, \_\_\_ U.S. \_\_\_, 134 S. Ct. 1058, 1065, 188 L. Ed. 2d 88 (2014), that a fraudulent misrepresentation or omission is not made "in connection with" a "purchase or sale of a covered security," unless it is material to a decision by one or more individuals (other than the fraudster) to buy or sell a "covered security." *See* Ch. 171, *Securities Fraud*, § 171.06[4][b][ii].

**Derivative Actions and Limited Partnerships.** In *In re Immobiliere Jeuness Etablissement*, 422 S.W.3d 909, 915, 918 (Tex. App.—Houston [14th Dist.] 2014, no pet. h.), the Fourteenth District court of appeals held that a limited partnership's

forfeiture of its right to do business in Texas does not preclude a limited partner from maintaining a derivative suit in the partnership's name. *See* Ch. 182, *Limited Partnership*, § 182.08[1].

**Standing Under Lanham Act.** In *Lexmark Intern. v. Static Control*, \_\_\_ U.S. \_\_\_, 134 S. Ct. 1377, 188 L. Ed. 2d 392 (2014), the U.S. Supreme Court has decided "the appropriate analytical framework for determining a party's standing to maintain an action for false advertising under the Lanham Act." *See* Ch. 200, *Trademarks*, § 200.40[2].

**Protecting Trade Secrets From Discovery.** In *In re Prairiesmarts LLC*, 421 S.W.3d 296, 305–306 (Tex. App.—Fort Worth 2014, orig. proceeding), the Fort Worth court of appeals held that the burden-shifting procedure used when a litigant resists discovery by asserting the trade secret privilege set forth in Texas Evidence Rule 507 is equally applicable when a litigant, by claiming the privilege, resists discovery sought by a petition to take presuit depositions under Texas Civil Procedure Rule 202.5. A Rule 202 petitioner seeking presuit discovery of information that has been proven to be trade secret information must satisfy both of the two distinct and separate burdens imposed under Evidence Rule 507 and Civil Procedure Rule 202. *See* Ch. 200B, *Trade Secrets*, § 200B.25[3].

## Employment Litigation

**Whistleblower Protection Under Sarbanes-Oxley Act Extends to Contractors and Subcontractors.** The United States Supreme Court has held in *Lawson v. FMR LLC*, \_\_\_ U.S. \_\_\_, 134 S. Ct. 1158, 1161–1162, 1167, 1173, 1176, 188 L. Ed. 2d 158 (2014), that the whistleblower protection afforded by the Sarbanes-Oxley Act extends to employees of private contractors

and subcontractors that serve public companies. *See* Ch. 203A, *Employment Litigation*, § 203A.17[3].

**Drug Users Excluded From Protection of TCHRA.** In *Melendez v. Houston Independent School Dist.*, 418 S.W.3d 701, 707–708 (Tex. App.—Houston [14th Dist.] 2013, no pet. h.), the Fourteenth District court of appeals held that “current condition of addiction” under the provision of the TCHRA, which specifies that “disability” does not include a current condition of addiction to alcohol or drugs, is a condition of addiction that is sufficiently recent to justify the employer’s reasonable belief that the addiction is an ongoing problem. *See* Ch. 203A, *Employment Litigation*, § 203A.21[4][b][iv].

**Fraud Claims Limited in Employment Context.** Ch. 336, *Fraud*, has been revised to include *Sawyer v. E. I. du Pont de Nemours & Co.*, 57 Tex. Sup. Ct. J. 476 (Tex. 2014), which held that: (1) an at-will employee cannot sue the employer for any alleged fraud that depends on continued employment; and (2) if at-will status has been altered by a collective bargaining agreement or other contract, and that agreement affords a remedy for the conduct at issue, the parties are restricted to the contractual remedy and may not circumvent the agreement by bringing fraud claims (*see* § 336.04[5]).

### Real Estate Litigation

**Mortgage Foreclosure Issues Addressed by Courts.** Mortgage foreclosure procedures continue to be a frequent source of litigation. Ch. 255, *Real Property Security Interests*, has been updated to include several recent cases from the Texas Supreme Court and courts of appeals, including:

- *Moayedi v. Interstate 35/Chisam Rd., L.P.*, 57 Tex. Sup. Ct. J. 724

(Tex. 2014), which held that: (1) the statutory right of a guarantor to receive a fair market valuation of the property and offset against any deficiency judgment may be waived by the guarantor in the guaranty contract; and (2) a general waiver clause is sufficient as a waiver, and the right of an offset need not be mentioned (*see* § 255.03[6][d][iii]).

- *Sims v. Carrington Mortg. Servs., LLC*, 57 Tex. Sup. Ct. J. 588 (Tex. 2014), which held that when an original note secured by a lien on a homestead is not satisfied and replaced, and there is no advance of any new funds or an increase in the obligations created by the original note, a restructured loan is valid and need not meet the constitutional requirements for home equity loans (*see* § 255.06[3], [5]).
- *Wells Fargo Bank, N.A. v. Leath*, 425 S.W.3d 525 (Tex. App.—Dallas 2014, pet. filed), which held that: (1) a borrower’s pleadings can be sufficient as the required notice of an alleged constitutional defect in a home equity loan, even if no prior notice is provided; and (2) the lender waives the issue of reliance on a borrower’s acknowledgement of the 80 percent loan-to-value ratio requirement by failing to raise it in the trial court (*see* § 255.06[5][a], [c]).
- *Montenegro v. Ocwen Loan Servicing, LLC*, 419 S.W.3d 561 (Tex. App.—Amarillo 2013, pet. denied), which held that, by its own terms, Property Code Section 51.002(d) requiring notice of acceleration does not apply to a

debtor who does not reside on the property (*see* § 255.03[2]).

**Inverse Condemnation Issues Addressed by Courts.** Ch. 261, *Condemnation*, has been updated to include recent cases from the Texas Supreme Court and courts of appeals, including:

- *Porretto v. Tex. Gen. Land Office*, 57 Tex. Sup. Ct. J. 971 (Tex. 2014), which held that: (1) no claims for inverse condemnation as to beachfront property were available despite the government’s claims of ownership and requests to change the tax rolls, because there was no attempt to actually take possession of any portion of the land; and (2) the boundary on the beach between state-owned land and private property does not move when the change to the mean high tide line is artificial, not natural (*see* §§ 261.21[1][a], 280.01[1][e]).
- *Edwards Aquifer Auth. v. Bragg*, 421 S.W.3d 118 (Tex. App.—San Antonio 2013, pet. filed), which held: (1) that the State of Texas need not be named as the defendant on an inverse condemnation claim, even if all the conduct of the named defendant was required by legislation; and (2) a regulatory takings claim is subject to the 10-year statute of limitations applicable to adverse possession claims (§§ 261.20[2], 261.23).
- *Cameron County v. Tompkins*, 422 S.W.3d 789 (Tex. App.—Corpus Christi 2013, pet. filed), which refused to decide whether the presentment requirement as to claims against counties applies to a claim for inverse condemnation because the requirement is not

jurisdictional, so the county waived the issue by failing to raise it in a timely manner (§ 261.20[2]).

**Sovereign Immunity Issues Relating to Real Property Improvement Contracts.** Ch. 270, *Improvements Contracts*, has been revised to include recent cases on governmental immunity from the Texas Supreme Court and courts of appeals, including:

- *Lubbock County Water Control v. Church & Akin, L.L.C.*, 57 Tex. Sup. Ct. J. 1055 (Tex. 2014), which held that: (1) a government unit’s signing of a “lease” of real property does not preclude the contract from falling within the waiver of immunity of Local Government Code Chapter 271; but, (2) the lease at issue did not include the provision of any goods or services to the government unit, so statute did not apply and immunity was preserved (*see* § 270.01[5][b]).
- *City of Willow Park v. E.S. & C.M., Inc.*, 424 S.W.3d 702 (Tex. App.—Fort Worth 2014, pet. filed), which held that when entering into the contract constitutes a waiver of immunity under Local Government Code Chapter 271, a clause in the contract purporting to reserve or reinstate the government unit’s immunity is void and has no effect (*see* § 270.01[5][b]).
- *Republic Power Partners, L.P. v. City of Lubbock*, 424 S.W.3d 184 (Tex. App.—Amarillo 2014, no pet. h.), which held that although a municipal corporation formed by several cities signed a contract, the city itself did not sign, so the city’s immunity was not waived under Local Government Code

Chapter 271 (§ 270.01[5][b]).

**Mechanic’s Lien Enforcement Issues.**

Ch. 271, *Mechanic’s Liens*, has been revised to include discussion of *Cardenas v. Wilson*, 428 S.W.3d 130 (Tex. App.—Houston [1st Dist.] 2014, no pet.), in which the court of appeals applied Government Code Chapter 51, authorizing a summary motion to remove a fraudulent lien, and held that: (1) an order resolving the summary motion is subject to interlocutory appeal; and (2) the court may grant the motion and remove the purported lien only when the documents claiming the lien are obviously fraudulent on their face, and the court may not otherwise consider the validity of the lien claim (*see* § 271.02[9]). In addition, the chapter has been updated to include coverage of *Zorrilla v. AYP CO Constr. II, LLC*, 421 S.W.3d 54 (Tex. App.—Corpus Christi 2013, pet. filed), which held that the status of the property as a homestead is an affirmative defense, so if the owner fails to raise the issue in a suit to foreclose a mechanic’s lien, the issue is waived (*see* §§ 271.01[9], 271.02[8]).

**Courts Address Property Tax Dispute**

**Issues.** Ch. 260, *Real Property Tax Suits*, has been revised to include recent cases from the Texas courts of appeals, including *Bastrop Cent. Appraisal Dist. v. Acme Brick Co.*, 428 S.W.3d 911 (Tex. App.—Austin 2014, no pet. h.), which held that when the parties have entered into an enforceable agreement that an exemption applies under Tax Code Section 1.111(e)(1), that agreement binds the taxing unit and precludes cancellation of the exemption (*see* §§ 260.01[3][b], 260.02[1][a]). This release also includes discussion of *Key Energy Servs., LLC v. Shelby County Appraisal Dist.*, 428 S.W.3d 133 (Tex. App.—Tyler 2014, no pet. h.), which held that: (1) the right to inject saltwater into a well was an interest in real property subject

to taxation, so the holder of the right could not avoid taxes by claiming that separate tax treatment of the wells themselves resulted in double taxation; (2) a motion for correction of the appraisal rolls under Tex Code Section 25.25(c) is limited to the four categories identified by the statute, and therefore does not extend to substantive challenges such as the property’s valuation; and (3) a motion for correction of the appraisal rolls under Tex Code Section 25.25(d) must be filed before the delinquency date, so a motion filed after that date cannot be considered, and an appeal from the appraisal review board’s order does not invoke the trial court’s jurisdiction (*see* §§ 260.01[2], 260.04[1][a]).

**Tenant Cannot Be Required to Pay for Repair of Any Damage Not Caused by Landlord.**

Ch. 282, *Landlord and Tenant*, has been updated to include discussion of *Phila. Indem. Ins. Co. v. White*, 421 S.W.3d 252 (Tex. App.—San Antonio 2013, pet. filed), in which the court of appeals held that a lease clause requiring the tenant to pay to repair any damages that were not caused by the landlord (e.g., damage caused by storms) violates public policy and is void (*see* § 282.21[2][d]).

**Courts Address Eviction Suit Issues.**

Ch. 282 has also been revised to include recent cases from the Texas courts of appeals addressing issues relating to eviction suits, including:

- *AAA Free Move Ministorage, LLC v. Ois Invs., Inc.*, 419 S.W.3d 522 (Tex. App.—San Antonio 2013, pet. denied), in which the San Antonio Court of Appeals overruled its prior precedent in *Glau Moya Parapsychology Training Inst., Inc. v. Royal Life Ins. Co.*, 507 S.W.2d 824 (Tex. Civ. App.—San Antonio 1974, no writ), and held that a judgment in

an eviction suit has no preclusive effect on claims for declaratory relief seeking interpretation of the lease (*see* § 282.41[3]).

- *Williams v. Bayview Realty Assocs.*, 420 S.W.3d 358 (Tex. App.—Houston [14th Dist.] 2014, no pet.), which held that the defendant’s failure to answer and resulting default judgment in an eviction action admitted the necessary landlord-tenant relationship, and therefore both established the jurisdiction of the lower courts, and precluded any challenge to the sufficiency of the evidence on the issue (*see* § 282.41[2], [4]).

**Supreme Court Addresses Oil and Gas Law Issues.** Ch. 283, *Oil & Gas Leases*, has been revised to include recent cases from the Texas Supreme Court including:

- *Key Operating & Equip., Inc. v. Hegar*, 57 Tex. Sup. Ct. J. 847 (Tex. 2014), which held that when one lease within a pooled unit is producing, the lessee has the right to use any road across the surface of any lease within the unit that is not producing in order to access the producing lease (*see* § 283.03[5][c], [11]).
- *French v. Occidental Permian Ltd.*, 57 Tex. Sup. Ct. J. 906 (Tex. 2014), which held that when carbon dioxide injected into a well must be removed from casinghead gas, the cost of removal is a post-production cost shared by the operator and the royalty interest owners, unless otherwise provided by the lease (*see* § 283.03[8]).

**Adverse Possession Claims Against Easement Holder.** Ch. 250, *Adverse Pos-*

*session*, has been revised to include *Schurhardt Consulting Profit Sharing Plan v. Double Knobs Mt. Ranch, Inc.*, 426 S.W.3d 800 (Tex. App.—San Antonio 2014, pet. filed), which held that: (1) a claim of adverse possession by the owner against an easement holder must meet all the requirements for such a claim between cotenants, including repudiation under a claim of right; and, (2) the claim therefore fails if the owner’s conduct is insufficient to provide notice of the owner’s intent to repudiate the easement holder’s rights (*see* §§ 250.02[2][a], 250.04[1]).

**Broker Liability for Salesperson Conduct.** Ch. 253, *Agents and Brokers*, has been updated to reflect the court of appeals decision in *Flutobo, Inc. v. Holloway*, 419 S.W.3d 622 (Tex. App.—Houston [14th Dist.] 2013, pet. filed), which held that although a broker is liable for the conduct of a salesperson under Occupations Code Section 1101.803, that liability applies only when the salesperson is acting in the capacity as an agent for the broker; therefore, when a salesperson sells his or her own property, the individual is acting as a principal with respect to that transaction, and the associated broker is not liable for any conduct of the salesperson (*see* §§ 253.01[3][b], 253.12[5]).

### Family Law Proceedings

**Grandparent Standing.** A disagreement among the courts of appeals as to the meaning of “satisfactory proof to the court” in connection with grandparent standing under Family Code Section 102.004(a)(1) is discussed in Ch. 370, *SAPCR Procedures*. *See* § 370.02[2][a].

**SAPCR Modification.** In the context of voluntary relinquishment as a ground for modifying a conservatorship order, the voluntary relinquishment need not have been intended to be permanent. *See* Ch. 373,

*Modification of SAPCR Orders*, § 373.05[5].

**Mistaken Paternity.** The two-year statute of limitation for filing a termination petition based on mistaken paternity begins to run when the man receives negative DNA test results via a mail-order test kit. *See* Ch. 381, *Termination of Parent-Child Relationship*, § 381.02[2][b].

**Affidavit of Relinquishment.** Less-than-perfect adherence to the technical requirements for an affidavit of relinquishment does not render the affidavit invalid. *See* Ch. 381, *Termination of Parent-Child Relationship*, § 381.03[2][b].

**Court-Appointed Attorney in Termination Case.** Unless the court finds good cause to relieve or replace the attorney ad

litem in a DFPS termination suit, the attorney's duties continue until the proceedings are dismissed or finally concluded. *See* Ch. 381, *Termination of Parent-Child Relationship*, § 381.05[1][c].

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# DORSANEO, TEXAS LITIGATION GUIDE

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Publication 719 Release 115

December 2014

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<input type="checkbox"/>	200B-7 thru 200B-13 . . . . .	200B-7 thru 200B-14.1
<input type="checkbox"/>	200B-27 thru 200B-28.1 . . . . .	200B-27 thru 200B-28.1
<input type="checkbox"/>	200B-59 . . . . .	200B-59 thru 200B-60.1
<input type="checkbox"/>	202-9. . . . .	202-9 thru 202-10.1
<input type="checkbox"/>	203-45 . . . . .	203-45 thru 203-46.1
<input type="checkbox"/>	203-57 . . . . .	203-57 thru 203-58.1
<input type="checkbox"/>	203-98.2(5). . . . .	203-98.2(5) thru 203-98.2(6)(a)
<input type="checkbox"/>	203-147 . . . . .	203-147
<input type="checkbox"/>	203A-36.1 thru 203A-41. . . . .	203A-37 thru 203A-42.9
<input type="checkbox"/>	203A-63 . . . . .	203A-63 thru 203A-64.1
<input type="checkbox"/>	203A-107 thru 203A-131 . . . . .	203A-107 thru 203A-132.1
<input type="checkbox"/>	203A-141 thru 203A-145 . . . . .	203A-141 thru 203A-146.1
<input type="checkbox"/>	203A-148.9 thru 203A-151 . . . . .	203A-149 thru 203A-152.17
<input type="checkbox"/>	203A-156.11 thru 203A-157 . . . . .	203A-157 thru 203A-158.3
<input type="checkbox"/>	203A-191. . . . .	203A-191
<input type="checkbox"/>	205-9. . . . .	205-9 thru 205-10.1
<input type="checkbox"/>	205-27 . . . . .	205-27 thru 205-28.1
<input type="checkbox"/>	205-35 . . . . .	205-35 thru 205-36.1

**VOLUME 14**

**Revision**

<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	210A-3 . . . . .	210A-3
<input type="checkbox"/>	210A-45 thru 210A-56.1. . . . .	210A-45 thru 210A-56.1
<input type="checkbox"/>	210A-68.1 thru 210A-68.19 . . . . .	210A-68.1 thru 210A-68.19
<input type="checkbox"/>	210A-81 thru 210A-83 . . . . .	210A-81 thru 210A-84.1
<input type="checkbox"/>	210A-140.1 thru 210A-140.3. . . . .	210A-140.1 thru 210A-140.3
<input type="checkbox"/>	220-81 . . . . .	220-81 thru 220-82.1
<input type="checkbox"/>	221-151 . . . . .	221-151

**VOLUME 15**

**Revision**

<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	234-65 thru 234-85 . . . . .	234-65 thru 234-77

**VOLUME 16**

**Revision**

<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	242-40.1 thru 242-40.3 . . . . .	242-40.1 thru 242-40.3

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## VOLUME 17

### Revision

<input type="checkbox"/>	Title page . . . . .	Title page
<input type="checkbox"/>	250-17 thru 250-25 . . . . .	250-17 thru 250-25
<input type="checkbox"/>	250-41 thru 250-43 . . . . .	250-41 thru 250-43
<input type="checkbox"/>	251-16.5 thru 251-16.11 . . . . .	251-16.5 thru 251-16.11
<input type="checkbox"/>	252-34.3 thru 252-34.7 . . . . .	252-34.3 thru 252-34.7
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<input type="checkbox"/>	253-36.1 . . . . .	253-36.1
<input type="checkbox"/>	254-14.1 thru 254-14.7 . . . . .	254-14.1 thru 254-14.7
<input type="checkbox"/>	254-26.1 thru 254-26.3 . . . . .	254-26.1 thru 254-26.3
<input type="checkbox"/>	255-23 . . . . .	255-23 thru 255-24.1
<input type="checkbox"/>	255-34.15 thru 255-34.19 . . . . .	255-34.15 thru 255-34.19
<input type="checkbox"/>	255-51 thru 255-66.1 . . . . .	255-51 thru 255-66.3
<input type="checkbox"/>	260-5 thru 260-11 . . . . .	260-5 thru 260-12.1
<input type="checkbox"/>	260-21 . . . . .	260-21 thru 260-22.1
<input type="checkbox"/>	260-37 thru 260-39 . . . . .	260-37 thru 260-40.1
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<input type="checkbox"/>	260-94.38(1) thru 260-94.38(3) . . . . .	260-94.38(1) thru 260-94.38(3)
<input type="checkbox"/>	261-47 thru 261-49 . . . . .	261-47 thru 261-50.1
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<input type="checkbox"/>	261-105 . . . . .	261-105 thru 261-106.1

## VOLUME 18

### Revision

<input type="checkbox"/>	Title page . . . . .	Title page
<input type="checkbox"/>	270-15 thru 270-26.1 . . . . .	270-15 thru 270-26.1
<input type="checkbox"/>	271-19 thru 271-20.1 . . . . .	271-19 thru 271-20.1
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<input type="checkbox"/>	280-13 thru 280-21 . . . . .	280-13 thru 280-22.1
<input type="checkbox"/>	281-49 thru 281-56.1 . . . . .	281-49 thru 281-56.1
<input type="checkbox"/>	282-50.1 . . . . .	282-50.1
<input type="checkbox"/>	282-89 thru 282-95 . . . . .	282-89 thru 282-96.1
<input type="checkbox"/>	283-31 . . . . .	283-31 thru 283-32.1
<input type="checkbox"/>	283-40.5 thru 283-40.15 . . . . .	283-40.5 thru 283-40.13
<input type="checkbox"/>	283-57 . . . . .	283-57

## VOLUME 19

### Revision

<b>Check As Done</b>	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	290-21 . . . . .	290-21 thru 290-22.1
<input type="checkbox"/>	290-35 thru 290-36.1 . . . . .	290-35 thru 290-36.1
<input type="checkbox"/>	290-47 thru 290-50.1 . . . . .	290-47 thru 290-50.3
<input type="checkbox"/>	290-66.3 thru 290-66.7 . . . . .	290-66.3 thru 290-66.7
<input type="checkbox"/>	290-76.1 thru 290-80.1 . . . . .	290-77 thru 290-80.1
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<input type="checkbox"/>	290-193 thru 290-213 . . . . .	290-193 thru 290-211
<input type="checkbox"/>	291-21 thru 291-24.1 . . . . .	291-21 thru 291-24.1
<input type="checkbox"/>	291-40.1 thru 291-40.2(1) . . . . .	291-40.1 thru 291-40.2(1)
<input type="checkbox"/>	291-61 thru 291-66.4(1) . . . . .	291-61 thru 291-66.4(3)
<input type="checkbox"/>	292-5 thru 292-10.3 . . . . .	292-5 thru 292-10.3
<input type="checkbox"/>	293-15 thru 293-18.9 . . . . .	293-15 thru 293-18.9
<input type="checkbox"/>	293-35 . . . . .	293-35 thru 293-36.1
<input type="checkbox"/>	293-63 thru 293-64.5 . . . . .	293-63 thru 293-64.5
<input type="checkbox"/>	293-106.5 thru 293-106.8(1) . . . . .	293-106.5 thru 293-106.8(1)
<input type="checkbox"/>	293-136.3 thru 293-136.8(17) . . . . .	293-136.3 thru 293-136.8(17)
<input type="checkbox"/>	300-21 thru 300-22.1 . . . . .	300-21 thru 300-22.1
<input type="checkbox"/>	310-7 thru 310-9 . . . . .	310-7 thru 310-10.1
<input type="checkbox"/>	310-23 thru 310-30.5 . . . . .	310-23 thru 310-30.7
<input type="checkbox"/>	310-55 thru 310-56.7 . . . . .	310-55 thru 310-56.8(1)

**VOLUME 20**

**Revision**

<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	320-48.1 thru 320-58.1 . . . . .	320-49 thru 320-58.3
<input type="checkbox"/>	320-64.6(1) thru 320-72.1 . . . . .	320-65 thru 320-72.17
<input type="checkbox"/>	321-15 thru 321-30.6(1) . . . . .	321-15 thru 321-30.6(3)
<input type="checkbox"/>	321-104.1 thru 321-104.8(1) . . . . .	321-104.1 thru 321-104.8(1)
<input type="checkbox"/>	321-104.18(3) thru 321-104.18(9) . . . . .	321-104.18(3) thru 321-104.18(9)
<input type="checkbox"/>	321-106.7 thru 321-107 . . . . .	321-107 thru 321-108.3
<input type="checkbox"/>	322-3. . . . .	322-3 thru 322-4.1
<input type="checkbox"/>	322-17 . . . . .	322-17 thru 322-18.1
<input type="checkbox"/>	322-54.1 thru 322-54.21 . . . . .	322-54.1 thru 322-54.23
<input type="checkbox"/>	323-10.1 . . . . .	323-10.1 thru 323-10.3
<input type="checkbox"/>	330-5 thru 330-6.1 . . . . .	330-5 thru 330-6.1
<input type="checkbox"/>	330-16.1 . . . . .	330-16.1
<input type="checkbox"/>	333-17 thru 333-19 . . . . .	333-17 thru 333-20.1
<input type="checkbox"/>	333-29 thru 333-33 . . . . .	333-29 thru 333-34.1
<input type="checkbox"/>	333-78.1 thru 333-87 . . . . .	333-79 thru 333-88.9
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<input type="checkbox"/>	336-21 thru 336-22.1 . . . . .	336-21 thru 336-22.1
<input type="checkbox"/>	336-48.1 thru 336-48.3 . . . . .	336-48.1 thru 336-48.5
<input type="checkbox"/>	336-52.3 thru 336-71 . . . . .	336-53 thru 336-72.1



<b>Check As Done</b>	<i>Remove Old <u>Pages Numbered</u></i>	<i>Insert New <u>Pages Numbered</u></i>
<input type="checkbox"/>	337-12.1 thru 337-13 . . . . .	337-13 thru 337-14.1
<input type="checkbox"/>	337-26.1 thru 337-47 . . . . .	337-27 thru 337-43

**VOLUME 21**

**Revision**

<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	340-27 thru 340-34.3 . . . . .	340-27 thru 340-34.3
<input type="checkbox"/>	340-48.1 thru 340-49 . . . . .	340-49 thru 340-50.1
<input type="checkbox"/>	340-73 thru 340-76.3 . . . . .	340-73 thru 340-76.3
<input type="checkbox"/>	340-88.6(1) thru 340-88.7 . . . . .	340-88.7 thru 340-88.8(1)
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<input type="checkbox"/>	344-45 . . . . .	344-45 thru 344-46.1
<input type="checkbox"/>	344-71 . . . . .	344-71 thru 344-72.1

**VOLUME 22**

**Revision**

<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	360-58.1 thru 360-85 . . . . .	360-59 thru 360-85
<input type="checkbox"/>	360A-37 thru 360A-40.1 . . . . .	360A-37 thru 360A-40.3
<input type="checkbox"/>	362-37 thru 362-44.1 . . . . .	362-37 thru 362-44.1
<input type="checkbox"/>	363-104.5 thru 363-107 . . . . .	363-105 thru 363-108.1
<input type="checkbox"/>	364-9 thru 364-13 . . . . .	364-9 thru 364-14.1
<input type="checkbox"/>	364-30.3 thru 364-63 . . . . .	364-31 thru 364-61
<input type="checkbox"/>	370-14.1 thru 370-27 . . . . .	370-15 thru 370-28.9

**VOLUME 23**

**Revision**

<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	373-54.1 thru 373-56.3 . . . . .	373-55 thru 373-56.3
<input type="checkbox"/>	381-13 thru 381-14.1 . . . . .	381-13 thru 381-14.1
<input type="checkbox"/>	381-37 thru 381-47 . . . . .	381-37 thru 381-48.1
<input type="checkbox"/>	381-64.1 thru 381-66.5 . . . . .	381-65 thru 381-66.7

**VOLUME 24**

**Revision**

<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	391-9. . . . .	391-9 thru 391-10.1
<input type="checkbox"/>	391-29 . . . . .	391-29 thru 391-30.1

<b>Check As Done</b>	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
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<input type="checkbox"/>	392-103 thru 392-113 . . . . .	392-103 thru 392-114.1
<input type="checkbox"/>	394-33 . . . . .	394-33 thru 394-34.1
<input type="checkbox"/>	394-65 . . . . .	394-65 thru 394-66.1
<input type="checkbox"/>	415-1 thru 415-3 . . . . .	415-1 thru 415-3
<input type="checkbox"/>	415-23 thru 415-29 . . . . .	415-23 thru 415-30.1

**VOLUME 25**

**Revision**

<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	420-3. . . . .	420-3 thru 420-4.1
<input type="checkbox"/>	421-11 . . . . .	421-11 thru 421-12.1
<input type="checkbox"/>	421-29 thru 421-33 . . . . .	421-29 thru 421-33
<input type="checkbox"/>	422-5 thru 422-9 . . . . .	422-5 thru 422-7
<input type="checkbox"/>	422-47 thru 422-49 . . . . .	422-47 thru 422-49
<input type="checkbox"/>	423-3 thru 423-19. . . . .	423-3 thru 423-20.1

**VOLUME 26**

**Revision**

<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	I-133 thru I-145. . . . .	I-133 thru I-145
<input type="checkbox"/>	I-237 thru I-245. . . . .	I-237 thru I-246.1
<input type="checkbox"/>	I-367 thru I-425. . . . .	I-367 thru I-425
<input type="checkbox"/>	I-641 thru I-669. . . . .	I-641 thru I-669
<input type="checkbox"/>	I-919 thru I-971. . . . .	I-919 thru I-971

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