



Texas Civil Justice League Update

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TCJL Files Two Amicus Briefs in the Texas Supreme Court

TCJL has recently filed *amicus curiae* briefs with the Texas Supreme Court in two cases with broad implications for the Texas economy and business climate.

Texas Rice Land Partners Ltd. and Mike Latta v. Denbury Green Pipeline-Texas, L.L.C.

In this case the Supreme Court held in favor of the landowner that the regulatory process by which the Texas Railroad Commission certifies common pipeline carriers does not preclude a later constitutional challenge to a common carrier's exercise of eminent domain authority pursuant to Chapter 111, Natural Resources Code. Chapter 111 has long served as the mechanism by which the state authorized oil and gas pipelines to acquire right-of-way for Texas' energy transportation infrastructure. By recognizing a constitutional cause of action to invalidate Chapter 111 grants of eminent domain authority, the Court's decision could subject existing and proposed pipelines to costly, piecemeal litigation and turn state courts into regulatory bodies. The long-term effects on Texas' energy infrastructure and economy, driven in large part by massive investments in drilling and transportation in shale formations across the state, could be extremely detrimental to further capital investment and job creation in the state.

TCJL's brief argues that in promulgating the common carrier certification process, the Legislature has determined the appropriate test for the exercise of eminent domain for a "public purpose"—the production and transportation of oil and gas for the benefit of the public, the generation of tax revenue for state and local governments, and the overall prosperity of Texas citizens. The brief states the problem with the Court's interpretation as follows:

If this interpretation of the Court's ruling is correct, Texas courts will now act as de facto regulators of energy infrastructure development in this state. Each individual property owner whose property a proposed or existing pipeline must traverse has an indestructible constitutional claim that may be asserted at any time in any court with jurisdiction over the owner's property. Each individual trial court will be asked to predict whether the carrier, under unspecified market conditions that may exist at an unspecified future date, might with a "reasonable probability" transport only its own product or sell the product to a third party. Since reasonable trial courts may differ on this question, it is easily conceivable that with respect to a single project trial courts along the proposed or existing line will come up with different answers. Ultimately, someone will have to sort this out, and that task will likely fall to this Court.

Denbury Green's motion for rehearing is currently pending before the Court. TCJL has asked the Court to grant rehearing and reconsider its opinion in light of the potential adverse impact to the Texas energy industry and the economy as a whole.

Kia Motors Corporation and Kia Motors America, Inc. v. Ruiz

This case involves the interpretation of a key provision of the 2003 civil justice reform package: the government standards defense (§82.008, Civil Practice & Remedies Code). This provision creates a rebuttable

presumption that a product manufacturer or seller is not liable for an injury to a claimant caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer established that the product's formula, labeling, or design complied with mandatory safety standards adopted by an agency of the federal government that were applicable to the product at the time of manufacture and that governed the product risk that allegedly caused the harm. In this case, the plaintiff was injured in an automobile collision in which the driver's side airbag failed to deploy. The automobile manufacturer raised the government standards defense on the basis that mandatory federal safety regulations require motor vehicles to contain passive restraint systems that meet specific standards, that the systems in question met those standards, and that no evidence was presented at trial showing that the airbag was defective. Both the trial court and the Dallas Court of Appeals ruled that the government standards defense did not apply to the automobile manufacturer in this case because the federal rules establish a "performance" standard and not a "design" standard.

In its brief in support of the manufacturer's petition for review to the Supreme Court, TCJL argues that the plain language of §82.008 makes the statute applicable to an automobile manufacturer whose vehicles must include passive restraint systems that comply with mandatory standards. The brief asserts:

§82.008(a) requires the manufacturer to establish that the product's design, in this case the drivers-side frontal airbag, complied with mandatory safety standards that applied to the product and that governed the product risk that allegedly caused the harm. Nowhere does §82.008(a) carve out a "performance" standard and exempt it from the application of the statute, as Ruiz argued and the court apparently concurred. In order to become operative, the statute requires the existence of "mandatory safety standards or regulations," no mandatory design standards. No one disputes that FMVSS 208 establishes mandatory safety standards to reduce the risk of injury and death from motor vehicle accidents. A motor vehicle manufacturer who fails to comply with FMVSS 208 may not market or sell a motor vehicle in this state or country. §82.008(a) unambiguously applies to the type of passive restraint system at issue in the case in this respect, and no further analysis or parsing of FMVSS 208 is required or relevant.

TCJL's brief also argues that the Court of Appeals erroneously appealed to "legislative intent" in an attempt to interpret clear and unambiguous statutory language, and that even if an argument can be made that the statute is ambiguous, the legislative history relied on by the court does not control the interpretation of the statute.

HB 4's government standards defense is one the cornerstones of the 2003 civil justice reforms. If the Court of Appeals decision is allowed to stand, the statute could become virtually useless, since very few federal regulations mandate design specifications for products. Moreover, if the defense is struck down, it will once again introduce a significant degree of uncertainty into the manufacturing economy, since manufacturers will no longer be assured that meeting or exceeding federal standards will at least create a presumption that the product did not have a design defect. TCJL has asked the Court to grant Kia's petition for review and hear the case.

TEXAS CIVIL JUSTICE LEAGUE

400 WEST 15TH STREET, SUITE 1400

AUSTIN, TX 78701

512-320-0474

www.tcjl.com

info@tcjl.com