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February 10, 2025

Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711

Re: No. 24-0293; *In re Greystar Development & Construction, LP, Gabriella Tower, LLC, and Greystar Development & Construction, LP—Gabriella Tower Contractor Series*

To the Honorable Members of the Supreme Court of Texas:

Pursuant to Rule 11, Texas Rules of Appellate Procedure, *amicus curiae* Texas Civil Justice League files this letter in the above-referenced cause in support of the petition for writ of mandamus.

Statement of Interest

The Texas Civil Justice League ("TCJL") is a non-profit association of Texas businesses, health care providers, professional and trade associations, and individuals dedicated to maintaining a fair, stable, and predictable civil justice system. TCJL has long participated as *amicus curiae* in matters that have a significant and pervasive impact on our membership and the Texas business climate.

Since its inception in 1986, TCJL has successfully advocated for supersedeas reform in the Texas Legislature on three separate occasions, including the 2003 amendments to Chapter 52, Civil Practice and Remedies Code, at issue in this case. Our members have a fundamental interest in preserving these reforms and preventing their erosion by judicial decision. In our view, the court of appeals' opinion in this case contradicts the plain language of the statute and erodes the protections enacted by the Legislature to ensure a defendant's right to appellate review.

This brief has been prepared in the ordinary course of TCJL's operations. No one has paid for the preparation of this brief.

Argument

Since its inception in 1986, TCJL has on three occasions advocated for supersedeas bond reform.[1] The first effort came in 1989 in the wake of the notorious 1985 jury verdict awarding Pennzoil $10.53 billion against Texaco in a dispute over the acquisition of Getty Oil. Unable to post a $13 billion bond securing the judgment, Texaco turned to the federal courts in an effort to obtain relief from Texas law requiring the company to post a bond in the full amount of the judgment. Though the lower courts reduced the amount of the bond to a more manageable $1 billion,

[1] The third effort, which is not relevant to this case, occurred in 2023 and resulted in the enactment of § 52.007, Civil Practice and Remedies Code. This section allows judgment debtors to post alternative security under certain circumstances.

the United States Supreme Court reversed on the basis that federal courts should not intervene until Texas state courts had the opportunity to resolve the dispute in the first instance. Texaco immediately sought federal bankruptcy protection. In 1989, during the next regular session of the Texas Legislature following Texaco's bankruptcy filing, the Texas Legislature enacted Chapter 52, Civil Practice & Remedies Code, regulating the amount of security judgment debtors must post to supersede a judgment.

The initial version of Chapter 52, which TCJL supported and advocated for during the 71st Legislative Session, gave the trial court the discretion to reduce the amount necessary to supersede certain judgments on appeal on a finding that "the lesser amount would not substantially decrease the degree to which a judgment creditor's recovery under the judgment would be secured" and that "setting the security at an amount equal to the amount of the judgment, interest, and costs would cause irreparable harm to the judgment debtor."[2] The statute thus recognized that the legal environment had changed from one in which money judgments could be so substantial as to destroy the financial solvency of judgment debtors altogether. In this environment, the former Texas Rule of Appellate Procedure 47, which at least

[2] Act of June 16, 1989, 71st Leg., R.S., ch. 1178, § 1, 1989 Tex. Gen. Laws 4813, 4813–14, *repealed in part by* Act of June 2, 2003, 78th Leg., R.S. ch. 204, § 7.03, 2003 Tex. Gen. Laws 847, 863 (current version at Tex. Civ. Prac. & Rem. Code §§ 52.001, 52.005–.006).

reduced the supersedeas amount from double the amount of the judgment to the judgment amount, plus interest and costs, could no longer be the basis of preserving appellate review but in fact could inhibit, if not prevent, a party from exercising its right to appellate review.

Chief Justice Hecht addressed this history in his opinion in *In re Longview Energy Company*, 464 S.W.3d 353, 358 (Tex. 2015). In that case, a divided San Antonio Court of Appeals held that Chapter 52's limitation on the amount of a supersedeas bond applied to the judgment, not to each of the judgment debtors. The Court, however, did not reach the issue because the money judgment did not constitute "compensatory damages" to which the supersedeas cap applies. *Longview Energy*, however, was governed by a version of Chapter 52 that the Legislature substantially revised in 2003, as part of the sweeping medical and tort liability reform legislation, H.B. 4. The legislation repealed most of the 1989 statute and replaced it with the current § 52.006. Pertinent to this case is § 52.006(b), which caps the amount of security at the lesser of (1) 50 percent of the judgment debtor's net worth, or (2) $25 million. TCJL strongly supported this provision as a desperately needed update to the 1989 statute. Between 1989 and 2003, the Texas economy experienced massive growth for many reasons, but not least as a consequence of legislative reforms of the workers' compensation system and a runaway tort liability crisis that

threatened the ability of the state to attract new investment and job creation. The unfortunate fact of the matter was that the 1989 law had become overrun by an avalanche of what we now call "nuclear verdicts." In our view, the plain language of the reformed Chapter 52 caps the amount of security at $25 million, period. For what it's worth (and as a matter of statutory construction our opinion and $8 will buy you a cup of coffee), no one involved in drafting and eventual enactment of § 52.006 ever thought that the $25 million cap was to be applied on a per judgment debtor basis. As one of the two statewide civil justice reform organizations that *was* directly involved in that process, we can emphatically assert that had we thought that the statute should be applied that way, the Legislature would have said so.

But the Legislature didn't say so. Instead, the statute simply limits the amount of security to "$25 million." The court of appeals makes much of the language of Subsection (b)(1), which does tie the amount of a security to "the judgment debtor's net worth." This option makes perfect sense because the purpose of Subsection (b)(1) was to permit a *lesser* amount of security than a one-size-fits-all $25 million cap would provide. It goes without saying that when it enacted § 52.006 the Legislature knew very well that litigation regularly produces more than one judgment debtor. It also knew that in order to make the statute as effective as possible in preserving a judgment debtor's right to appellate review, it needed a dual approach, one that

provided a cap based on an individual judgment debtor's net worth and the other a straightforward cap based on the amount of the judgment itself. To put it another way, as far as the statute is concerned, it doesn't matter what resources a judgment debtor may or may not have to put as security. What matters is that the statute gives judgment debtors the choice to limit their liability for the bond so that they may continue to do business pending the outcome of their case. In a case in which one or more judgment debtors have low net worth, it may make sense to pick option (1). In such a case the *total* amount of security may even reach $25 million, depending on how much each individual debtor owed to the pot. But in cases involving one or more debtors with higher net worth, the judgment-based cap is the better option because it both lowers the debtor's liability and avoids a slew of expensive and time-wasting satellite litigation to determine what a judgment debtor's net worth actually is and how much of the security each judgment debtor is responsible for. Section 52.006(b)(2) relies on two easy-to-ascertain numbers: the amount of the judgment and $25 million. That's the end of the inquiry, as the Legislature intended.

Notwithstanding what we believe the plain text of the statute says, the problem with the plaintiffs' position is that it conflates the two options so that they can have it both ways. If the $25 million cap really did operate on per judgment debtor basis, it is not difficult to foresee what will happen. As they have done in this case, plaintiffs

will seek to stack as many $25 million caps as they can in order to leverage the settlement value of the case in an effort to discourage, if not deprive, judgment debtors of appellate review that could well reduce or eliminate their ultimate liability. As we are too painfully aware, the return of even bigger nuclear verdicts than existed in 2003 once more threatens the stability and predictability of the tort liability system. Should the court of appeals' interpretation of § 52.006 be validated, it will recreate the very problem that the 1989 and 2003 Legislatures sought to remedy: the right to appellate review must be preserved no matter who the judgment debtors are and how deep their bottoms may be. Plenty of remedies exist that permit plaintiffs to pursue judgment debtors who don't pay their bills. We don't need to create yet another incentive, as the court of appeals' opinion does, to run those bills up so high that judgment debtors simply can't afford to pursue basic due process. That was the *Texaco v. Pennzoil* issue then, and it is the issue now.

In short, if plaintiffs think that a $25 million bond isn't enough, they can ask the Legislature to amend § 52.006(b) to raise the cap and allow them to do what they are seeking to do in the courts. Because that is precisely what they are asking this Court to do: *raise* the cap that the Legislature has decided, as a matter of public policy, is sufficient to secure a judgment. Perhaps we are at a stage in our history in which $25 million doesn't seem like very much money. Perhaps what $25 million

signified in 2003 isn't what it signifies today. Perhaps, if that is the case, plaintiffs could make a reasoned argument that the judgment-based cap is too small in certain cases. But they need to make that argument in the right forum, and they need to show that the current structure of the cap allows judgment debtors, however well-heeled they may be, to flee their debts rather than ponying up. We see no evidence that anything of the sort is happening in this case or anywhere else.

Conclusion and Prayer

TCJL respectfully requests that this Court reverse the court of appeals and grant the Relators' petition.

Respectfully submitted,

/s/ George S. Christian

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/s/ George S. Christian

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I hereby certify that a true and correct copy of the foregoing *amicus* letter was served on counsel of record by using the Court's CM/ECF system on the 10th day of February, 2025.

/s/ George S. Christian

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