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Litigation Roundup: Another OAG Alum Heads to Washington

FEBRUARY 11, 2025 | MICHELLE CASADY

In this edition of Litigation Roundup, Beck Redden and Dykema Gossett go head-to-head in a jury trial in Harris County, a group of Dallas residents get an appellate win in the fight over restrictions on short-term rentals and the U.S. Court of Appeals for the Fifth Circuit undoes a victory for the *Austin American-Statesman* in a lawsuit over an anonymous advertisement.

In just a few short weeks the 97th Academy Awards will take place in Los Angeles, and one of the films nominated for Best Documentary Short Film has a connection to the Texas legal world. The 37-minute film, *I am Ready, Warden*, examines a Texas death penalty case that made it all the way to the U.S. Supreme Court, *Ramirez v. Collier*, which was argued and won by Houston-based appellate lawyer Seth Kretzer in March 2022.

"I've never appeared in a documentary. None of my cases have been remotely interesting enough," Kretzer told *The Texas Lawbook* in an interview Monday. He estimated he appears on screen for "about 15 seconds" in the documentary that follows the fight of death row inmate John Henry Ramirez, who argued his Baptist pastor should be allowed to pray aloud and lay hands on him during his execution. Ramirez was sentenced to death in 2008 for the 2004 robbery and murder of Pablo Castro in Corpus Christi, Texas.

The filmmaker, Smriti Mundhra, aimed to steer clear of focusing on the legal issues in the documentary and instead focused on the effect an execution has on all parties involved. Kretzer, whose client's guilt was never in question, noted that the first hearing in Ramirez' case came before the Supreme Court.

"It's interesting. And whether or not it affects people's thoughts about the death penalty, it shows that litigation has some kind of impact," he said.

The film is available for streaming on Paramount+.

In other litigation-adjacent news, Attorney General Ken Paxton announced last week that **another former member** of his staff — Joseph Mazzara, who had most recently served as special counsel to Paxton and as first assistant attorney general — had joined the administration of President Donald Trump. Mazzara, who clerked for Judge Edith H. Jones, Judge Brantley A. Starr and Judge Stephen Vaden, will serve as acting general counsel for the U.S. Department of Homeland Security.

Paxton issued a statement praising Mazzara, who is a Marine and a combat veteran, for being a "courageous defender of the rule of law."

"His service to our nation as both a decorated Marine and a brilliant attorney makes him exceptionally qualified for this vital role ... and I have no doubt he will continue to fight for the security and sovereignty of our country," Paxton said.

The Litigation Roundup is a weekly feature highlighting the work Texas lawyers are doing inside and outside the state. Have a development we should include next week? Please let us know at tblitigation@texaslawbook.net.

Harris County District Court

Jury Sides with Furniture Co. in Dispute with Warehouse

An online furniture company based in Houston recently convinced a jury in Harris County that a warehouse, inventory and shipping company had breached its contract after two weeks of trial.

Edloe Finch filed suit in February 2023 alleging it discovered that UNIS LLC had, over the course of two years, overbilled it by nearly \$800,000 by inflating weights and included charges for unused supplies. UNIS filed counterclaims seeking more than \$2 million it alleged it was owed for work it had done for Edloe but failed to bill for.

The trial began Jan. 29 with jury selection. Jurors heard seven days of testimony before beginning deliberations at 12:10 p.m. Friday. The panel returned its verdict by 1:30 p.m. determining Edloe Finch was entitled to a total of about \$785,000 in damages across four categories — for incorrect label charges, incorrect "pick and pack charges," incorrect weight charges and incorrect pallet charges.

The jury was asked to answer four questions: Did UNIS breach the contract? If so, what are the damages Edloe Finch is entitled to for that breach? Does Edloe Finch have a legal obligation to pay UNIS for the unbilled charges? If so, how much?

The jury determined Edloe Finch did not have an obligation to pay UNIS.

Matthew P. Whitley of Beck Redden, who represents Edloe Finch issued a statement to *The Lawbook* praising the jury's verdict.

"I'm extremely proud of our trial team, especially Fariha Jawed, who gave an excellent closing argument and received praise from several jurors after the trial," he said. "We are very appreciative of the jury's time and focus over this nearly two-week trial, and now we are turning our attention to Edloe Finch's claim for attorney's fees."

Harris County District Judge Latosha Payne presided over the trial. Judge Payne will also preside over a bench trial on attorney fees that will take place within the next few months.

Edloe Finch is also represented by **Allison Miller**, **Nicholas M. Bruno** and **Fariha Jawed** of Beck Redden.

UNIS is represented by **Brooke M. Bohlen**, **Alexander D. Good** and **Brett W. Schouest** of Dykema Gossett.

The case number is 2023-11022.

Business Court, Eleventh Judicial District

Lawyers Sued Over Bitcoin Mining Deal Hire Defense Team

A securities law firm that was among the defendants named in a December lawsuit filed by Blockware Solutions — which alleges it was defrauded and duped into purchasing bitcoin mining equipment — has hired lawyers to defend against the claims.

In an answer filed Feb. 7, the defendants — American Mining Warehouse, its managing member Tyler Deboer, law firms Whitley LLP and Whitley Law Group and lawyer Samuel Whitley — told the court they "generally deny each and every allegation" Blockware had lodged.

Blockware Solutions alleges violations of the Texas Business and Commerce Code, breach of contract, fraudulent inducement, breach of fiduciary duty, conversion, aiding and abetting, conspiracy to commit fraud, negligent misrepresentation and unjust enrichment. It is seeking more than \$10 million in damages and disgorgement of \$3.9 million.

"This is a fraud and breach of contract action wherein contracting defendants, with the substantial assistance of attorney defendants, negotiated, contracted for, and sold certain bitcoin mining equipment to plaintiff under false pretenses," Blockware alleges. "Plaintiff paid for, but defendants failed to deliver, the bitcoin mining equipment in accordance with the terms of three separate contracts and failed to deliver all of the equipment that was paid for."

Blockware alleges the delays in getting the equipment, in violation of the contract, have cost it lost profits and lost business, a "domino effect that was repeatedly conveyed to defendants, making time of the essence to Blockware."

Blockware Solutions is represented by E. John Gorman and Joseph F. Greenberg of The Feldman Law Firm and Tim Bauman, Katrina Loyer and Melissa Levin of Bauman Law Group.

The defendants are represented by Siobhan K. Ray of McDowell Hetherington and Stuart Kagen of Kagen, Caspersen & Bogart.

The case number is 24-BC11B-0029.

Fifth Court of Appeals, Dallas

Short-Term Rental Alliance Wins Appeal

The city of Dallas on Friday lost a bid to move forward with its planned ban on short-term rentals when a three-justice panel of the Dallas appellate court determined a temporary injunction can stay in place.

Dallas filed its opening brief on appeal last February trying to undo Dallas County District Judge Monica Purdy's injunction temporarily blocking the city from enforcing ordinances that would ban about 95 percent of all short-term rentals in the city limits. Judge Purdy wrote that she was unpersuaded by a study the city said it relied on in passing the restrictions.

The panel wrote that both ordinances currently enjoined state that they "take effect immediately from and after [their] passage and publication in accordance with the provisions of the Charter of the City of Dallas" and that enforcement will begin six months later.

"This evidence supports the trial court's finding that without injunctive relief, appellees would suffer probable, imminent, and irreparable injury to their vested property rights," the panel wrote in the 13-page opinion.

Senior Justice Yvonne T. Rodriguez, sitting by assignment, and Justices Dennise Garcia and Craig Smith delivered the opinion.

Dallas is represented by Andrew G. Spaniol, Nicholas D. Palmer, James B. Pinson, Jennifer C. Huggard and Tammy L. Palomino of the city attorney's office.

The Dallas Short-Term Rental Alliance is represented by **Michael K. Hurst** and **David Coale** of Lynn Pinker Hurst & Schwegmann.

The case number is 05-23-01309-CV.

U.S. Court of Appeals for the Fifth Circuit

Early Win for Austin American-Statesman Undone in Suit Over Anonymous Ad Blunder

A man who sued the Austin American-Statesman accusing the newspaper of failing to keep its word that his funding of an advertisement would remain confidential will get another chance to pursue his lawsuit.

A three-judge panel issued an eight-page ruling on Feb. 4 holding that U.S. District Judge David A. Ezra had wrongly granted a summary judgment win to the newspaper in the lawsuit brought by Gary Bradley.

After Bradley began to "have issues" with the new pastor at the church he had attended for decades, he approached the newspaper in February 2020 to place an anonymous advertisement in hopes of changing the pastor, according to the opinion.

The advertisement urged parishioners to attend a meeting and vote against the new pastor's budget. Bradley met with a newspaper employee who agreed to keep the source of the advertisement anonymous, according to the opinion. But about a month after the ad ran, and despite the fact that Bradley had already paid in full for the advertisement, the Statesman sent an invoice for the ad, with Bradley's name on it, directly to the church.

He sued the newspaper in state court for breach of contract, breach of warranty, mental anguish and intentional infliction of emotional distress. He sought more than \$1 million in damages.

The newspaper removed the case to federal court where Judge Ezra adopted a magistrate's recommendation to toss the mental anguish and IIED claims and later granted the Statesman summary judgment on Bradley's breach of contract and breach of warranty claims.

"Here, accepting Bradley's evidence as true, there was an agreement to keep Bradley's identity anonymous so that the church would not know that he placed the advertisement. There are different views between Bradley and the Statesman employee, which is exactly why summary judgment is not appropriate," the panel explained.

"The bottom line is that, while the jury could believe the Statesman employee, that is not up to the district court at the summary judgment stage. Here, the factual disputes support a jury trial, not a summary judgment. The evidence that the Statesman sent an invoice to the church, which exposed Bradley's involvement, raises a fact question regarding breach."

The panel revived the claims for breach and mental anguish but affirmed dismissal of the IIED claim.

Judges Leslie H. Southwick, Catharina Haynes and James E. Graves Jr. sat on the panel that delivered the per curiam opinion.

Bradley is represented by Geoffrey D. Weisbart and Sara Janes of Weisbart Springer Hayes.

The Statesman is represented by **Laura Prather**, **Michael Lambert** and **Catherine Robb** of Haynes Boone.

The case number is 23-50646.

Panel Revives Texas Homeowners' Fight to Remove KKK-Related Decor

The owners of a home in San Marcos will get to continue their fight against the city's historic commission to remove a piece of the façade put in place by a former owner with ties to the Ku Klux Klan.

Kristy Kay Money and Rolf Jacob Sraubhaar filed notice of appeal in March after U.S. District Judge Robert L. Pitman determined the couple's takings claims were not ripe and dismissed the case on his own order without any party requesting the move.

Money and Sraubhaar filed suit against San Marcos and its director of planning and development services in June 2023 alleging the ordinance — that is restricting them from removing from the front of their home a metal balcony with the initial of a previous homeowner who had historical ties to the Ku Klux Klan — is unconstitutional.

Because their home is in a historic district, the ordinance requires they seek approval prior to removing the decorative balcony or face criminal penalties and fines. They sought and were denied approval in May 2023. In the lawsuit, the homeowners are alleging that the government's mandate that the balcony stay in place is an unconstitutional taking restricting their use of property.

The homeowners argue the ordinance is unconstitutional in another way as well.

"Under the Texas Constitution restrictions on private property rights must be based on nuisance or incompatibility," the suit alleges. "Texas cities lack authority to regulate private property for aesthetic purposes."

The panel's 14-page ruling notes that the couple's home is not a historic home but is located within the Burleson Historic District in San Marcos.

"The district court determined, as the City argues here, that these per se takings claims are not ripe because the Moneys did not appeal the Commission's denial to the Zoning Board, and therefore did not receive a final decision," the panel wrote, before later explaining that Judge Pitman "seems to have conflated finality with exhaustion."

"The Commission's denial satisfied the finality requirement. The Moneys were not obligated to exhaust their remedies by filing an appeal. Their as-applied takings claim is also prudentially ripe," the panel held.

Judges James L. Dennis, Leslie H. Southwick and Kurt D. Engelhardt sat on the panel.

Money and Sraubhaar are represented by Chance Weldon, Robert E. Henneke and Christian G. Townsend of the Texas Public Policy Foundation.

San Marcos is represented by Joanna Salinas of Fletcher, Farley, Shipman & Salinas.

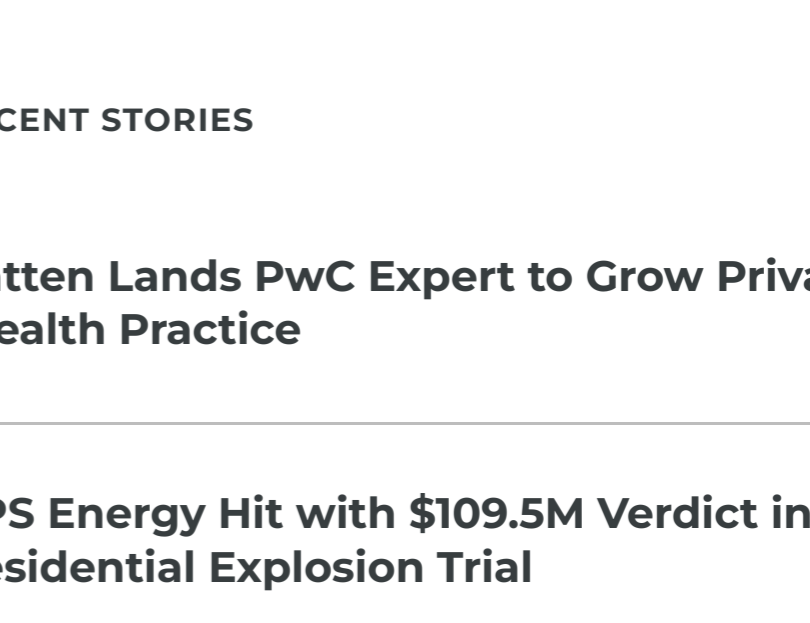
The case number is 24-50187.

Michelle Casady

Michelle Casady is based in Houston and covers litigation and appeals — including trials, breaking news and industry trends — for The Texas Lawbook.

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