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## **SUPREME COURT OF TEXAS UPDATE**

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## SUPREME COURT OF TEXAS UPDATE

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Phil Johnson  
*Justice*  
Supreme Court of Texas

### I. SCOPE OF THIS ARTICLE

This article surveys cases that were decided by the Supreme Court of Texas from March 1, 2017 through February 28, 2018. Petitions granted but not yet decided are also included.

### II. ADMINISTRATIVE LAW

#### A. Judicial Review

1. Shamrock Psychiatric Clinic, P.A. v. Tex. Dep't of Health and Human Servs., 540 S.W.3d 533 (Tex. Feb. 23, 2018) [16-0890].

At issue in this case is whether Shamrock Psychiatric Clinic, a Medicaid provider, is entitled to a contested-case hearing on the merits of the State's claim to recoup alleged overpayments. The Texas Health and Human Services Commission administers the Texas Medicaid Program and, through its Office of Inspector General, is responsible for investigating violations of and enforcing state laws related to the program. In January 2013, Shamrock received notice that the Inspector General would pursue a payment-hold for alleged overpayments. Shamrock timely responded to this notice, and the Inspector General set the case for hearing before the State Office of Administrative Hearings. Beginning in September, an Inspector General attorney stated the agency's intent to pursue an overpayment claim against Shamrock. In a series of emails, the Inspector General attorney proposed consolidation of the pending payment-hold case with the overpayment case, since the two claims involved overlapping issues. Shamrock agreed that the two cases should be tried together, and, relying on a status report entered by the Inspector General stating the parties' agreement, the administrative law judge continued a November 2013 hearing to March.

The Inspector General attorney handling Shamrock's case soon after left the agency. In December, Shamrock received the Inspector General's final notice of overpayment, which

included notice of a 15-day appeal requirement. Relying on the agreement to consolidate the two hearings, Shamrock did not file a written appeal by that deadline. In January 2014, the Inspector General's new counsel notified Shamrock of the State's intent to dismiss the cases because Shamrock failed to submit a written appeal request. The State then "withdrew" its initial payment-hold case, arguing that the administrative law judge no longer had jurisdiction to enforce any alleged agreement. The judge reluctantly dismissed the case.

Shamrock filed suit in district court, seeking a writ of mandamus directing the administrative law judge to enforce the parties' agreement. The trial court granted the State's plea to the jurisdiction, finding that sovereign immunity barred Shamrock's suit. On appeal, Shamrock argued that both the administrative law judge and the Office of Inspector General had a ministerial duty to abide by the agreement. The court of appeals rejected this argument.

The Supreme Court reversed, holding that the Inspector General's status report, read in conjunction with the parties' email correspondence and the administrative law judge's orders relying on the report, constitute a written agreement satisfying SOAH Rule 155.415 and Texas Rule of Civil Procedure 11. The Court stated that administrative law judges, like trial judges, have a ministerial duty to enforce a valid Rule 11 agreement. Because the administrative law judge failed to enforce the agreement in this case, the Court held that the *ultra vires* exception to sovereign immunity applied to Shamrock's suit, and thus the district court erred in granting the State's plea to the jurisdiction.

## **B. Public Utility Commission**

1. City of Richardson v. Oncor Elec. Delivery Co., 539 S.W.3d 252 (Tex. Feb. 2, 2018) [15-1008].

This case involved a dispute between a city and a utility over who must pay relocation costs to accommodate changes to public rights-of-way. The City of Richardson negotiated a franchise agreement with Oncor Electric Delivery Company LLC, requiring Oncor to bear the costs of relocating its equipment and facilities to accommodate changes to public rights-of-way. Richardson later approved the widening of thirty-two public alleys. Oncor refused to pay for the relocation of its equipment and facilities to accommodate these changes. While the relocation dispute was pending, Oncor filed an unrelated case with the Public Utility Commission (PUC), seeking to alter its rates. That case was resolved by settlement, and the resulting rate change was filed as a tariff with the PUC. Richardson enacted an ordinance consistent with the tariff, which included the following pro-forma provision: “Retail Customer, or the entity requesting such removal or relocation, shall pay to Company the total cost of removing such Delivery System Facilities.” Oncor relied on this language to support its refusal to pay relocation costs.

At common law, a utility is normally required to bear the costs of right-of-way relocations. This requirement was reflected in the franchise agreement. Oncor argued that the tariff controlled over the franchise agreement because it carried the weight of state law, and because the Tariff was a freely negotiated agreement that reflected Richardson’s consent to pay relocation expenses, thus discharging Oncor’s obligation to pay such expenses under the franchise agreement. Richardson argued that the tariff was not a freely negotiated agreement, and that it lacked the requisite clarity to abrogate either the franchise agreement or the common law.

## **C. Railroad Commission**

1. Forest Oil Corp. v. El Rucio Land & Cattle Co., 518 S.W.3d 422 (Tex. Apr. 28, 2017) [14-0979].

At issue in this case was whether the Railroad Commission (RRC) has exclusive jurisdiction over environmental contamination

claims and whether the arbitration award at issue was proper.

Forest Oil Corporation has been conducting oil and gas operations on a ranch owned by James A. McAllen for over thirty years. In a previous case, both parties agreed to a Settlement Agreement that required Forest to remediate any environmental damage on the ranch. Subsequently, McAllen sued Forest for environmental contamination, among other common-law claims, and was awarded damages in arbitration. Forest moved to vacate the award on several grounds, including that the RRC had exclusive or primary jurisdiction over McAllen’s claims, precluding the arbitration. Forest also asserted that there was evidence of partiality of one of the arbitrators, Donato Ramos, because McAllen had earlier objected to using Ramos as a mediator in another case, apparently to avoid any conflict in Ramos’ serving as an arbitrator in this case. Forest also argued that the damages awards were in manifest disregard of Texas law, and that the parties had agreed to expanded judicial review of the arbitration award. The trial court largely upheld the arbitration damages, and the court of appeals affirmed.

The Supreme Court affirmed. The Court first determined that the RRC did not have exclusive jurisdiction over contamination claims. While the legislature had put a statutory remedy in place through the RRC, it did not abrogate common-law claims. Without clear legislative intent to abrogate common-law claims, the Court will give full effect to either remedy. Accordingly, the RRC did not have primary jurisdiction because Forest’s duty to remediate contamination is grounded in common-law and statute. Furthermore, the Court concluded that Ramos was still an impartial arbitrator because the evidence that he was aware of McAllen’s objection in a prior case was circumstantial. The damages awarded were within the discretion of the arbitration panel and were awarded pursuant to the Settlement Agreement. Lastly, the Settlement Agreement prohibited Forest’s request of expanded judicial review.

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