

**Supreme Court of Texas**  
**May 9, 2014**

***Waste Management of Texas, Inc. v. Texas Disposal Systems Landfill, Inc.***

No. 12-0522

Case Summary written by Jessica Rugeley, Online Edition Editor.

Justice Willett delivered the opinion of the Court.

In 1995, the City of San Antonio began negotiating a waste management contract to begin in 1997 with Texas Disposal Systems (TDS). At the same time, the city of Austin was seeking bids for landfill services. TDS and Waste Management of Texas (WMT) were both selected to proceed to the second phase of the bidding process for Austin. In early 1997, WMT hired a consultant to draft an “Action Alert” memorandum that falsely alleged the following: (1) TDS received an exception to the federal environmental rules, (2) operated without a fully synthetic liner, and (3) did not have a leachate collection system to prevent groundwater contamination. WMT anonymously published this paper to community leaders in Austin. TDS sued WMT in late 1997 for defamation, tortious interference with an existing or prospective contract, and business disparagement. TDS alleged damages based on the delayed contracts with San Antonio and Austin and sought compensatory and punitive damages and injunctive relief. After TDS filed suit, WMT sent memos to the San Antonio Public Works Department, the San Antonio city Council, and the Texas Natural Resource Conservation Commission that alleged TDS’s contract with San Antonio would create multiple permit violations. WMT also issued a press release that listed reasons as to why TDS should not be selected for the Austin contract. TDS amended its original petitions to include these new events and added antitrust claims against WMT for attempting to create a monopoly.

At trial, TDS requested the trial court to instruct the jury on defamation per se and presumed damages, but the trial court refused. The jury found that WMT’s statements were false and that WMT knew the statements were false, finding actual malice, but found that TDS suffered no actual damages. Thus, the trial court entered a take-nothing judgment against TDS. The court of appeals reversed, holding that the trial court erred by not including a question about defamation per se in the charge and remanded for a new trial. In the second trial, the trial court instructed the jury on defamation per se and presumed damages. The jury awarded TDS \$450,592,03 for reasonable and necessary expenses, \$0 for lost profits, \$5 million for injury to reputation, and \$20 million as exemplary damages based on the jury’s finding of malice. The trial court treated the \$5 million award for injury to reputation as non-economic damages and applied the statutory

cap, lowering the award to \$1,651,184.06. WMT appealed and the court of appeals affirmed.

Issues: (1) Can a corporation suffer reputation damages? (2) Are reputation damages economic or non-economic damages for purposes of the statutory cap on exemplary damages? (3) Does the evidence support the damages awarded by the jury?

(1) The Court held that corporations do have reputations and can recover for reputational harm, reaffirming its decision in *Bell Publishing Co. v. Garrett Engineering Co.*, 170 S.W.2d 197 (Tex. 1943). In *Bell Publishing*, the Court upheld a jury's finding of defamation per se against when a corporate plaintiff sued for the publication of a libelous article. "If false and disparaging statements injure a corporation's reputation, it can sue for defamation per se just like a flesh-and-blood individual."

(2) Next, the Court held that a corporation's reputation damages are non-economic damages for the purposes of the statutory cap on exemplary damages. TDS argued that reputational damages are economic because they can be valued in money. Texas Civil Practice and Remedies Code § 41.001 did not specifically define non-economic damage until 2003, in which it was defined to include injury to reputation. TDS argued that the Court should focus on the statute as it was written in 1995. The Court, however looked to the Restatement (Second) and (Third) of Torts, which classify defamation per se as non-pecuniary harm "because the law takes an expansive view of what counts as personal injury." Furthermore, in *Bentley v. Bunton*, 94 S.W.3d 561 (Tex. 2002), the Court held that non-economic damages cannot be determined with mathematical precision but, by their nature, can only be determined by the use of sound judgment. General damages are non-economic, like for loss of reputation, and special damages are economic damages, like for lost income. Thus, damages for injury to reputation are non-economic and the statutory cap applies.

(3) Finally, the Court held that the evidence was legally sufficient to support the award of remediation costs but not the award of reputation damages. To find sufficient evidence, there must be more than a scintilla as to each vital fact. A plaintiff must establish actual malice to get presumed and punitive damages in a defamation case. Martin, the Action Alert's author, admitted he knew the statements made against TDS were false. Martin and WMT drafted the Action Alert in a way to negatively affect TDS's business. Thus, the evidence is legally sufficient to support a finding of actual malice.

The evidence was insufficient to support the award for reputation damages. TDS used three exhibits to support an estimated \$10 million value of TDS's reputation. These exhibits all related to lost profits, which the jury did not award damages for, and growth and decline in business. They did not establish reputational harm. An "indicator" is not enough to support an estimate of reputational damage. The Court did find, however, sufficient

evidence for the award for remediation costs and exemplary damages. TDS presented invoices of curative work in response to the Action Alert. Furthermore, because TDS established malice, it is entitled to exemplary damages.

The Court remanded to the court of appeals for a recalculation of both pre- and post-judgment interest in light of the insufficient evidence for reputation damages.

***Amedisys, Inc. v. Kingwood Home Health Care, LLC***

No. 12-0839

Case Summary written by Jessica Rugeley, Online Edition Editor.

Justice Boyd delivered the opinion of the Court.

Amedisys, Inc. and Kingwood Home Health Care are competitors. Two Amedisys employees left to work for Kingwood and allegedly began soliciting business from Amedisys clients. Amedisys sued Kingwood for tortious interference with Amedisys's non-solicitation agreements with its employees. During settlement negotiations, Kingwood claims that Amedisys repeatedly stated that it would not accept an offer less than six figures. Kingwood offered a \$90,000 in hopes that Amedisys would reject the offer and Kingwood could invoke rule 167, which grants a party the right to recover litigation costs if the party made, and the opponent rejected, a settlement offer that was significantly more favorable than the judgment obtained at trial. Amedisys, however, accepted the offer after filing its designation for expert witnesses. Before the offer was accepted, Kingwood filed its own expert witness designations and moved to strike Amedisys's designation on that ground that its deadline had passed. After receiving the acceptance, Kingwood claimed that the settlement failed for consideration because Amedisys missed the expert designation deadline and "fraudulently induced" Kingwood's settlement offer by claiming that it would not take an offer less than six figures.

Kingwood attended the hearing on its motion to strike Amedisys's expert designations but Amedisys did not because it believed the settlement mooted that motion. The trial court granted Kingwood's motion and Amedisys filed an emergency motion asking the court to enforce the settlement agreement, reconsider the order striking its expert designations, and stay the case until the settlement dispute was resolved. The trial court granted Amedisys's summary judgment motion. The court of appeals reversed, holding that Amedisys did not accept Kingwood's offer because the offer was for "all claims asserted or which could have been asserted" and Amedisys's acceptance stated it was for "all claims asserted."

Issue: Does the summary judgment evidence establish that Amedisys accepted Kingwood's settlement offer?

First, the Court noted that Kingwood can raise the issue that Amedisys did not accept all material terms of the settlement offer for the first time on appeal because Amedisys moved for summary judgment and a non-movant who fails to raise an issue in response to a summary judgment motion may still challenge the legal sufficiency of the grounds on appeal. The Court held that Amedisys's email and letter constitute uncontroverted evidence that it accepted the offer. Common law principles of acceptance apply, rather than Texas Civil Practice and Remedies Code § 42 and Texas Rule of Civil Procedure 167 as Amedisys argued, because § 42 and Rule 167 govern awards of litigation costs, not the requirements for breach of contract claims. Under common law principles, an acceptance cannot change material terms of the offer; such a change constitutes a counteroffer rather than an acceptance. The variation in the language between the offer and acceptance was not material and did not make Amedisys's response a counteroffer. The email sent with the attached acceptance stated, "Attached please find Amedisys's acceptance of the settlement offer you sent pursuant to Rule 167." Furthermore, any variation in language is not material because there is no evidence that Amedisys has or had any potential claims other than the ones asserted in the lawsuit. Thus, Amedisys presented prima facie evidence that it accepted Kingwood's offer and the burden shifted to Kingwood to produce evidence raising an issue of fact. Kingwood failed to present any contrary evidence and thus the court of appeals was reversed and the Court remanded for further proceedings.