Supreme Court of Texas
Labor and Employment Topics

Tex. Dept. of Ins. v. Jones
No. 15-0025
Case Summary written by Davinder Jassal, Staff Member.

JUSTICE WILLETT delivered the opinion of the Court, in which CHIEF JUSTICE HECHT, JUSTICE GREEN, JUSTICE JOHNSON, JUSTICE GUZMAN, JUSTICE LEHRMANN, JUSTICE DEVINE, and JUSTICE BROWN joined.

In 2005, Bonnie Jones was injured during the course of her employment. As a result, American Home Assurance Company (American Home), her employer's workers' compensation carrier, paid her various benefits. Jones later asserted three claims to receive supplemental income benefits (SIBs) for periods known as the twelfth, fourteenth, and fifteenth quarters of 2011. During an administrative hearing, the hearing officer determined that Jones was not entitled to benefits for the fourteenth quarter because she did not make an active effort to seek employment during that period.

Afterwards, Jones filed suit against American Home to recover SIBs for the fourteenth quarter. The Texas Department of Insurance, Division of Workers' Compensation (Division) intervened after learning that the district court might enter judgment approving a settlement between Jones and American Home, under which Jones would receive a partial award of SIBs. The Division urged the district court to consider the findings of fact in the administrative hearing that Jones did not satisfy the work-search requirements during the fourteenth quarter. Additionally, the Division argued that a partial SIBs award was in conflict with the Texas Labor Code's precise statutory formula for calculating monetary entitlements. However, the district court approved the settlement, and the court of appeals affirmed relying on a general policy of encouraging settlements between parties.

Issue: Can a court approve settlements that are not in strict compliance with the Texas Labor Code's precise framework for determining workers' compensation settlements?

The Supreme Court of Texas held that a court may only approve those settlements that are in strict compliance with the Texas Labor

Code's formula for calculating awards of SIBs. The Court reasoned that the Legislature reformed the workers' compensation framework over a quarter-century ago specifically to discourage the type of lawsuit in the present case—suits designed to generate settlements regardless of the underlying merits. Although, generally, Texas public policy favors the settlement of lawsuits, the workers' compensation arena imposes special rules. The Texas Labor Code forbids settlements that provide awards when the precise criteria required to be eligible for SIBs have not been met. The Court addressed the work-search requirements of the Code and determined that one cannot be partially eligible for SIBs—an injured worker is either eligible or ineligible. Thus, a court cannot approve a settlement that declares an injured worker "partially" eligible for SIBs. Additionally, the court may not approve a settlement that does not adhere to all appropriate provisions of law under the Code. The Division and Labor Code regulations specify in great detail the formula for calculating an award of SIBs, which the Court reasoned is one of the appropriate provisions of law. Any proposed settlement that is not in compliance with this formula is void. Here, the district court did not hear evidence on whether Jones met the requirements to be SIBs-eligible and the proposed settlement was inconsistent with the formula for calculating SIBs. Accordingly, the Court reversed the judgment of the court of appeals and remanded the case to the district court.

JUSTICE BOYD delivered a dissenting opinion.

Justice Boyd stated that the Texas Workers' Compensation Act encourages parties to reach settlements and agreements to resolve their disputes. However, the parties' right to settle is limited due to the Act's several requirements and specific restrictions on *settlements*. Justice Boyd disagreed with the Court's view that the SIBs award must perfectly match the amount under the statute's formula. Under this approach, when parties agree to settle, rarely will the settlement be equal to the formula—in effect, no settlements will be approved. According to Justice Boyd, the Act only restricts those settlements that do not comply with the provisions governing *settlements* of SIB awards, and not all of the provisions governing an *award* of these benefits.

Union Pac. R.R. Co. v. Nami
No. 14-0901
Case Summary written by Rachel Holland, Staff Member.

CHIEF JUSTICE HECHT delivered the opinion of the Court, in which JUSTICE GREEN, JUSTICE WILLETT, JUSTICE GUZMAN, JUSTICE LEHRMANN, JUSTICE BOYD, JUSTICE DEVINE, AND JUSTICE BROWN joined.

William Nami (Nami) lived in Cuero, Texas and worked for Union Pacific Railroad (Union Pacific) as a tamping machine operator. Sometimes Nami operated the machine from inside an attached cabin; other times he switched places with another worker and stood outside the machine to observe their progress. In September and October of 2008, Nami worked on tracks near Sweeny, in Brazoria County, Texas. A sign outside Sweeny advertised the town as the "mosquito capital of the world." Additionally, a recent hurricane had soaked the county and increased the already substantial presence of mosquitoes. Nami was often bitten by mosquitoes while working amidst the tall the grass and occasional pools of water present in the narrow railroad right-of-way. He was even bitten inside the cabin of the tamping machine, which had holes and a door that would not close properly. Despite Nami's complaints, the cab was never repaired.

Union Pacific was aware of the mosquitoes' presence and knew they could carry and infect people with West Nile virus. Although less than 1% of infected people developed life-threatening symptoms, Union Pacific issued warnings about the virus to its employees. In May 2008, Union Pacific issued a safety bulletin explaining the danger and urging employees to use mosquito repellent. However, the company did not issue repellent to employees, mow the right-of-way, or spray pesticide. Nami did not know about the risk of West Nile virus. He did not see the company bulletin or hear any of the warnings. Nami took no steps to reduce his likelihood of being bitten and infected. He came down with flu-like symptoms in late September 2008, and was eventually diagnosed with a severe case of West Nile virus. As a result of the infection and ensuing complications, Nami could not return to work and suffered long-term health problems. Nami sued Union Pacific under the Federal Employers' Liability Act (FELA) for failing to use reasonable care in providing a safe workplace. At trial, Nami's expert witness

testified that fifteen pools of mosquitoes sampled in Brazoria County tested positive for West Nile virus and one other person in the county tested positive for the disease.

Issue: Whether an employer railroad owes a duty of care under FELA to employees to prevent West Nile virus infection caused by mosquitoes naturally present in the workplace?

The Court held that Union Pacific owed Nami no duty to prevent infection from a mosquito bearing the West Nile virus because the *ferae naturae* doctrine applied and precluded Union Pacific's liability. The Court noted that FELA imposes a duty on railroads to use reasonable care in providing employees a safe workplace. Except where FELA explicitly rejects common-law principles, general (rather than forum specific) common-law principles are to be used in applying FELA. FELA's causation element, which is more relaxed than proximate cause due in part to FELA's remedial goals, is one such departure from the common law. However, the Court noted that three fundamental common-law principles apply. Even under FELA, negligence is defined as a failure to use ordinary care to protect against unreasonable risk of harm. Additionally, an employer owes a duty to provide its employees a safe workplace, and that duty is the same as the duty of property owners to invitees. Finally, because an employer is not intended to be an insurer of an employee's safety, exceptions exist to that duty. The Court then turned its analysis to whether the common-law doctrine of *ferae naturae* was one such exception.

Under the common law, a property owner is not liable for any harm caused by animals, *ferae naturae* (wild animals), on their property, unless the property owner reduces such an animal to her possession, attracts the animal to her property, or knows of an unreasonable risk of harm posed by the animal and fails to mitigate or warn an invitee of the danger. The Court reasoned that because FELA does not explicitly exclude the doctrine of *ferae naturae*, it was entitled to great weight in the Court's negligence analysis. Mosquitoes are classified as *ferae naturae* because they are indigenous to Texas. The Court quickly dispensed with the notion that Union Pacific had in some way reduced the mosquitoes to its possession. It then concluded that there was no evidence that the tall grass and standing water in the railroad's right-of-way attracted mosquitoes or served as a breeding ground for mosquitoes bearing the virus, highlighting the fact that only

fifteen pools in the 1,597 square miles of Brazoria County tested positive for West Nile and that the right-of-way was so narrow that mosquitoes could have easily flown in from the surrounding areas, even if preventative measures were taken. The Court then turned its analysis to whether there was a failure to warn or mitigate.

Despite the miniscule risk posed by the virus, Union Pacific took steps to warn all of its employees of the danger. These steps included a safety bulletin discussed during a safety meeting Nami was required to attend. Although Nami testified he never received a warning, the Court noted that the prevalence of mosquitoes was obvious in the area. Likewise, the Court concluded that the danger of mosquito-transmitted West Nile virus was well known by the public. Although issuing long-sleeved shirts and mosquito repellent might have reduced the risk of infection, the Court reasoned that it would not have prevented infection and that Union Pacific had no obligation to provide such supplies. The Court concluded that because Union Pacific did nothing to attract the mosquitoes and could not have kept them out of the area in which Nami worked, the doctrine of *ferae naturae* operated to preclude any duty to prevent mosquito-borne infection. Because Union Pacific did not owe Nami a duty to prevent his infection, the Court held Union Pacific could not be negligent and thus was not liable to Nami under FELA.

JUSTICE JOHNSON delivered a dissenting opinion.

Justice Johnson argued that foreseeability was the proper measure of liability under FELA and that the common-law doctrine of *ferae naturae* was subsumed by this foreseeability element. Consequently, he argued that the doctrine of *ferae naturae* should have been one factor weighed by the jury in determining whether Union Pacific violated its duty of care, rather than completely precluding the existence of any such duty. Justice Johnson concluded that the risk of infection was foreseeable because the safety bulletins proved Union Pacific knew of the danger. He argued that Union Pacific placed employees in a greater than normal danger of infection, despite the foreseeability of the risk, without making any attempts to control the presence of mosquitoes. Justice Johnson also argued that the risk of infection was neither as remote nor as well known by the public as the Court concluded. Noting that the jury charge focused on negligence regarding failure to warn or provide mosquito repellent, he emphasized

that Union Pacific's attempted warnings were ineffective in regard to Nami and that providing insect repellent would have at least reduced the risk of infection. Because Justice Johnson did not believe the doctrine of *ferae naturae* eliminated Union Pacific's duty to prevent mosquito-borne infection, he next considered whether there was sufficient evidence that Nami became infected at work. Given the relaxed standard of causation applied in FELA cases, Justice Johnson concluded that the evidence was legally sufficient to show Nami was infected while at work. Justice Johnson would have held Union Pacific liable because the risk of infection was foreseeable, Union Pacific failed to effectively warn of or mitigate the risk, and the harm suffered was sufficiently connected to the workplace provided by Union Pacific.

TIC Energy and Chemical, Inc. v. Martin
No. 15-0143
Case Summary written by Nicole Amos, Staff Member.

JUSTICE GUZMAN delivered the opinion of the Court.

Kevin Martin was employed by Union Carbide Corporation and lost one of his legs in a workplace accident. He recovered workers' compensation benefits through Union Carbide's parent company, Dow Chemical Company. Martin then sued TIC Energy and Chemical, Inc. (a subcontractor providing maintenance services at the site of the accident), alleging TIC employees had negligently caused his injury. TIC filed a motion for summary judgment based on the Workers' Compensation Act's exclusive-remedy provision, claiming the statutory defense as Martin's fellow employee based on section 406.123 of the Labor Code. That section of the Labor Code deems a general contractor the statutory employer of a subcontractor and its employees when the general contractor agrees in writing to provide workers' compensation insurance to the subcontractor. TIC produced evidence of such a written agreement. Martin argued that the exclusive-remedy provision did not apply because TIC was an independent contractor and had agreed in writing to assume the responsibilities of an employer. Under section 406.122(b) of the Labor Code, a subcontractor and its employees are not employees of the general contractor for purposes of subtitle A of the Workers' Compensation Act in this circumstance. Martin argued that 406.122(b) is an exception to 406.123 or, alternatively, that 406.123

does not make the subcontractor an "employee" of the general contractor for purposes of workers' compensation.

TIC argued that section 406.123 of the Labor Code was controlling while Martin argued that section 406.122(b) controlled. The trial court denied TIC's motion for summary judgment. On appeal, the court of appeals concluded that the two sections irreconcilably conflicted because section 406.123 unambiguously states that the general contractor is the employer of the subcontractor, while section 406.122 unambiguously states that the general contractor is not the employer of the subcontractor. However, the court of appeals did not fully address the conflict because neither party argued that the statutes conflict, but rather that one controls and not the other. The court of appeals upheld the denial of summary judgment holding that TIC did not establish its affirmative defense because it did not negate the applicability of section 406.122(b).

On appeal, both parties argue that the provisions do not conflict and can be interpreted in their favor.

Issue: What is the extent to which statutory benefits and protections afforded to a subscribing general contractor and its employees may be shared with subcontractors and their employees?

The Texas Workers' Compensation Act works to protect the interests of both employers and employees. Covered employees can receive prompt compensation after work-related injuries resulting from medical bills and lost wages without having to prove liability. Employers are protected from employees seeking additional common-law remedies because workers' compensation benefits are an injured employee's exclusive remedy. This exclusive-remedy defense extends to servants of the employer, protecting employees from claims by coworkers.

Section 406.122(b) of the Labor Code exclusively states that "[a] subcontractor and the subcontractor's employees are not employees of the general contractor for purposes of this subtitle if the subcontractor: (1) is operating as an independent contractor; and (2) has entered into a written agreement with the general contractor that evidences a relationship in which the subcontractor assumes the responsibilities of an employer for the performance of work."

Section 406.123 of the Labor Code states: "[a] general contractor and a subcontractor may enter into a written agreement under which

the general contractor provides workers' compensation insurance coverage to the subcontractor and the employees of the subcontractor." Subsection (e) provides that such an agreement "makes the general contractor the employer of the subcontractor and the subcontractor's employees only for purposes of the workers' compensation laws of this state."

In a prior case, *HCBeck, Ltd. v. Rice*, the Court explained that a general contractor becomes the statutory employer of its subcontractors when it has, pursuant to a written agreement, purchased a workers' compensation insurance policy that covers its subcontractors and their employees. Additionally, the Court observed that a scheme in which a contractor can provide workers' compensation, even when it has not purchased the insurance directly thereby qualifying subcontractors as statutory employers entitled to an exclusive-remedy defense, is consistent with the benefits offered by controlled insurance programs. Further, the Court explained that favoring blanket coverage to all workers on a site accords with legislative intent.

The Court determined that the text of the statutes is clear and unambiguous and thus indicative of the Legislature's intent. TIC contends that 406.122 presents a general rule to which section 406.123 provides a permissive exception. This is consistent with the structure of the statute. Typically a general rule precedes an exception. Additionally, TIC asserts that the legislative intent is met if the statute is construed in this way because it results in comprehensive coverage of workers at a single site, pursuing a common objective, and thus satisfies the aims of the Workers' Compensation Act.

On the other hand, Martin argues the reverse. The Court does not agree with this argument, instead siding with TIC. The plain terms, statutory structure, reciprocal-benefit scheme, and legal precedent make it clear that section 406.123 is an exception to the general rule set out in section 406.122. The Court holds that TIC, as Martin's co-employee, is entitled to rely on the Workers' Compensation Act's exclusive-remedy defense and reverses the judgment of the court of appeals in TIC's favor.

Laverie v. Wetherbe
No. 15-0217
Case summary written by Ryan Mitchell, Staff Member.

JUSTICE BROWN delivered the unanimous opinion of the Court.

Texas Tech associate dean and professor James Wetherbe sued colleague Debra Laverie over comments made about him during the search for a new dean for Rawls College of Business, a position to which he was a candidate. Laverie, who was in charge of hiring faculty, was on the search committee for the new dean position. Due to Wetherbe's connections to the school, there was some confusion about the fairness and openness of the position to external candidates. Laverie told Texas Tech's provost, Bob Smith, that it was the general opinion of the faculty that Wetherbe was the "presumptive front-runner" and a "singular" candidate. Smith later sent an email to the entire faculty and search committee to clear up the confusion and ensure everyone that the search was open and fair. At another time during the search, Laverie informed Smith that a separate staff member claimed that Wetherbe was eavesdropping on conversations within Rawls, possibly by use of a listening device. At the same time, Wetherbe was considered for a distinction award at Texas Tech—a Horn Professorship. Smith withdrew his support when he learned that Wetherbe was not tenured and notified the committee, which lead to most of the committee withdrawing their support as well. Wetherbe sued Laverie for defamation, claiming that her statements to Smith ruined his chances for promotion and that the statements were fabricated to sabotage him.

Laverie moved for summary judgment under the idea that Wetherbe was required to name Texas Tech as the defendant under the Tort Claims Act. Essentially, Laverie argued that she was entitled to dismissal because the suit was based on her conduct within the scope of her employment and that the case could have been brought against Texas Tech. The trial court dismissed, and the court of appeals affirmed, on the grounds that there was not conclusive evidence that Laverie was serving the purpose of her employer rather than furthering her own purposes.

ISSUE: Under the Torts Claims Act, can the scope of employment be expanded to encompass the employee's subjective intent in performing their job duties in a certain way?

The Court first addressed how to interpret the Torts Claims Act's usage of scope of employment. The Court ruled that there was nothing in the Act that indicated a subjective intent, but rather indicated an

objective assessment of whether the employee's act were within the scope of her job. This was reinforced by a longstanding line of *respondeat superior* cases, and the court ruled that the scope-of-employment analysis would remain objective. There may have been a connection between the employee's duties and the alleged conduct, but the conduct itself remained a part of the duties.

The Court also addressed the policy issues behind Wetherbe's theory, indicating that the Tort Claims Act was created to prevent recovery against state employees and reduce expenditures on redundant litigation. If a showing of subjective intent was required, it would increase the difficulty of obtaining dismissals by proving that the employee acted without ulterior motives.

Last, the Court noted that Wetherbe did not assert that Laverie acted outside the scope of her employment. Because Laverie oversaw hiring and essentially ran Rawls, Laverie did her job when reporting information to Smith and the search committee. "Even if Laverie defamed Wetherbe, she did so while fulfilling her job duties." The Court reversed the court of appeals and rendered judgment dismissing the claims against Laverie.