



## Case Summaries January 28, 2022

### Grants

#### EMINENT DOMAIN

#### Condemnation Authority and Valuation Testimony

***Hlavinka v. HSC Pipeline P'ship, LLC*, 605 S.W.3d 819 (Tex. App.—Houston [1st Dist.] 2020), *pet. granted*, — Tex. Sup. Ct. J. — (January 28, 2022) [20-0567]**

The primary issues in this case are whether (1) Texas law grants eminent domain authority to a pipeline owner shipping polymer grade propylene; (2) a pipeline shipping a product from the pipeline owner's sole manager to an unaffiliated customer constitutes a public use; and (3) the landowner may properly testify that the highest-and-best use of the taken land is as a pipeline corridor, and value the land through comparisons to past, private pipeline easement sales.

The pipeline at issue is owned by HSC and operated by Enterprise Products Operating, LLC. The pipeline transports polymer grade propylene (PGP). It begins in Texas City, runs through Brazoria County, and ends at a Braskem America facility near the coast. Braskem is not affiliated with HSC or Enterprise. Braskem is the only customer currently served by the pipeline, and Braskem purchases the PGP from Enterprise before it enters the pipeline.

The Hlavinkas own about 15,000 acres in Brazoria County. This land has many uses, but the Hlavinkas' primary purpose in buying the land was to sell pipeline easements. For the last decade or so, the Hlavinkas have negotiated about one pipeline easement per year on the property. HSC attempted to negotiate a right of way on the Hlavinkas' property. The parties could not reach a deal, and HSC initiated a condemnation proceeding. The Hlavinkas challenged HSC's eminent domain authority.

The trial court granted summary judgment for HSC on the issue of condemnation authority. At the valuation stage, the Hlavinkas sought to introduce testimony from Terrance Hlavinka (the landowner) that the highest and best use of the condemned land was a pipeline corridor worth \$3.3 million. The trial court

excluded this evidence, and awarded the Hlavinkas \$132,293.36—representing 108,967.36 for crop and surface damage and \$23,326 for the easements and workspace. The parties entered a stipulation, listing issues that could be appealed.

The court of appeals determined that Texas law grants eminent domain authority to shippers of PGP. But it held that a fact issue existed as to whether this specific pipeline would be for a public use. The court of appeals declined to consider the Hlavinkas' challenge to the admissibility of certain affidavits supporting HSC's eminent domain authority, as the parties' stipulation did not include this as an appealable issue. Finally, the court of appeals determined that Terrance Hlavinka's testimony was admissible because he established that the taken land was a separate economic unit that should be valued as a pipeline easement.

Both parties filed petitions for review in the Supreme Court. The Hlavinkas argue that (1) Texas law does not grant eminent domain authority to a pipeline shipping PGP; and (2) the parties' stipulation did not prevent the Hlavinkas from challenging the admissibility of HSC's affidavits. HSC argues that (1) the pipeline is for a public use because it serves an unaffiliated customer who retains title to the product; and (2) Terrance Hlavinka's testimony should be excluded because it improperly uses the taking itself to define the separate economic unit, and relies on discredited valuation methodologies.

The Supreme Court granted the petitions for review. Oral argument has been set for February 23, 2022.

## **MEDICAL MALPRACTICE**

### **Damages**

***Columbia Valley Healthcare Sys., L.P. v. A.M.A.*, 2020 WL 4382264 (Tex. App.—Corpus Christi–Edinburg 2020), *pet. granted*, — Tex. Sup. Ct. J. — (January 28, 2022) [20-0681]**

The principal issue in this case is whether the district court is required to submit questions on life expectancy and annual healthcare expenses to the jury under the Periodic Payment Statute. Ana Ramirez (Ramirez) went to Valley Regional Medical Center (Valley Regional) for premature labor with her son. Ramirez was primarily under the care of her nurses. Her obstetrician was on call. During her stay, the baby's heartbeat repeatedly dropped. Ramirez's obstetrician performed an emergency c-section. The umbilical cord was tightly wrapped around the baby's neck, cutting off oxygen. The baby was ultimately diagnosed with cerebral palsy.

Ramirez sued Valley Regional for medical malpractice, alleging that the nurses were negligent in not calling her obstetrician earlier, causing severe oxygen deprivation to her son and thus his developing cerebral palsy. Valley Regional invoked Chapter 74 of the Texas Civil Practice and Remedies Code—the Periodic Payment Statute—which allows a party to request that the district court structure