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***Ford Motor Co. v. Castillo*, ___ S.W.3d ___, No. 13-0158, 2014 WL 4933008 (Tex. Oct. 3, 2014)**

Circumstantial evidence of collusion between plaintiffs' counsel and the presiding juror was sufficient evidence of fraudulent inducement.

Castillo sued Ford in a products-liability case. The jury charge included two design-defect questions. A few days into jury deliberations, the jury sent a note to the judge that asked: "What is the maximum amount that can be awarded?" Ford then promptly settled the case for $3 million.

Ford's counsel later spoke with the jury and discovered that the jury had not been discussing damages at the time the note was sent out. The jury had voted for Ford on the first liability issue, and was close to voting for Ford on the second issue.

Ford's counsel also discovered that most of the jurors were not even aware that the foreman had sent the note. Ford then refused to pay the settlement. The plaintiffs moved to enforce the settlement, and Ford defended based on fraudulent inducement, unilateral mistake, and mutual mistake.

After a jury trial, Ford won on its fraudulent-inducement and mutual-mistake claims. The Texas Supreme Court held that the circumstantial evidence was enough to support the elements of fraudulent inducement. There was evidence suggesting that the presiding juror had colluded with plaintiffs' counsel to send out the note about damages.

***Exxon Mobil Corp. v. Drennen*, ___ S.W.3d ___, No. 12-0621, 2014 WL 4782974 (Tex. Aug. 29, 2014)**

Texas courts will enforce out-of-state choice-of-law provisions in bonus-compensation agreements between Texas-based corporations and their employees.

Drennen sued his former employer, Texas-based Exxon Mobil Corporation, to recover bonus compensation under restricted-stock agreements. Drennen retired from his position as Vice President at Exxon and went to work for Hess Corporation. Exxon argued that Drennen had forfeited the restricted-stock awards by going to work for a competitor, which qualified as "detrimental activity" under the bonus -compensation agreements. Drennen sued for breach of contract and sought declaratory judgment that: (1) the provisions in the bonus-compensation agreements were essentially covenants not to compete; (2) that the covenants were unenforceable due to their lack of time, geographical, and scope limitations; and (3) Exxon's refusal to give him the restricted shares amounted to an attempt to recover under unenforceable covenants.

At trial, the jury found for Exxon, applying New York law as provided for in the agreements. The court of appeals reversed, holding that the choice-of-law provisions in the agreements were unenforceable because

applying New York law to "unreasonable covenants not to compete" would be contrary to Texas public policy.

The Supreme Court disagreed, concluding that enforcement of New York law was not contrary to public policy, even though (1) Texas had a stronger relationship with these parties and this transaction than New York did, and (2) Texas had a "materially greater interest" in this case. The Court emphasized the need for uniformity, especially when dealing with a corporation as large as Exxon: "Uniformity is a worthy goal and a logical rationale for choosing New York law and is a goal recognized in the Restatement (Second) of Conflict of Laws."

***Nath v. Tex. Children's Hosp.*, ___ S.W.3d ___, No. 12-0620, 2014 WL 4252269 (Tex. Aug. 29, 2014)**

In determining the amount of a sanctions award, courts must consider the degree to which the party being awarded fees caused its own expenses.

Dr. Nath, a plastic surgeon, sued Baylor College of Medicine and Texas Children's Hospital for defamation and tortious interference with business relations. Nath alleged that Baylor's employees made statements about him that were "potentially damaging" to his reputation.

On the defendants' motion for summary judgment, the trial court dismissed all of Nath's claims. The hospital sought modification of the judgment to assess attorney's fees as sanctions for Nath's baseless pleadings. The court awarded sanctions of $776,607 in attorney's fees to the hospital and $644,500 in attorney's fees to Baylor, finding that Nath had acted in bad faith and noted that, as a former law student familiar with the law, Nath "took a personal, participatory role in this litigation." The court of appeals affirmed the awards.

Noting that this was "one of the highest reported monetary sanctions awards in Texas history stemming from baseless pleadings and one of the largest such awards in the United States," the Supreme Court held that sanctions were proper in this case: "We agree with the Hospital and Baylor that the trial court properly sanctioned Nath because he pursued time-barred claims and irrelevant issues in order to leverage a more favorable settlement."

But the Court reversed and remanded for a determination of the degree to which the defendants' actions caused their own expenses: "[T]he Hospital and Baylor waited almost four years into the litigation before moving for summary judgment on Nath's claims and only moved for sanctions after obtaining a final judgment. We previously advised courts to consider a variety of factors when imposing sanctions, including the degree to which the non-sanctioned parties' behavior caused their own expenses."

***In re Doe*, ___ S.W.3d ___, No. 13–0073, 2014 WL 4783574 (Tex. Aug. 29, 2014)**

A plaintiff cannot use Texas Rule of Civil Procedure 202 to conduct discovery where the court does not have jurisdiction over the potential defendant.

The Reynolds & Reynolds Co. and its CEO filed a Rule 202 petition to conduct a presuit deposition of Google, Inc., seeking the identity of a blogger on a website that Google hosts. The plaintiffs claimed that they intended to allege libel and business disparagement against the blogger. The anonymous blogger appeared through his lawyer, specially appearing on the grounds that his blog did not create sufficient minimal contacts with Texas. He argued that because the court did not have personal jurisdiction under Rule 202, which provides that the "petition must . . . be filed in a proper court of any county."

The trial court ordered Google to be deposed. The Supreme Court granted mandamus review, holding that the plaintiffs needed personal jurisdiction over the blogger to invoke Rule 202. The Court reasoned that: (1) permitting discovery against a potential defendant without personal jurisdiction would not allow that defendant the protections that the Texas Rules of Civil Procedure otherwise afford; and (2) permitting such discovery would "unreasonably expand[] the rule."

***King Fisher Marine Serv., L.P. v. Tamez*, ___ S.W.3d ___, No. 13-0103, 2013 WL 9600954 (Tex. Aug. 29, 2014)**

It is within a court's discretion to establish a deadline for objections to jury instructions that is earlier than the one provided by Texas Rule of Civil Procedure 272.

Tamez, a welder on a ship, sued the ship's operator, King Fisher Services, L.P., under the Jones Act. Tamez alleged that he was injured while performing a task under a "specific order." "Specific order" is a term of legal significance under maritime law, because "[w]hen a seaman is carrying out a specific order, his damages may not be reduced by a finding of contributory negligence." The jury found Tamez was working under a specific order.

King Fisher proposed its own definition for "specific order," but did not tender its proposal until the day after the charge conference and just before the trial court read the charge to the jury. "The trial court then refused the instruction 'mainly because it's not timely,' adding that 'we needed to have all this stuff done and in by yesterday.'"

On appeal, King Fisher argued that its proposed definition was timely under Rule 272 because it was offered before the charge was read to the jury. The Supreme Court held that the trial court acted within its discretion to "schedule its cases in such a manner as to expeditiously dispose of them." The court reasoned that "[n]othing in the rule prohibits a trial court from setting a deadline for charge objections that may expire before it charges the jury as long as the deadline affords the parties a 'reasonable time' to inspect and object to the charge."

***Petroleum Solutions, Inc. v. Head*, ___ S.W.3d ___, No. 11-0425, 2014 WL 3511509 (Tex. July 11, 2014)**

It is not within a court's discretion to grant spoliation sanctions where there is no proof of irreparable deprivation of meaningful ability to present a claim.

After a diesel leak, Head sued Petroleum Solutions, which Head had hired to install a fuel system. Petroleum Solutions filed a third-party claim for indemnity against Titeflex, the manufacturer of a part alleged to have caused the leak. Titeflex counterclaimed for indemnity. Titeflex also moved for sanctions against Petroleum Solutions, claiming "that Petroleum Solutions spoliated evidence by failing to produce the allegedly faulty [part] and sought a jury instruction to that effect."

The trial court granted sanctions by charging the jury with a spoliation instruction and striking Petroleum Solutions' statute-of-limitations defense. The jury found for Head and awarded it over $1 million. The jury also found in favor of Titeflex on its statutory indemnity claim, awarding Titeflex approximately $450,000.

The Supreme Court reversed on the issue of spoliation sanctions. The Court clarified the standard recently articulated in *Brookshire Bros. v. Aldridge*, 438 S.W.3d 9 (Tex. 2014), where it held that there were limitations on a trial court's discretion to determine whether a party spoliated evidence and whether a particular remedy is appropriate. "We further held in *Brookshire Brothers* that, to find that spoliation occurred, the trial court must make affirmative determinations as to two elements. First, the party who failed to produce evidence must have had a duty to preserve the evidence. . . . Second, the nonproducing party must have breached its duty to reasonably preserve material and relevant evidence." The Court held that, assuming spoliation had occurred in this case, the trial court abused its discretion "because no proof exist[ed] that Petroleum Solutions intentionally concealed evidence or that Petroleum Solutions' spoliation irreparably deprived Head of any meaningful ability to present its claims."