

THE 2003 LEGISLATIVE AMENDMENTS TO PREJUDGMENT AND POSTJUDGMENT INTEREST LAW IN TEXAS

ANNE M. JOHNSON*

I. INTRODUCTION	1191
II. HISTORICAL PERSPECTIVE.....	1192
III. APPLICATION OF THE 2003 AMENDMENTS	1193
IV. INTEREST RATE	1195
V. TOLLING.....	1197
VI. FUTURE DAMAGES	1198
VII. CONCLUSION	1199

I. INTRODUCTION

During the regular 2003 legislative session, the Texas legislature passed House Bills 4 and 2415, both of which contained nearly identical amendments to the Texas Finance Code. The most significant of these amendments changed the method by which postjudgment interest is calculated and effectively reduced the statutory prejudgment and postjudgment interest rate from a floor of ten percent to a floor of five percent. The 2003 amendments also (1) prohibited prejudgment interest on future damages, and (2) repealed Finance Code section 304.108 which gave the trial court discretion to toll prejudgment interest during periods of trial delay. These amendments apply “in any case in which a final judgment is signed or subject to appeal on or after the effective date of this Act.”

This article will examine these legislative amendments, offer practical advice regarding the calculation of interest under the current law, and highlight the issues that have arisen in Texas appellate courts regarding judgment interest since the passage of the two Acts.

* Of Counsel, Haynes and Boone, LLP, Dallas; B.A., University of Pennsylvania, 1992; J.D., University of Texas School of Law, 1995.

The author thanks Nina Cortell, Haynes and Boone, LLP, Dallas, for her insightful comments on earlier drafts of this article.

II. HISTORICAL PERSPECTIVE

Over the past twenty years, prejudgment interest law in Texas has undergone dramatic changes. This section is included to place the 2003 legislative amendments in their proper historical perspective.

Texas law has recognized three grounds for an award of prejudgment interest: (1) the contract, if it provides for interest, (2) by statute, and (3) in equity.¹ Historically, the only statute authorizing prejudgment interest provided for six percent prejudgment interest in suits “on all accounts and contracts ascertaining the sum payable.”²

Thus, until recent history, prejudgment interest was not available in most tort cases.

This changed in 1985 with the Texas Supreme Court’s opinion in *Cavnar v. Quality Control Parking, Inc.*³ *Cavnar* allowed recovery of equitable prejudgment interest at the rate of ten percent, compounded daily, starting six months after the date of the incident giving rise to the cause of action.⁴ *Cavnar* was the key authority on equitable prejudgment interest from 1985 to 1998.

Two years after *Cavnar*, the Texas legislature codified its own prejudgment interest rule for tort actions in article 5069-1.05, section 6(a) of the Revised Civil Statutes, providing that “[j]udgments in wrongful death, personal injury, and property damage cases must include prejudgment interest.”⁵ This new statute provided for ten percent *simple* interest beginning on the 180th day after written notice of the claim or the date suit was filed, whichever occurred first.⁶

In 1997, the Texas legislature recodified the Vernon’s interest statutes in the new Finance Code. As with all recodifications, the stated purpose was to make the statutes “more accessible and understandable” and to avoid “substantive change.”⁷ Nevertheless, the statutory references and language changed, arguably resulting in

1. Phillips Petroleum Co. v. Stahl Petroleum Co., 569 S.W.2d 480, 483–85 (Tex. 1978).

2. Act of May 24, 1979, 66th Leg., R.S., ch. 707, 1979 Tex. Gen. Laws 1718, *repealed* by Act of May 24, 1997, 75th Leg., R.S., ch. 1008, § 6(a), 1997 Tex. Gen. Laws 3091, 3601–02.

3. 696 S.W.2d 549 (Tex. 1985).

4. *Id.* at 554–55.

5. Act of June 3, 1987, 70th Leg., 1st C.S., ch. 3, § 1, 1987 Tex. Gen. Laws 51, 51, *repealed* by Act of May 24, 1997, 75th Leg., R.S., ch. 1008, § 6(a), 1997 Tex. Gen. Laws 3091, 3602 (current version at Tex. Fin. Code § 304.102).

6. Act of June 3, 1987, 70th Leg., 1st C.S., ch. 3, § 1, 1987 Tex. Gen. Laws 51, 51–52, *repealed* by Act of May 24, 1997, 75th Leg., R.S., ch. 1008, § 6(a), 1997 Tex. Gen. Laws 3091, 3601–02.

7. TEX. FIN. CODE ANN. § 1.001 (Vernon 1998).

some substantive changes.

In 1998, in *Johnson & Higgins of Texas, Inc. v. Kenneco Energy, Inc.*, the supreme court modified *Cavnar* and adopted in its place the statutory ten percent simple interest formula.⁸ Thus, *Kenneco* extended the statutory provisions, at least in part, to other claims not otherwise covered by contract or statute.

In 1999, the legislature amended section 302.002 of the Finance Code (the former “six percent statute” governing contract cases). It appears that the 1999 version of that statute no longer authorizes or regulates any award of prejudgment interest.⁹

The details of the 2003 legislative amendments follow.¹⁰

III. APPLICATION OF THE 2003 AMENDMENTS

Both Acts state that the amendments apply “in any case in which a final judgment is signed or subject to appeal on or after the effective date of this Act.”¹¹ The bill analyses of H.B. 2415 and H.B. 4 explain that these amendments are to apply prospectively.¹² Nevertheless, the

8. *Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 531–32 (Tex. 1998).

9. Several Texas appellate courts have so held. *See, e.g.*, *Lucke v. Kimball*, No. 13-01-362-CV, 2004 WL 102830, at *9 (Tex. App.—Corpus Christi Jan. 22, 2004, pet. denied); *El Paso Natural Gas Co. v. Lea Partners, L.P.*, No. 08-01-00310-CV, 2003 WL 21940729, at *10 (Tex. App.—El Paso Aug. 14, 2003, pet. denied); *Natural Gas Clearinghouse v. Midgard Energy Co.*, 113 S.W.3d 400, 413–14 (Tex. App.—Amarillo 2003, pet. denied); *Cumberland Cas. & Sur. Co. v. Nkwazi, L.L.C.*, No. 03-02-00270-CV, 2003 WL 21354608, at *6 (Tex. App.—Austin June 12, 2003, no pet.); *Walden v. Affiliated Computer Servs., Inc.*, 97 S.W.3d 303, 330 (Tex. App.—Houston [14th Dist.] 2003, pet. denied); *De la Morena v. Ingenieria E Maquinaria De Guadalupe, S.A.*, 56 S.W.3d 652, 659 (Tex. App.—Waco, 2001, no pet.). For an in-depth discussion on this subject and other ramifications of the 1999 legislation, see Robert H. Pemberton, *A Guide to Recent Changes and New Challenges in Texas Prejudgment Interest Law*, 30 TEX. TECH L. REV. 71 (1999).

10. *See* Act of June 2, 2003, 78th Leg., R.S., ch. 676, § 1, 2003 Tex. Gen. Laws 2096, 2097 (effective June 20, 2003) (codified at TEX. FIN. CODE ANN. § 304.003(c) (Vernon Supp. 2004–2005)) [hereinafter “H.B. 2415”]; Act of June 2, 2003, 78th Leg., R.S., ch. 204, § 6.01, 2003 Tex. Gen. Laws 847, 862 (effective Sept. 1, 2003) (codified at TEX. FIN. CODE ANN. § 304.003(c) (Vernon Supp. 2004–2005)) [hereinafter “H.B. 4”].

11. Tex. H.B. 2415, 78th Leg., R.S., ch. 676, § 2(a), 2003 Tex. Gen. Laws 2096, 2097; Tex. H.B. 4, 78th Leg., R.S., ch. 204, § 6.04, 2003 Tex. Gen. Laws 847, 862. The effective date of H.B. 2415 is June 20, 2003. Tex. H.B. 2415, 78th Leg., R.S., ch. 676, § 2(b), Tex. Gen. Laws 2096, 2097 (providing that H.B. 2415 took effect immediately if it received a two-thirds vote of all members elected to each house, which it did on June 20, 2003). The effective date of H.B. 4 is September 1, 2003. Tex. H.B. 4, 78th leg., R.S., ch. 204, § 23.02, 2003 Tex. Gen. Law 847, 898.

12. *See* SENATE COMM. ON JURISPRUDENCE, BILL ANALYSIS, Tex. H.B. 2415, § 2(a), 78th Leg., R.S. (2003) (stating that the “signed or subject to appeal” section “[m]akes application of this Act prospective”); SENATE COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. H.B. 4, § 6.04, 78th Leg., R.S. (2003) (stating that the “signed or subject to

passage of these bills sparked widespread debate regarding the meaning of the phrase “subject to appeal.” One view is that “subject to appeal” is equivalent to “appealable” or “capable of being appealed,” and therefore the amendments apply only to judgments signed or capable of being appealed on or after the effective date of the Act. The other view is that the phrase “subject to appeal” means “on appeal” or “pending on appeal” and therefore the amendments apply to all cases in the appellate system as of the effective date of the Act.

The first appellate court to address the meaning of the phrase “subject to appeal” was the Fort Worth Court of Appeals in *Columbia Medical Center v. Bush*.¹³ Based on an examination of the legislative history, the court concluded that the plain meaning of the phrase “subject to appeal,” when used to describe a judgment, means that it is capable of being appealed. Accordingly, the court interpreted section 2(a) of the amendment as providing that the amendment applied to (1) judgments signed on or after September 1, 2003,¹⁴ and (2) judgments signed before September 1, 2003 but which did not become subject to appeal until on or after September 1, 2003, such as a default judgment in a multi-defendant case where the default judgment, although signed before September 1, 2003, was not appealable until the plaintiff’s claims against the remaining defendants were disposed of after September 1, 2003.¹⁵

Since *Columbia Medical Center*, several appellate courts have agreed with the Fort Worth Court of Appeals, holding that the plain meaning of the phrase “subject to appeal,” when used to describe a judgment, means that it is capable of being appealed.¹⁶ These cases

appeal” section “[m]akes application of the changes in law made by this article prospective”).

13. 122 S.W.3d 835, 864–66 (Tex. App.—Fort Worth 2003, pet. denied).

14. *Columbia Medical Center* did not address H.B. 2415, effective June 20, 2003, which makes the interest amendments applicable to judgments that were signed after June 20, 2003. Other courts and commentators have concluded that June 20, 2003 is the effective date of the 2003 Amendments. See, e.g., Jennifer Tillison, *Subject to Appeal*, APP. ADVOC., Winter 2004, at 6–12.

Judgments that were signed after June 20, 2003 (or perhaps after August 1, 2003 according to the Office of Consumer Credit Commissioner), or judgments that were capable of being appealed after the effective date are subject to the new postjudgment interest rate calculation. The amendment should not be applied to modify the postjudgment interest rate in cases that already were pending on appeal when the new rate went into effect.

Id. at 12.

15. *Columbia Med. Ctr.*, 122 S.W.3d at 865–66.

16. See, e.g., *City of Dallas v. Redbird Dev. Corp.*, 143 S.W.3d 375, 388–89 (Tex. App.—Dallas 2004, no pet. hist.); *In re Kajima Int’l*, 139 S.W.3d 107, 117 (Tex. App.—

hold that, giving the statutory language its plain meaning, the amendments to section 304.003(c) of the Texas Finance Code apply to cases in which a judgment is signed on or after June 20, 2003.¹⁷

Nevertheless, practitioners continue to argue in pending appeals across the state that judgments that are pending on appeal remain “subject to appeal” and should qualify for the reduced interest rates under the 2003 Amendments. They assert that, in the past, when the Texas Supreme Court has changed the law regarding interest calculations, it has applied the changes to all cases “in the judicial process.”¹⁸ They also argue that the legislative history of House Bills 2415 and 4 support their interpretation that these amendment apply to all cases, including those pending on appeal.¹⁹

IV. INTEREST RATE

Under Texas Finance Code section 304.103, prejudgment interest is awarded at the same rate as postjudgment interest. As a result, when the 78th legislature amended the postjudgment interest rate in 2003, it also changed how prejudgment interest is calculated.

Prior to H.B. 2415 and H.B. 4, judgment interest was computed, under section 304.003 of the Finance Code, by the consumer credit commissioner based upon the auction rate quoted on a discount basis for 52-week treasury bills, except that the minimum rate allowed was ten percent and the maximum rate was twenty percent. However, the last auction of 52-week treasury bills was held on February 27, 2001,

Corpus Christi 2004, no pet.); *Sibley v. RMA Partners, L.P.*, 138 S.W.3d 455, 459–60 (Tex. App.—Beaumont 2004, no pet. hist.); *Bennett v. Cochran*, No. 14-00-01160-CV, 2004 WL 852298, at *7–8 (Tex. App.—Houston [14th Dist.] April 22, 2004, no pet. hist.); *Burke v. Union Pac. Res. Co.*, 138 S.W.3d 46, 74 (Tex. App.—Texarkana 2004, pet. filed); *Tesfa v. Stewart*, 135 S.W.3d 272, 279 (Tex. App.—Fort Worth 2004, pet. denied); *Columbia Med. Ctr. of Las Colinas, Inc. v. Hogue*, 132 S.W.3d 671, 688 (Tex. App.—Dallas 2004, pet. granted); *Utts v. Short*, No. 03-03-00512-CV, 2004 WL 635342, at *5–6 (Tex. App.—Austin April 1, 2004, pet. denied); *Cigna Healthcare of Tex., Inc. v. Pybas*, 127 S.W.3d 400, 420–21 (Tex. App.—Dallas 2004), *judgm't vacated w.r.m.*, 2004 WL 585008 (Tex. App.—Dallas 2004).

17. See cases cited *supra* note 15.

18. See *Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 533 (Tex. 1998); *Cavnar v. Quality Control Parking, Inc.*, 696 S.W.2d 549, 556 (Tex. 1985).

19. For example, Michael Graham testified regarding the addition of the “subject to appeal” language, Senate Floor Amendment No. 8 to H.B. 4, as follows: “The purpose of these amendments are to create, or to fix an existing inequity. We believe that it should be fixed as quickly as possible, and therefore, should apply to all suits within the judicial process currently, and not to causes of action accruing in the future . . .” *The Medical Malpractice & Tort Reform Act of 2003: Hearings on Tex. H.B. 4 Before the Senate Comm. on State Affairs, 78th Leg., R.S. 1836* (Feb. 26, 2003) (testimony of Michael Graham, representing the Texas Civil Justice League).

and the last auction rate published by the Federal Reserve Board was apparently in June 2000. As a result, the post-judgment interest rate was frozen at ten percent, despite falling interest rates in the market.²⁰

As codified, H.B. 2415 reads in its entirety:

§ 304.003. Judgment Interest Rate: Interest Rate or Time Price Differential Not in Contract

(a) A money judgment of a court of this state to which Section 304.002 does not apply, including court costs awarded in the judgment and prejudgment interest, if any, earns postjudgment interest at the rate determined under this section.

(b) On the 15th day of each month, the consumer credit commissioner shall determine the postjudgment interest rate to be applied to a money judgment rendered during the succeeding calendar month.

(c) The postjudgment interest rate is:

(1) the prime rate as published by the Federal Reserve Bank of New York on the date of computation;

(2) five percent a year if the prime rate as published by the Federal Reserve Bank of New York described by Subdivision (1) is less than five percent; or

(3) 15 percent a year if the prime rate as published by the Federal Reserve Bank of New York described by Subdivision (1) is more than 15 percent.²¹

The new section 304.003 creates a floor of five percent and a ceiling of fifteen percent for prejudgment and postjudgment interest rates.²² In other words, if prime rate is less than five percent on the date of computation, then the judgment interest rate will be five percent. If the prime rate is more than fifteen percent on the date of computation, then the judgment interest rate will be fifteen percent. Under *Kenneco*, these statutory provisions apply to all claims not otherwise covered by contract or statute.²³

Some courts have interpreted the 2003 rate amendment as simply a reduction of the postjudgment and prejudgment interest rate from

20. For additional analysis and discussion of the reasons for the 2003 Amendments, see Tillison, *supra* note 13, at 6–12.

21. TEX. FIN. CODE ANN. § 304.003 (Vernon Supp. 2004).

22. See *id.* § 304.103 (providing that the prejudgment interest rate is equal to the postjudgment interest rate applicable at the time of judgment).

23. *Johnson & Higgins of Tex., Inc.*, 962 S.W.2d at 514, 530 (holding that the statutory framework should be applied to all cases, not just those involving “wrongful death, personal injury, and property damage”).

ten percent to five percent.²⁴ However, this interpretation, based on the widely-held belief that prime rate is below five percent, is incorrect. In mid-December 2004, prime rate exceeded five percent for the first time in over four years. As a result, the Office of the Consumer Credit Commissioner determined that the postjudgment interest rate for judgments rendered in January and February 2005 is five and a quarter percent. The rate for judgments rendered in March and April 2005 is five and a half percent.

As a practical matter, and given the current trend of rising interest rates, the easiest and most reliable way to determine the current judgment interest rate is to go to the website of the Office of the Consumer Credit Commissioner.²⁵ The current judgment interest rate is posted on this site in the Office's weekly publication, *The Texas Credit Letter*, at the beginning of each month.

Fortunately, although the Texas Supreme Court denied review in *Columbia Medical Center*, it has granted review in *Columbia Medical Center of Las Colinas, Inc. v. Hogue*, another case presenting the issue of the meaning of "subject to appeal."²⁶ Hopefully, the Supreme Court's opinion in *Hogue* will end the debate on this issue.

V. TOLLING

Former section 304.108 of the Texas Finance Code provided as follows:

(a) In addition to the exceptions provided by Section 304.105, a court may order that prejudgment interest does not accrue during periods of delay in the trial.

(b) A court shall consider:

- (1) periods of delay caused by a defendant; and
- (2) periods of delay caused by a claimant.²⁷

Section 304.108 was repealed in its entirety under H.B. 4.

However, the interest clock is still tolled during periods in which

24. See, e.g., *In re Kajima Int'l, Inc.*, 139 S.W.3d 107 (Tex. App.—Corpus Christi 2004, no pet.) (2003 amendments "had the effect of reducing the rate of postjudgment interest accruing on the judgment from ten percent to five percent per annum"); *Warrantech Corp. v. Computer Adapters Servs., Inc.*, 134 S.W.3d 516 (Tex. App.—Fort Worth 2004, no pet. hist.) (holding inapplicable Finance Code section that reduces postjudgment interest rate from ten percent per year to five percent per year).

25. Office of the Consumer Credit Commissioner, <http://www.occc.state.tx.us> (last visited April 8, 2005).

26. 132 S.W.3d 671 (Tex. App.—Fort Worth 2004, pet. granted). *Hogue* is set for submission in the Texas Supreme Court on April 12, 2005.

27. TEX. FIN. CODE ANN. § 304.108 (Vernon 1997).

settlement offers may be accepted. Specifically, “[i]f judgment for a claimant is more than the amount of a settlement offer of the defendant, prejudgment interest does not accrue on the amount of the settlement offer during the period that the offer may be accepted.”²⁸ A settlement offer must be in writing to affect the accrual of prejudgment interest.²⁹

VI. FUTURE DAMAGES

The 2003 Amendments added section 304.1045 to the Finance Code which provides that prejudgment interest may not be assessed or recovered on an award of future damages.³⁰

Prior to the 2003 Amendments, it was unclear whether interest was available for future damages. A brief discussion of the law prior to the 2003 amendments follows.³¹

Cavnar did not allow interest on future damages, holding that, unless statutorily or contractually provided, prejudgment interest was only available on actual damages that have accrued by the time of judgment.³² Thus, to recover prejudgment interest on accrued damages under *Cavnar*, the plaintiff had to segregate accrued damages from future damages.³³

Article 5069-1.05, (the predecessor to sections 304.101–.108 of the Texas Finance Code), enacted in 1987, modified *Cavnar* in “wrongful death, personal injury, and property damage” cases. In *C&H Nationwide, Inc. v. Thompson*, the Texas Supreme Court held that this statute allowed recovery of prejudgment interest in such cases not only on past damages, but also on future damages included in the judgment.³⁴ The court reasoned that the phrase “amount of the

28. See TEX. FIN. CODE ANN. § 304.105(b) (Vernon Supp. 2004–2005).

29. *Id.* § 304.106.

30. See *id.* § 304.1045.

31. For the applicability of the 2003 Amendments, see Part III.

32. See *Cavnar v. Quality Control Parking, Inc.*, 696 S.W.2d 549, 555–56 (Tex. 1985).

33. *Id.* at 556; see also *Benavidez v. Isles Constr. Co.*, 726 S.W.2d 23, 24–25 (Tex. 1987) (although jury awarded lump sum combining past and future damages, stipulation on past medical expenses and separate finding on property damage sufficiently segregated past and future damages to allow prejudgment interest on past damages); *Yowell v. Piper Aircraft Corp.*, 703 S.W.2d 630, 636 (Tex. 1986) (plaintiffs were not entitled to prejudgment interest on wrongful death claims because they failed to segregate past damages from future, unaccrued damages such as loss of inheritance); *Loyd Elec. Co., Inc. v. Millett*, 767 S.W.2d 476, 484 (Tex. App.—San Antonio 1989, no writ) (court correctly calculated prejudgment interest on damages accruing before trial).

34. *C & H Nationwide, Inc. v. Thompson*, 903 S.W.2d 315, 324–25 (Tex. 1994). *But see Columbia Hosp. Corp. v. Moore*, 92 S.W.3d 470, 474–75 (Tex. 2002) (prohibiting the award of prejudgment interest on future damages in health care liability claims).

judgment” in article 5069-1.05, section 6(a) made no distinction between past and future damages and thus entitled the plaintiffs to prejudgment interest on the entire judgment.³⁵ Based on *C&H Nationwide*, several appellate courts upheld awards of prejudgment interest on future damages.³⁶

Nevertheless, it remained unclear whether prejudgment interest was recoverable on future damages in cases to which the statute did not apply. On the reasoning that the Supreme Court extended the statutory approach to all claims for equitable prejudgment interest in *Kenneco*, it could be argued that prejudgment interest on future damages was recoverable even in non-statutory cases.³⁷ However, several courts maintained that *Cavnar* still controlled in non-personal injury cases.³⁸

Under the 2003 Amendments, it is clear that prejudgment interest on future damages is not permitted in any case. This has important implications for the court’s charge. As under *Cavnar*, a plaintiff now has the burden to request a damage question that segregates between past and future damages. If the plaintiff does not segregate past losses from future losses, he is not entitled to recover prejudgment interest at all on those non-segregated elements of damages.³⁹

VII. CONCLUSION

The 2003 legislative amendments in House Bills 4 and 2415 clarified some issues with respect to judgment interest law, but the

35. *C & H Nationwide*, 903 S.W.2d at 325.

36. *C&D Robotics, Inc., v. Mann*, 47 S.W.3d 194, 202 (Tex. App.—Texarkana 2001, no pet.); *Reliable Consultants, Inc. v. Jaquez*, 25 S.W.3d 336, 347 (Tex. App.—Austin 2000, pet. denied); *Weidner v. Sanchez*, 14 S.W.3d 353, 372 (Tex. App.—Houston [14th Dist.] 2000, no pet.); *Jamar v. Patterson*, 910 S.W.2d 118, 124 (Tex. App.—Houston [14th Dist.] 1995, writ denied).

37. *Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 514, 530 (Tex. 1998) (holding that the statutory framework should be applied to all cases, not just those involving “wrongful death, personal injury, and property damage”).

38. See, e.g., *KMG Kanal-Muller-Gruppe Deutschland GmbH & Co. KG v. Davis*, No. 01-02-00344-CV, 2005 WL 568056, at *12 (Tex. App.—Houston [1st Dist.] March 10, 2005, no. pet. hist.) (holding that *Cavnar* still controls when “damages are awarded for economic injury, not for personal injury”); *Casteel v. Crown Life Ins. Co.*, 3 S.W.3d 582, 596 (Tex. App.—Austin 1997) (reaffirming viability of *Cavnar* in non-personal injury cases), *rev’d in part on other grounds*, 22 S.W.3d 378 (Tex. 2000).

39. *Cavnar v. Quality Control Parking, Inc.*, 696 S.W.2d 549, 554–56 (Tex. 1985); *Domingues v. City of San Antonio*, 985 S.W.2d 505, 511 (Tex. App.—San Antonio 1998, pet. denied); *Cresthaven Nursing Residence v. Freeman*, 134 S.W.3d 214, 223 (Tex. App.—2003, no pet.).

application of these amendments remains unclear. Hopefully, the Texas Supreme Court will soon address the meaning of “subject to appeal” and practitioners can enjoy more certainty in this area of the law.