

# Summary Judgments in Texas: State and Federal Practice

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March 26, 2010 Lynne Liberato

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PRACTICES Appellate

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This Article addresses the confluence of procedural changes that have shaped summary judgment practice. These changes are built upon a framework set out in the federal summary judgment trilogy - *Celotex*<sup>1</sup>, *Matsushita*<sup>2</sup>, and *Liberty Lobby*<sup>3</sup> - and the application of the Texas "no-evidence" summary judgment rule.<sup>4</sup> Also at play are the gatekeeping functions expressed in the U.S. Supreme Court opinion in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*<sup>5</sup> and the Texas Supreme Court opinion in *E.I. du Pont de Nemours & Co. v. Robinson*<sup>6</sup> and their impact upon expert testimony as a component of summary judgment practice. Most recently, the advent of a "reasonable juror" standard for evaluating the sufficiency of the evidence plays a role in the changing framework upon which summary judgment practice has been built.<sup>7</sup> Upon these pillars, this Article examines the procedural and substantive aspects of obtaining, opposing, and appealing a summary judgment, reviews the types of cases amenable to summary judgment, and, finally, provides an overview of federal summary judgment practice.

Judge David Hittner & Lynne Liberato, "Summary Judgments in Texas," 46 Hous. L. Rev. 1379 (2010).

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<sup>1</sup> *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

<sup>2</sup> *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

<sup>3</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

<sup>4</sup> TEX. R. CIV. P. 166a(i).

<sup>5</sup> *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 580 (1993).

<sup>6</sup> *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 555 (Tex. 1995).

<sup>7</sup> *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310 (Tex. 2009) (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005)).

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