

News & Insights

Dykema Appellate Team Obtains Victory for Ford Motor Company in Texas Supreme Court

Texas high court issues first decision in more than 20 years concerning obtaining discovery from an expert witness' employer, setting crucial precedent for future discovery lawsuits

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The Texas Supreme Court ruled in favor of Dykema client Ford Motor Company on Friday in a highly significant decision that imposes a new outer limit on discovery from expert witnesses. The court's unanimous opinion in the case, *In re Ford Motor Company and Ken Stoepel Ford, Inc.*, is the first of its kind in more than 20 years concerning obtaining discovery from an expert witness' employer.

After losing in the lower courts, which granted the plaintiff's request for expansive discovery, specifically allowing that two of Ford's expert witnesses could be examined for alleged biases by deposing corporate representatives from their employers, Dallas-based Dykema appellate team members David Schenck and Christopher Kratovil sought mandamus relief to prevent the broad discovery that had been ordered. The Supreme Court agreed that Texas law did not permit this level of discovery.

"The decision indicates that the Texas high court does not permit a 'fishing expedition' in the process of discovery, and we anticipate it will be regularly cited in future discovery fights in cases involving technical issues and sophisticated experts," said Dykema Member Christopher Kratovil.

"This is a rare victory of its kind with a wide-ranging impact for Texas discovery law," said Dykema Member David Schenck, who also leads the firm's Specialized Litigation & Advanced Motion Practice Team. "The outcome speaks to Dykema's highly specialized appellate skills and the strength of its Dallas team."

The case arises from a police chase in Kerrville, Texas, in which the plaintiff, Saul Morales, fled from police who were attempting to detain him for alleged drunk driving. Mr. Morales eventually abandoned his car and continued to flee on foot until he was apprehended by Kerrville police officers. While Mr. Morales was being handcuffed, the arresting officer's car began rolling backwards and struck Mr. Morales. Mr. Morales claims that his injuries resulted from an alleged design defect in the police car. In litigating the underlying product liability case, Ford retained nationally known experts to offer testimony rebutting the technical and engineering allegations made by Mr. Morales.

In response to the designation of these two expert witnesses, Mr. Morales attempted to take aggressive, intrusive and enormously burdensome discovery from their non-party employers. Ford resisted this invasive discovery from its experts' non-party employers as improper and unauthorized by the Texas Rules of Civil Procedure. However, relying on older Texas Supreme Court precedent, the trial court and an intermediate appellate court authorized all the discovery sought by Mr. Morales from the two outside consulting firms.

Dykema ultimately helped convince the Supreme Court that Texas law did not permit this level of discovery, with the court unanimously accepting the arguments presented on Ford's behalf. The court reasoned in its decision, "Such a fishing expedition, seeking sensitive information covering twelve years, is just the type of overbroad discovery the rules are intended to prevent. . . . By holding that the requested discovery is impermissible in this case, we do not unduly inhibit discovery of an expert's potential bias. Courts have recognized that discovery into the extent of an expert's bias is not without limits."

Attorneys

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Dykema Appellate Team Obtains Victory for Ford Motor Company in Texas Supreme Court (Cont.)

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