

[Texas Supreme Court Hears Arguments in a Case With Significant Implications for TWIA Policyholders](#)

Raizner Slania

Yesterday, on February 21, 2024, the Texas Supreme Court heard arguments in the case Texas Windstorm Insurance Association v. Stephen Pruski, Case No. 23-0447, in which Raizner Slania filed an amicus curiae brief on behalf of the non-profit organization United Policyholders. Uniquely for both United Policyholders and our firm, the brief was filed advocating for the same position taken by the insurers.

The case relates to what may first appear to be a technical question of statutory interpretation, but the implications of the issue are significant. The brief was filed to address whether a Texas law, Texas Insurance Code Section 2210.575(e), requires that cases against the Texas Windstorm Insurance Agency (TWIA) be presided over by judges appointed by the Texas MDL panel, a special panel of judges that oversees the process of consolidating substantially similar cases that are treated as one during pretrial proceedings. And, if the statute does so require, whether the requirement is jurisdictional or procedural; and, if procedural, whether it can be waived. While this appears to be a technical issue, since TWIA was created, Texas district courts have heard over 3,850 cases involving TWIA and the Multidistrict Litigation Panel of Texas has transferred only a single block of 242 cases related to Hurricane Harvey. See generally, *In re Tex. Windstorm Ins. Ass'n Harvey Litig.*, MDL No. 19-0472, 2020 Tex. LEXIS 658 (Tex. July 10, 2020). Conservatively, that leaves more than 3,600 cases open to challenge if the Court incorrectly concludes that the statute is jurisdictional in nature and the requirement cannot be waived.

Procedural Background

Stephen Pruski held a policy with TWIA, the storm coverage provider of last resort for the Texas gulf coast. After Hurricane Harvey damaged Pruski's condominium, he submitted a claim to TWIA, which was

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Source: <https://uphelp.org/texas-supreme-court-hears-arguments-in-a-case-with-significant-implications-for-twia-policyholders/>

Date: November 24, 2024

denied in part. After satisfying the statutory presuit notice requirement, Pruski filed suit pro se in Texas state court. Pruski then filed a motion for traditional summary judgment which the district court denied. TWIA subsequently filed its own motion for traditional summary judgment, arguing the damages sought by Pruski were not recoverable. The district court granted TWIA's motion for summary judgment, reasoning that Pruski's damages were not recoverable as a matter of law. Pruski appealed the district court's decision.

On February 23, 2023, the Thirteenth Court of Appeals, Corpus Christi-Edinburg, delivered an opinion in the matter of Stephen Pruski v. Texas Windstorm Association. The Court ruled the district court judge lacked authority to rule on the case because it had not been appointed by the MDL Panel in accordance with a portion of Texas Insurance Code Section 2210.575(e), which states that "an action brought under this subsection shall be presided over by a judge appointed by the judicial panel on multidistrict litigation." The Court also held that the provision was jurisdictional and could not be waived, despite Pruski engaging in months of litigation and filing a merits-based motion for summary judgment prior to raising the issue with the district court. The Court of Appeals ruling vacated the district court's ruling in its entirety.

TWIA subsequently filed a petition for review with the Texas Supreme Court. After Pruski responded in opposition, the Texas Supreme Court requested further briefing on the merits.

Amicus Curiae Brief Filed to Clarify Address the Function of Section 2210.575(e)

Amici curiae—or friends of the court—are persons or groups that are not a party to an action, but petition the court for permission to submit a brief in the action as they have a strong interest in the matter and hope to influence the court's decision.

The central issue in the case is whether Section 2210.575(e) contains a specific grant or limit on a Texas district court's power to resolve a matter. To resolve that issue, the Texas Supreme Court must categorize the requirements stated in Section 2210.575(e) as either jurisdictional or procedural, also described as mandatory but non-jurisdictional. Jurisdictional statutes are not waivable; however, other requirements may only affect the power of the court when they are invoked by the parties. To determine whether the statute's appointment requirement is jurisdictional, Texas law requires that a court consider several factors including the plain text of the statute, the consequences dictated by the statute for

violation, any declared purpose of the section, and the practical consequences. From there, it will be necessary to determine how the requirements of the statute can be waived, either explicitly or implicitly, by the parties if the statute is not jurisdictional.

While this may seem to be a highly technical legal question, the consequences of the Supreme Court finding the MDL appointment requirement to be jurisdictional would be to jeopardize nearly all of the cases involving TWIA and to leave previously resolved decisions open to attack.

On November 17, 2023, Raizner Slania filed an amicus curiae brief (the “Brief”) with the Texas Supreme Court on behalf of United Policyholders, which has an interest in clarifying important issues of Texas insurance law, such as the power of Texas district courts to hear certain insurance disputes like those involving TWIA.

The Brief Argues Section 2210.575(e) is Not Jurisdictional and Can Be Waived

Raizner Slania’s Brief focuses on applying precedents from the Texas Supreme Court to show that Section 2210.575(e) is a mandatory and not jurisdictional statute. The Brief then goes on to argue that although the statute presents mandatory requirements, like any other non-jurisdictional mandatory requirement, it is nevertheless subject to waiver where the parties conduct substantial litigation and then only point to the requirement after the fact.

Neither the Supreme Court nor the Texas MDL Panel have ever ruled on the issue. The MDL Panel has, in more than a decade since the statute was implemented, only addressed the requirement of the statute once to consolidate hundreds of cases related to Hurricane Harvey.

The Brief begins with the first factor: the text of the statute. The Brief points out that, unlike most statutes creating a jurisdictional requirement, there is no explicit grant or limit of jurisdiction contained in the statute. Further, any other traditional language that accompanies typical jurisdictional statutes is absent from the statute’s plain text. The Brief goes on to address the three other factors that the Supreme Court of Texas has established to determine whether a statute is jurisdictional: explicit consequences in the statute, a declared purpose in the statute consistent with jurisdictional limitations, and the practical consequences of finding a statute jurisdictional. The Brief argues accordingly that there are no explicit consequences in the statute, there is no declared purpose limiting a court’s jurisdiction,

and the practical consequences of finding the statute jurisdictional would be so destabilizing and superfluous that interpreting the statute as jurisdictional would be absurd.

The Brief argues that where the statute lacks the explicit language necessary for jurisdictional grants and there are not explicit consequences in the statute's text, the Court should find that the text is procedural and non-jurisdictional, consistent with past court precedents. The Brief goes on to argue that where the parties have complied with the significant pre-suit requirements to pursue a case against TWIA, filed a traditional motion for summary judgment, and only raised the appointment requirements of the statute after losing their substantive motion, it is clear the parties have engaged in such a substantial amount of litigation that they have waived the statute's requirements.

Texas Supreme Court Granted the Petition for Review and Heard Arguments from Counsel
On December 15, 2023, after Raizner Slania filed its Brief on behalf of United Policyholders, Texas Supreme Court granted the petition for review and set oral argument for February 21, 2024.

A recording of the Texas Supreme Court's oral argument can be found at:
<https://www.youtube.com/watch?v=C5ZAna0ESQ4>.

At the hearing, the questions from the Justices focused on the issues of waiver and the possible future proceedings for the case if the Court were to find Pruski did not waive the issue. This focus strongly suggests that the Texas Supreme Court agrees with the primary point of Raizner Slania's Brief: Section 2210.575(e) is not jurisdictional. Counsel for TWIA cited the primary case law used in Raizner Slania's Brief suggesting that the Brief's arguments have largely been adopted by the Association. Further the assigned amicus counsel for Pruski seemed to concede at multiple points in his oral argument period that Section 2210.575(e) is almost certainly not jurisdictional, and accordingly the MDL appointment requirement is waivable.

The outcome will dictate not simply how future lawsuits against TWIA are conducted, but also the potential finality of thousands of already ruled on cases against TWIA. For other policyholders facing this important issue in the future, we hope the Brief provides thorough arguments for the Texas Supreme Court to preserve the integrity, certainty, and consistency of future disputes between TWIA and policyholders.