

# *Hit the Accelerator!*

*A synopsis of  
Texas interlocutory appeals*

**Jeffery C. Lewis**

Atchley, Russell, Waldrop & Hlavinka, L.L.P.  
Texarkana, Texas

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# Jeffery C. Lewis

Atchley, Russell, Waldrop & Hlavinka, L.L.P.  
1710 Moores Lane – P. O. Box 5517  
Texarkana, Texas 75505-5517  
Tel 903-792-8246 Fax 903-792-5801  
jlewis@arwhlaw.com

## Specialization

Board Certified - Civil Appellate Law  
Texas Board of Legal Specialization

## Practice Areas

Civil Appellate, School Law, Litigation

## Honors

“Rising Star” (*Texas Monthly* - 2004)

## Bar Admissions

Texas  
Arkansas  
U.S. Supreme Court  
U.S. Courts of Appeals  
(Fifth Circuit, Eighth Circuit)  
U.S. District Courts  
(E.D. Tex.; E.D. Ark.; W.D. Ark.)

## Memberships

State Bar of Texas  
(Appellate and School Law sections)  
College of the State Bar of Texas  
(2002-present)  
American, Arkansas, Fifth Circuit &  
Eighth Circuit Bar Associations  
Texas Association of Defense Counsel

## Education

Baylor University, Waco, TX  
(J.D., 1990; B.B.A., *cum laude*, 1987)

## Papers Presented

*Hit the Accelerator: A Synopsis of  
Texas Interlocutory Appeals*  
2004 TADC Summer Meeting (7-15-04)

*Top 10 Incurable Jury Arguments*  
2000 TADC Fall Meeting (9-23-00)

## Selected Cases

*Allen v. Albright*, 43 S.W.3d 643 (Tex.  
App.--Texarkana 2001, no pet.)

*Arnold & Arnold v. Williams*, 315 Ark.  
632, 870 S.W.2d 365 (1994), *cert.*  
*denied*, 513 U.S. 990, 115 S.Ct. 489, 130  
L.Ed.2d 400 (1994)

*Buls v. Fuselier*, 55 S.W.3d 204 (Tex.  
App.--Texarkana 2001, no pet.)

*In re Collom & Carney Clinic Ass'n*, 62  
S.W.3d 924 (Tex. App.--Texarkana  
2002, orig. proceeding)

*Johnson v. Fuselier*, 83 S.W.3d 892  
(Tex. App.--Texarkana 2002, no pet.)

*Lynch v. NorAm Energy Corp.*, No. 06-  
99-73-CV (Tex. App.--Texarkana 2000,  
pet. denied)

*Mullinax v. Texarkana I.S.D.*, No. 02-  
40220 (5th Cir. 2002)

*Stiger v. Christus Health Ark-La-Tex*,  
No. 03-40972 (5th Cir. 2004)

*Therapy Corp. v. City of Texarkana*, No.  
02-40565 (5th Cir. 2003)

*Trusty v. Strayhorn*, 87 S.W.3d 756  
(Tex. App.--Texarkana 2002, no pet.)

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*“Interlocutory Appeals” chart*

## I. Perfecting an interlocutory appeal

### A. “Accelerated appeal”

TEX. R. APP. P. 28.1

### B. Notice of appeal deadline: within 20 days after order is signed

TEX. R. APP. P. 26.1(b)

*Federated Mut. Ins. Co. v. Davenport*, 85 S.W.3d 837 (Tex. App.--Waco 2002, no pet.)

*Denton County v. Huther*, 43 S.W.3d 665 (Tex. App.--Fort Worth 2001, no pet.)

### C. 15-day extension for filing notice

TEX. R. APP. P. 26.3

*Hone v. Hanafin*, 104 S.W.3d 884 (Tex. 2003)

#### Exception

##### Agreed interlocutory appeals CP&RC § 51.014(d)

- 10-day perfection deadline
- TRAP 26.3 extension available?

YES: *Stolte v. County of Guadalupe*, No. 04-04-0083-CV (Tex. App.--San Antonio 2004, n.p.h.)

NO: *In re D.B.*, 80 S.W.3d 698 (Tex. App.--Dallas 2002, no pet.)

## II. Appeals which stay commencement of trial and all trial court proceedings

TEX. CIV. PRAC. & REM. CODE §51.014(b);  
H.B. 4 §1.03

### A. Certifying or refusing to certify a class in a lawsuit brought under Rule 42, TEX.R.CIV.P.

TEX. CIV. PRAC. & REM. CODE  
§51.014(a)(3)

TEX. CIV. PRAC. & REM. CODE  
§26.051(b): order which denies plea to the jurisdiction asserting that a state agency has exclusive or primary jurisdiction may be reviewed on appeal as part of an appeal of a class certification order [H.B. 4 §1.01]

*Compaq Computer Corp. v. Lapray*, 47 Tex. Sup. Ct. J. 522 (May 7, 2003)

*Ford Motor Co. v. Sheldon*, 965 S.W.2d 65 (Tex. App.--Austin 1998), *rev'd*, 22 S.W.3d 444 (Tex. 2000), *appeal after remand*, 113 S.W.3d 839 (Tex. App.--Austin 2003, no pet.)

*De Los Santos v. Occidental Chem. Corp.*, 933 S.W.2d 493 (Tex. 1996) (order changing nature of class from opt-out to mandatory)

*Daimler Chrysler Corp. v. Inman*, 121 S.W.3d 862 (Tex. App.--Corpus Christi 2003, pet. filed)

*Wood v. Victoria Bank & Trust Co.*, 69 S.W.3d 235 (Tex. App.--Corpus Christi 2001, no pet.) (appeal from order decertifying class)

### B. Denial of motion for summary judgment based on assertion of immunity defense by officer or employee of state or political subdivision

TEX. CIV. PRAC. & REM. CODE  
§51.014(a)(5)

*Hidalgo County v. Gonzalez*, 128 S.W.3d 788 (Tex. App.--Corpus Christi 2004, no pet.)

*Kobza v. Kutac*, 109 S.W.3d 89 (Tex. App.--Austin 2003, pet. denied)

*Harris County v. Smyly*, 130 S.W.3d 330 (Tex. App.--Houston [14th Dist.] 2004, no pet.)

*Smith v. Janda*, 126 S.W.3d 543 (Tex. App.--San Antonio 2003, no pet.)

**C. Granting or denying governmental unit's plea to the jurisdiction**

TEX. CIV. PRAC. & REM. CODE  
§51.014(a)(8)

*Texas Dept. Of Criminal Justice v. Simons*, 47 Tex. Sup. Ct. J. 861 (July 9, 2004)

*Reata Const. Corp. v. City of Dallas*, 47 Tex. Sup. Ct. J. 408 (Apr. 2, 2004)

*Texas Dep't of Parks and Wildlife v. Miranda*, 47 Tex. Sup. Ct. J. 386 (Apr. 2, 2004)

**III. Appeals which stay commencement of trial only**

**A. Venue or joinder decisions in multi-plaintiff suits**

TEX. CIV. PRAC. & REM. CODE  
§15.003(b), (d) [H.B. 4 §3.03]

- §15.003(c)(2) - court of appeals to render judgment no later than 120 days after appeal perfected

**B. Receivers or trustees  
– appointment order  
– order overruling motion to vacate appointment order**

TEX. CIV. PRAC. & REM. CODE  
§51.014(a)(1), (a)(2), (b)  
[H.B. 4 §1.03]

*Urso v. Lyon Financial Services, Inc.*, 93 S.W.3d 276 (Tex. App.--Houston [14th Dist.] 2002, no pet.)

*Waite v. Waite*, 76 S.W.3d 222 (Tex. App.--Houston [14th Dist.] 2002, no pet.) (no appeal from order dissolving receivership)

**C. Granting or denying TEX.R.Civ.P. 120a special appearance except in a suit brought under Family Code**

TEX. CIV. PRAC. & REM. CODE  
§51.014(a)(7), (b) [H.B. 4 §1.03]

*Exito Electronics v. Trejo*, 47 Tex. Sup. Ct. J. 738 (June 25, 2004)

*BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789 (Tex. 2002)

*Bridgestone Corp. v. Lopez*, 131 S.W.3d 670 (Tex. App.--Corpus Christi 2004, no pet.)

**D. Electronic or print media defendant: denial of a summary judgment motion based on free speech or free press rights**

TEX. CIV. PRAC. & REM. CODE  
§51.014(a)(6), (b) [H.B. 4 §1.03]

*Hearst Corp. v. Skeen*, 130 S.W.3d 910 (Tex. App.--Fort Worth 2004, pet. filed)

*Scripps Tex. Newspapers, L.P. v. Belalcazar*, 99 S.W.3d 829 (Tex. App.--Corpus Christi 2003, pet. denied)

**Automatic Stay Exception**

CP&RC §51.014(c)

No automatic stay of summary judgment denial of immunity defense, denial of special appearance, or denial of plea to the jurisdiction, unless the MSJ, S/A, or P/J is filed and requested for submission or hearing before the trial court not later than the later of

(1) a scheduling order deadline set by the trial court, or

(2) the 180th day after the date the defendant files

(A) the original answer,

(B) the first other responsive pleading to plaintiff's petition, or

(C) a responsive pleading to plaintiff's amended pleading that alleges a new cause of action against the defendant and the defendant is able to raise an immunity defense, S/A, or P/J to the new cause of action.

**IV. Other interlocutory appeals**

**A. Temporary injunctions under Ch. 65, CP&RC:**

-- granting or refusing to grant

-- granting or overruling motion to dissolve

TEX. CIV. PRAC. & REM. CODE  
§51.014(a)(4)

*Art Inst. of Chicago v. Integral Hedging, L.P.*, 129 S.W.3d 564 (Tex. App.--Dallas 2003, no pet.)

*Bobbitt v. Cantu*, 992 S.W.2d 709, 712 (Tex. App.-Austin 1999, no pet.)

**B. Texas Arbitration Act:**

-- denial of motion to compel arbitration

-- granting application to stay

**arbitration**

TEX. CIV. PRAC. & REM. CODE  
§171.098(a)(1), (a)(2), (b)

*J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223 (Tex. 2003)

**C. Medical malpractice expert reports: denying CP&RC §75.351(b) dismissal motion**

TEX. CIV. PRAC. & REM. CODE  
§51.014(a)(9) [H.B. 4 §1.03]

*See In re Woman's Hosp. of Texas, Inc.*, 47 Tex. Sup. Ct. J. 346 (Mar. 5, 2004) (Owen, J., concurring and dissenting)

**D. Granting CP&RC §75.351(l) motion challenging adequacy of medical malpractice expert report**

TEX. CIV. PRAC. & REM. CODE  
§51.014(a)(10) [H.B. 4 §1.03]

**E. Certain bond orders in tax lawsuits**

TEX. GOV'T CODE §1205.068

**F. MDL orders**

TEX. GOV'T CODE §74.163(a)(4);  
TEX. R. JUD. ADMIN. 13.9

[H.B. 4 § 3.01, 3.02;  
S. Ct. Misc. Dkt # 03-9145]

1. Panel decisions reviewed only by Supreme Court  
TEX. R. JUD. ADMIN. 13.9(a)

2. Trial court and pre-trial court orders reviewed by appellate court that normally reviews decisions of the court in which case is pending  
TEX. R. JUD. ADMIN. 13.9(b)

## V. Agreed interlocutory appeal

TEX. CIV. PRAC. & REM. CODE  
§51.014(d)

- A. District court “may issue” a written order for interlocutory appeal when
1. the parties agree the order involves a controlling question of law as to which there is a substantial ground for difference of opinion;
  2. an immediate appeal from the order may materially advance the ultimate termination of the litigation; and
  3. the parties agree to the order.

*Dixon v. Amoco Prod. Co.*, No. 12-02-00309-CV (Tex. App.--Tyler 2004, pet. filed) (memorandum opinion) (appeal permitted to review partial judgment adjudicating legal sufficiency of property description)

*City of Arlington v. Scalf*, 117 S.W.3d 345 (Tex. App.--Fort Worth 2003, pet. denied) (City's plea to the jurisdiction denied, plaintiff's motion for partial summary judgment granted; trial court signed agreed order for interlocutory appeal of partial summary judgment; court of appeals consolidated appeal of summary judgment order with City's appeal of the trial court's denial of the plea to the jurisdiction)

- B. No stay of trial proceedings unless
1. the parties agree and
  2. the district court, the court of appeals, or a judge of the court of appeals orders a stay of the proceedings.
- C. 10-day deadline: “application” must

be made to court of appeals “not later than the 10th day after the date an interlocutory order” is entered

- D. Appellate review discretionary: the appellate court “may permit an appeal to be taken from that order.”

*Dimock v. Dimock*, No. 2-04-099-CV (Tex. App.--Fort Worth 2004, no pet.) (memorandum opinion) (appellate court refused application; although “[a]ll statutory requisites” had been met for appeal, court determined the issue presented “pivots on fact issues that must be resolved in the trial court” and did not involve a “controlling question of law as to which there is a substantial ground for difference of opinion”).

## VI. Supreme Court review

General rule: decision of court of appeals final on interlocutory appeals  
TEX. GOV'T CODE § 22.225(b)(3)

*Univ. of Texas Southwestern Med. Ctr. of Dallas v. Margulis*, 11 S.W.3d 186 (Tex. 2000) (“Ordinarily, this Court would not have jurisdiction to review a court of appeals' decision on an interlocutory appeal unless there is a dissent in the court of appeals, conflicts jurisdiction, or a specific statute granting jurisdiction.”)

### Exceptions

#### A. Disagreement (a.k.a. “dissent”) jurisdiction

TEX. GOV'T CODE § 22.225(c)

*Travis County v. Pelzel & Assoc., Inc.*, 77 S.W.3d 246 (Tex. 2002) (jurisdiction conferred when appellate justice disagreed with one ground for lower court's decision but agreed with another ground and concurred in judgment)

*Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801 (Tex. 2002) (dissent from denial of en banc rehearing conferred jurisdiction)

## B. Conflict jurisdiction

**TEX. GOV'T CODE § 22.225(c), (e)**  
[H.B. 4, §§ 1.02, 1.04]

*Compaq Computer Corp. v. Lapray*, 47 Tex. Sup. Ct. J. 522 (May 7, 2003)

*Texas Dep't of Parks and Wildlife v. Miranda*, 47 Tex. Sup. Ct. J. 386 (Apr 2, 2004)

## C. Specific statute

### 1. CP&RC §51.014(a)(6) media defendant MSJ appeals

TEX. GOV'T CODE § 22.225(d)

### 2. CP&RC §51.014(a)(3) class action appeals

TEX. GOV'T CODE § 22.225(d)  
[H.B. 4, § 1.02]

TEX. OCC. CODE §2301.756(b) gives precedence to actions involving motor vehicle dealers and other licensees

### 3. Appealable arbitration orders

TEX. CIV. PRAC. & REM. CODE §171.098(b)

### 4. Bond orders/tax lawsuits

TEX. GOV'T CODE §1205.068

### 5. MDL panel orders

TEX. GOV'T CODE §74.163(a)(4);  
TEX. R. JUD. ADMIN. 13.9(a)

## D. Jurisdiction to determine jurisdiction

*Qwest Communications Corp. v. AT&T Corp.*, 24 S.W.3d 334 (Tex. 2000) (jurisdiction to determine whether a court of appeals correctly decided its jurisdiction over an interlocutory appeal")

## E. Mandamus

*Deloitte & Touche, LLP v. Fourteenth Court of Appeals*, 951 S.W.2d 394 (Tex. 1997) ("We do not preclude the possibility that in an interlocutory appeal context we might issue mandamus against a court of appeals for procedural irregularities or for actions taken by a court of appeals so devoid of any basis in law as to be beyond its power. But in such cases, ... we would be reviewing extraordinary circumstances causing irreparable harm and precluding an adequate remedy by appeal.")

*Republican Party of Texas v. Dietz*, 940 S.W.2d 86 (Tex. 1997) (mandamus allowed for review of district court's injunction which affected a statewide political convention under "unique and compelling circumstances" with "claims of statewide importance", rejecting argument that Party should have filed an accelerated appeal in the court of appeals)

## VII. Orders pending an interlocutory appeal

### TEX. R. APP. P. 29

29.1 perfecting appeal does not suspend order appealed from unless order superseded

29.2 trial court may permit appellant to supersede order granting

interlocutory relief; refusal  
reviewed by appellate court for  
abuse of discretion

- 29.3 appellate court may make  
temporary orders to preserve  
parties' rights, but "must not"  
suspend trial court's order if  
appellant's rights would be  
protected by supersedeas or other  
TRAP 24 order
- 29.4 while appeal pending, only  
appellate court may enforce  
order; appellate court may refer  
enforcement proceeding to trial  
court
- 29.5 while appeal pending, trial court  
retains jurisdiction of the case  
and may make further orders,  
including dissolving the appealed  
order and proceeding with trial  
"if permitted by law"; but trial  
court cannot make an order
- (a) inconsistent with  
appellate court order or
  - (b) which interferes with  
appellate court jurisdiction or  
effectiveness of any relief  
sought or that may be granted  
on appeal

*McAllen Med. Ctr. v. Cortez*, 66 S.W.3d  
227 (Tex. 2001)

*Tom James of Dallas, Inc. v. Cobb*, 109  
S.W.3d 877 (Tex. App.--Dallas 2003, no  
pet.)

# Interlocutory Appeals

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## Perfecting Appeal

“Accelerated appeal” - file notice 20 days after order signed TRAP 26.1(b), 28.1

15-day extension of time to file TRAP 26.3

## Stay of trial *and* all trial proceedings:

\*Certifying or refusing to certify class  
CP&RC §51.014(a)(3)

MSJ denial of immunity by officer or employee of state or political subdivision  
CP&RC §51.014(a)(5)

Granting/denying plea to the jurisdiction  
CP&RC §51.014(a)(8)

## Stay of trial *only*:

Venue or joinder decisions in multi-plaintiff suits  
CP&RC §15.003

Receivers or trustees: appointment order & order overruling motion to vacate appointment order  
CP&RC §51.014(a)(1), (a)(2)

Granting/denying TRCP 120a special appearance except in suit brought under Family Code  
CP&RC §51.014(a)(7)

\*Media defendant: denial of MSJ based on free speech or free press rights  
CP&RC §51.014(a)(6)

## Stay Exception CP&RC §51.014(c)

No automatic stay for denial of MSJ immunity, S/A, or P/J unless filed and requested for submission or hearing not later than the later of

- (1) a scheduling order deadline, or
- (2) the 180th day after the date defendant files
  - (A) the original answer,
  - (B) the first other responsive pleading to the plaintiff’s petition, or
  - (C) a responsive pleading to a plaintiff’s amended pleading that alleges a new cause of action against the defendant and the defendant is able to raise an immunity defense, S/A, or P/J to the new cause of action

## Other interlocutory appeals

Temporary injunctions under CP&RC Ch. 65

- granting or refusing to grant
- granting or overruling motion to dissolve

CP&RC §51.014(a)(4)

\*TX Arb. Act - denying motion to compel arbitration or granting motion to stay arbitration  
CP&RC §171.0908(a)(1)

Med. mal. expert reports:

- deny dismissal motion CP&RC §51.014(a)(9)
- grant motion challenging adequacy of report CP&RC §51.014(a)(10)

\*Bond orders/tax suits GOV’T CODE §1205.068

\*MDL orders GOV’T CODE §74.163(a)(4)

## Agreed Appeal CP&RC §51.014(d)

District court “may issue” written order for an interlocutory appeal when

- parties agree order involves a controlling question of law as to which there is substantial ground for difference of opinion;
- immediate appeal from order may materially advance ultimate termination of the litigation;
- parties agree to order.

No stay of trial proceedings unless (i) parties agree and (ii) trial judge, court of appeals, or an appellate justice orders a stay

File “application” with appellate court 10 days after entry of order

Review discretionary with appellate court

## Supreme Court review

Disagreement (dissent) GOV’T CODE §22.225(c)

Conflict GOV’T CODE §22.225(c), (e)

\*Specific statute

- media D. MSJ denial GOV’T CODE §22.225(d)
- class action GOV’T CODE §22.225(d)
- arbitration CP&RC §171.098(b)
- tax suit bond orders GOV’T CODE §1205.068
- MDL panel orders GOV’T CODE §74.163(a)(4)

Jurisdiction to determine jurisdiction

Mandamus