

GIBSON DUNN

Appellate and Constitutional Law Update

May 24, 2024

## Texas Supreme Court Holds Courts Cannot Certify Issue Classes Unless Underlying Claim Is Certifiable

*Frisco Medical Center, L.L.P. v. Chestnut*, No. 23-0039 – Decided May 17, 2024

**The Texas Supreme Court held that courts cannot sever discrete issues for class treatment if the underlying claim doesn't meet Rule 42's class certification requirements.**

*“Severing an issue ‘does not save the class action’ because courts ‘cannot manufacture predominance through the nimble use’ of Rule 42(d)(1)[ ] . . . .”*

PER CURIAM

---

### Background:

Plaintiffs Paula Chestnut and Wendy Bolen sued Frisco Medical Center, L.L.P. and Texas Regional Medical Center, L.L.C. for allegedly charging emergency room patients special fees without prior notification. Plaintiffs sought class certification on behalf of a group of allegedly overcharged emergency room patients. The district court certified a class of patients who received emergency treatment, were assessed a fee, and paid that fee, finding that the prerequisites of Texas Rule of Civil Procedure 42(a) were met and that plaintiffs' claims satisfied

all three parts of Rule 42(b). The district court also determined that four discrete issues should be severed for issue class treatment under Rule 42(d)(1), which provides that “[w]hen appropriate . . . an action may be brought or maintained as a class action with respect to particular issues.”

On interlocutory appeal, the Fifth Court of Appeals held that plaintiffs’ claims as a whole failed to satisfy any of the parts of Rule 42(b). Nevertheless, the court held that three of the four discrete issues the trial court identified satisfied Rule 42(b)(2). The court affirmed the certification of these three as “issue classes” under Rule 42(d)(1).

#### **Issue:**

Can a court certify an “issue class” when the underlying claim doesn’t meet the class certification requirements?

#### **Court’s Holdings:**

No. A court cannot certify an issue class unless the underlying claim meets Rule 42’s other class certification requirements.

#### **What It Means:**

- In a per curiam opinion handed down without argument, the Court reaffirmed its holding in *Citizens Insurance Co. of America v. Daccach*, 217 S.W.3d 430 (Tex. 2007), that issue-class certification “cannot be used to manufacture compliance with the certification prerequisites” of Rule 42(a) and (b). Op. 4.
- The Court explained that Rule 42(d)(1) is merely “a case-management tool” allowing trial courts to subdivide “class actions that already meet the requirements of Rule 42(a) and (b) into discrete ‘issue classes’ for ease of litigation”—not a means “to certify an otherwise uncertifiable class.” Op. 4–5.
- This conclusion tracks the Fifth Circuit’s reasoning in *Castano v. American Tobacco Co.*, 84 F.3d 734 (5th Cir. 1996), regarding Rule 42’s federal counterpart—confirming that interpretations of the federal class action rules will continue to influence Texas’s analogous requirements.
- By foreclosing the use of issue classes when the underlying claim is otherwise uncertifiable under Rule 42, the Court eased the pressure on class-action defendants to choose between risking crushing liability at trial or capitulating to what many judges have called “blackmail settlements.”

---

**Gibson Dunn submitted an *amicus* brief on behalf of the Chamber of Commerce of the United States of America in support of Petitioner.**

---

---

---

## Gibson Dunn Appellate Honors



The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Texas Supreme Court. Please feel free to contact the following practice group leaders:

### Appellate and Constitutional Law

Thomas H. Dupree Jr.  
+1 202.955.8547  
[tdupree@gibsondunn.com](mailto:tdupree@gibsondunn.com)

Allyson N. Ho  
+1 214.698.3233  
[aho@gibsondunn.com](mailto:aho@gibsondunn.com)

Julian W. Poon  
+1 213.229.7758  
[jpoon@gibsondunn.com](mailto:jpoon@gibsondunn.com)

Brad G. Hubbard  
+1 214.698.3326  
[bhubbard@gibsondunn.com](mailto:bhubbard@gibsondunn.com)

### Related Practice: Texas General Litigation

Trey Cox  
+1 214.698.3256  
[tcox@gibsondunn.com](mailto:tcox@gibsondunn.com)

Collin Cox  
+1 346.718.6604  
[ccox@gibsondunn.com](mailto:ccox@gibsondunn.com)

Gregg Costa  
+1 346.718.6649  
[gcosta@gibsondunn.com](mailto:gcosta@gibsondunn.com)

Andrew LeGrand  
+1 214.698.3405  
[alegrand@gibsondunn.com](mailto:alegrand@gibsondunn.com)

Russ Falconer  
+1 346.718.3170  
[rfalconer@gibsondunn.com](mailto:rfalconer@gibsondunn.com)

Ashley Johnson  
+1 214.698.3111  
[ajohnson@gibsondunn.com](mailto:ajohnson@gibsondunn.com)

*This alert was prepared by Texas associates Elizabeth Kiernan, Stephen Hammer, Jessica Lee, and Zachary Carstens.*

Attorney Advertising: These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.

If you would prefer NOT to receive future emailings such as this from the firm,  
please reply to this email with "Unsubscribe" in the subject line.

If you would prefer to be removed from ALL of our email lists,  
please reply to this email with "Unsubscribe All" in the subject line. Thank you.

© 2024 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at [gibsondunn.com](https://www.gibsondunn.com)