

# **Bond Case Briefs**

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## **IMMUNITY - TEXAS**

### **University of Texas Health Science Center at Houston v. Rios**

**Supreme Court of Texas - December 15, 2017 - S.W.3d - 2017 WL 6396028**

Medical resident filed petition against university medical center and medical center physicians, asserting claims against center for tortious interference with business relationship and breach of contract, and claims against physicians for defamation, arising out of statements made about resident to others, including Texas Medical Board.

Attorney General moved to dismiss all but tort claims against medical center. Resident then filed amended petition in which he nonsuited tort claims against medical center. The District Court dismissed remaining breach of contract claim against medical center, but denied physicians' motion to dismiss. Physicians appealed. The Houston Court of Appeals affirmed. Physicians petition for review was allowed.

The Supreme Court of Texas held that:

- Resident's allegations, together with defendants' acknowledgement in pleadings, that physicians were employees of medical center, constituted judicial admissions that physicians were employees, for purposes of election of remedies provision under Texas Tort Claims Act (TTCA);
- Physicians were acting within scope of employment for medical center when they made allegedly defamatory statements; and
- Resident's amended petition did not nullify physicians' statutory right to dismissal, under election of remedies provision of TTCA.

Medical resident's allegation of fact in original petition against university medical center and physicians that center acted "through" physicians in tortiously interfering with his employment relationship, together with physicians' acknowledgment in motion to dismiss original petition that they were all employees of medical center, constituted judicial admissions that physicians were employees of medical center that relieved physicians of having to prove that fact on motion to dismiss resident's amended petition on ground that dismissal of tort claims against them was mandatory, under provision of Texas Tort Claims Act (TTCA) that required dismissal of claims against government employees when suit was brought against both governmental entity and employees.

University medical center physicians were acting within scope of employment for medical center when they made allegedly defamatory statements about first-year resident, including statements to Texas Medical Board, in alleged retaliation for resident having raised concerns regarding patient welfare, for purposes of determining whether physicians were "employees" entitled to mandatory dismissal of amended petition on claims against them for defamation and against medical center for breach of contract, under election of remedies provision of Texas Tort Claims Act (TTCA), which required dismissal of tort claims against employees, on motion of Attorney General, when suit was filed against both governmental entity and its employees, where alleged defamatory statements arose from their employment as faculty members at medical center in connection with operation of its residency program.

University medical center resident's amended petition, in which he nonsuited claim against medical center for tortious interference with business relationship, did not nullify physicians' statutory right, upon motion, to dismissal of claims against them for defamation arising out of statements made about resident to others, including Texas Medical Board, under election of remedies provision of Texas Tort Claims Act (TTCA), which mandated dismissal of claims against government entity's employees when suit was brought against both entity and employees; it was defendants' filing of motion to dismiss prior to filing of amended petition, and not its content, that triggered physicians' statutory right to dismissal, and to extent that statute conflicted with rule providing upon amendment of pleading, original pleading was no longer part of pleading in record, statute controlled.