

# IN THE SUPREME COURT OF TEXAS

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No. 98-0154  
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SOUTHWESTERN REFINING COMPANY, INC., KERR-MCGEE CORPORATION, AND  
SHERWOOD BREAUX, PETITIONERS

v.

JULIA BERNAL, ET AL., RESPONDENTS

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ON PETITION FOR REVIEW FROM THE  
COURT OF APPEALS FOR THE THIRTEENTH DISTRICT OF TEXAS  
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**Argued April 7, 1999**

JUSTICE ENOCH, joined by CHIEF JUSTICE PHILLIPS and JUSTICE HANKINSON, dissenting.

In some areas of the law, including class-action certifications, the Legislature has chosen to limit this Court's jurisdiction by making most interlocutory appeals final in the courts of appeals. Sometimes this has meant that cases that would otherwise merit our attention because they are important to the jurisprudence of the state are beyond our reach. This is such a case. But frustration at not being able to reach the merits of every important case is not a sufficient reason to fail to exercise judicial restraint. Thus, while I share the Court's desire to remedy significant errors in a published court of appeals' opinion, I nevertheless must dissent because we do not have jurisdiction to reach the merits of this class-certification order.

Under our conflicts jurisprudence, error is not the same as conflict. Decisions are in conflict, for purposes of this Court's conflicts jurisdiction, only when if issued by the same court, the later

decision would overrule the earlier decision. Under this standard, the court of appeals' opinion in this case does not conflict with our decision in *Transportation Insurance Co. v. Moriel*<sup>1</sup> or any other case cited by the parties.

We have repeatedly emphasized how difficult it is to establish conflicts jurisdiction.<sup>2</sup> The test for such jurisdiction has long been whether "the rulings in the two cases are 'so far upon the same state of facts that the decision of one case is necessarily conclusive of the decision in the other.'"<sup>3</sup> For cases to conflict, it must be that "one would operate to overrule the other in case they were both rendered by the same court."<sup>4</sup>

The court of appeals' decision in this case does not conflict with *Moriel*. We held in *Moriel* that, if requested, a trial court should not permit the jury to hear evidence about punitive damages, including a defendant's net worth, before liability and actual damages have been submitted to the jury.<sup>5</sup> The Court supports its conflicts conclusion here with the observation that "the form of this lawsuit, per se, is not a material factual difference that distinguishes the principles we announced in *Moriel*."<sup>6</sup> That may be so, but it has nothing to do with whether, had the same court issued both

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<sup>1</sup> 879 S.W.2d 10 (Tex. 1994).

<sup>2</sup> See *Coastal Corp. v. Garza*, 979 S.W.2d 318, 319 (Tex. 1998) (quoting *Gonzalez v. Avalos*, 907 S.W.2d 443, 444 (Tex. 1995)).

<sup>3</sup> *Gonzalez*, 907 S.W.2d at 444 (quoting *Christy v. Williams*, 298 S.W.2d 565, 567 (Tex. 1957)), quoted in *Coastal Corp.*, 979 S.W.2d at 319.

<sup>4</sup> *Id.* (quoting *Christy*, 298 S.W.2d at 568-69).

<sup>5</sup> *Moriel*, 879 S.W.2d at 30.

<sup>6</sup> \_\_\_ S.W.3d at \_\_\_ (citing Texas Rule of Civil Procedure 815 for the proposition that a class action cannot "enlarge or diminish any substantive rights or obligations of any parties to any civil action").

*Moriel* and the court of appeals' opinion here, the latter would overrule the former. No plausible reading of the court of appeals' opinion would lead to that conclusion.

It is telling to compare the Court's discussion of *Moriel* to the court of appeals' rationale for why it modified the trial court's trial plan. How does the Court describe our holding in *Moriel*? Thusly: "a jury must decide liability and actual damages issues before it considers punitive damages."<sup>7</sup> And what did the court of appeals say about *Moriel*'s holding? Virtually the same thing: "*Moriel* clearly indicates that issues of liability and actual damages should be submitted to the jury first, and that punitive damages issues are to be presented to the jury only after liability and actual damages have been determined."<sup>8</sup>

And why did we so hold in *Moriel*? Because, the Court tells us today, punitive damages have to be proportional to actual damages: "In *Moriel* we were concerned that existing procedures failed to ensure that punitive damage awards 'are not grossly out of proportion to the severity of the offense and have some understandable relationship to compensatory damages.'"<sup>9</sup> And why did the court of appeals determine in this case that the trial court's trial plan was an abuse of discretion? Because, the court of appeals told us in its opinion, punitive damages have to be proportional to actual damages: "The certification order in this case does not provide any mechanism for the jury to become familiar with the sort of actual damages present in this case prior to the jury's determination

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<sup>7</sup> *Id.* at \_\_\_\_.

<sup>8</sup> 960 S.W.2d at 298 (citing *Moriel*, 879 S.W.2d at 30).

<sup>9</sup> \_\_\_\_ S.W.3d at \_\_\_\_ (quoting *Moriel*, 879 S.W.2d at 29 (internal quotation omitted)).

of punitive damages. Such an arrangement is prohibited . . . because it provides no way for punitive damages to be reasonably proportional to actual damages."<sup>10</sup>

Under our conflicts jurisprudence, failure to properly apply a previously announced legal principle has never been understood, before today, to amount to a conflict. The Court claims that the court of appeals did more than merely err because we said in *Moriel* that "[t]he standards we announce apply to *all* punitive damage cases tried in the future."<sup>11</sup> But this statement does not foreclose the possibility that *Moriel's* standards might apply differently in some class actions than they apply in single-plaintiff-single-defendant cases. The court of appeals may have been wrong in its analysis, but it did attempt to apply *Moriel's* holding to a procedural context not present in *Moriel*:

[T]he trial court abused its discretion in devising a trial plan that would allow the jury to assess punitive damages before attaining any familiarity with the actual damages. A better plan, which we adopt as part of our judgment in this case, is to delay assessment of punitive damages until after actual damages for the class representatives have been proven. This plan still allows the jury to resolve the common issue of punitive damages relatively early in the litigation, but also allows the jury to have an understanding of the extent of actual damages suffered by a class before assessing punitive damages.<sup>12</sup>

The Court's rationale for claiming this *conflicts* with *Moriel* is actually the Court's analysis of how the court of appeals has *misapplied Moriel*:

Under the court of appeals' modified order, the jury would decide punitive damages for the entire class without knowing the severity of the offense or the extent of compensatory damages, if any, for each of the 885 plaintiffs. The certification order's provision to eliminate punitive damages for plaintiffs who are not able to prove

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<sup>10</sup> 960 S.W.2d at 298 (citing *Alamo Nat'l Bank v. Kraus*, 616 S.W.2d 908, 910 (Tex. 1981)).

<sup>11</sup> \_\_\_ S.W.3d at \_\_\_ (quoting *Moriel*, 879 S.W.2d at 26 (emphasis added by the Court)).

<sup>12</sup> *Id.* at 298-99.

actual damages may limit the harm to Southwest. But the modified trial plan is nevertheless prejudicial because it fails to ensure that punitive damages are not grossly out of proportion to the severity of the offense for each of the 885 plaintiffs.<sup>13</sup>

Tellingly, the Court can't conclude that the court of appeals' decision would overrule *Moriel* had both been issued by the same court until it analyzes whether or not *Moriel* applies to class actions. We do not have jurisdiction here simply because the court of appeals guessed wrong on how we would apply *Moriel* in this very different context.

Nor do we have conflicts jurisdiction on any other ground Southwest alleges. As the Court notes, Southwest asserts that the court of appeals' opinion conflicts not just with *Moriel*, but also with *RSR Corp. v. Hayes*<sup>14</sup> and *Iley v. Hughes*.<sup>15</sup> It doesn't.

If our conflicts jurisprudence permitted us to go behind the court of appeals' opinion to search the record for a conflict, I might conclude differently about *RSR*. But in determining whether decisions are in conflict, we look only to the face of the opinions.<sup>16</sup> We cannot turn to the record, at the conflicts stage, to see what the evidence establishes. This is because section 22.225(b) of the Government Code makes the court of appeals the final arbiter of the facts and law in an interlocutory appeal, unless we have jurisdiction under section 22.225(c) or (d).<sup>17</sup> And if we were to look first to the merits of the case, concluding that it was wrongly decided, and therefore conclude that we have

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<sup>13</sup> \_\_\_ S.W.3d at \_\_\_.

<sup>14</sup> 673 S.W.2d 928 (Tex. App.—Dallas, writ dismissed w.o.j.).

<sup>15</sup> 311 S.W.2d 648 (Tex. 1958).

<sup>16</sup> See *Coastal Corp.*, 979 S.W.2d at 320 ("With this understanding of our conflict jurisdiction in mind, we turn to whether the court of appeals' opinion in this case conflicts with *RSR* . . .").

<sup>17</sup> TEX. GOV'T CODE § 22.225(b).

conflicts jurisdiction, we would be putting the cart before the horse. And that is what the Court does here.

I cannot conclude that the court of appeals' opinion conflicts with *RSR* because the court of appeals in this case failed to include a sufficient description of the factual allegations and the legal principles to be applied to those allegations from which I can determine a conflict. Of course, courts of appeals must include sufficient facts in their opinions to ensure that their decisions are subject to meaningful conflicts analysis. But while one may suspect that a conflict lurks beneath the opinion, such a suspicion does not establish conflicts jurisdiction here. Unless a case meets our rigorous test for a conflict, or there is a dissent from the court of appeals, we do not have jurisdiction over class-certification appeals until the Legislature decides to give it to us.

As for *Iley*, I conclude that it, too, does not afford us jurisdiction over this case. In *Iley*, we held that our rules of procedure did not permit "piecemeal trials," in which different issues in the same case are tried to different juries. Like *Moriel*, *Iley* was not a class action, and how its holding applies in the class context is an issue yet to be determined by this Court. Moreover, the court of appeals stated that it was not convinced that "more than one jury will be needed to try this case."<sup>18</sup> Of course, my personal doubt that so many claims could be presented to a single jury has nothing to do with whether we have conflicts jurisdiction. And in light of the different procedural context presented here, I can't say that the court of appeals' opinion here conflicts with *Iley*.

We do not have conflicts jurisdiction in this case. Therefore, I dissent.

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<sup>18</sup> 960 S.W.2d at 297.

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Craig T. Enoch  
Justice

Opinion delivered: May 11, 2000