



*Southwestern Refining Co. v. Bernal*, 22 S.W.3d 425 (Tex. 2000). State Farm first asserts that *Bernal* required rigorous analysis of all the prerequisites to class certification, while the court of appeals held that rigorous analysis was limited to commonality and predominance. We do not so read the court of appeals' opinion. State Farm's argument to the court of appeals was that *Bernal's* rigorous analysis requirement required the trial court to examine the merits of the plaintiff's claims before certifying a class. The court of appeals disagreed, stating that "[t]o interpret the 'rigorous analysis' requirement of *Bernal* as mandating an evaluation of the ultimate merit of appellees' claims at the class certification hearing would be stretching the holding of *Bernal* far beyond what we believe the supreme court intended." 45 S.W.3d 182, 192. The court of appeals merely noted that the "rigorous analysis" language from *Bernal* came in the context of a predominance discussion. *Id.* at 191-92 ("The 'rigorous analysis' required by *Bernal* is set in the context of analyzing whether the predominance requirement of Texas Rule of Civil Procedure 42(b)(4) was met for a class of plaintiffs alleging they received personal injuries from an explosion of a refinery tank. . . . In this case, appellants have not challenged the class certification on commonality or predominance of common issues grounds and, in fact, could not reasonably do so . . . ." (citation omitted)). *Bernal* does not require a trial court to evaluate the merits of the plaintiffs' claims. Therefore, there is no conflict.

Second, State Farm argues that the court of appeals' statement that a "trial plan" is not required in all class certification orders conflicts with *Bernal*. In *Bernal*, we stated that "[a] trial court's certification order must indicate how the claims will likely be tried so that conformance with Rule 42 may be meaningfully evaluated." *Bernal*, 22 S.W.3d at 435. On rehearing, the court of appeals stated that "we do not read . . . *Bernal* . . . to require a trial plan in every class certification order." 68 S.W.3d 701, 702

(op. on rehearing). State Farm asserts this language creates a sufficient conflict. However, the court of appeals' statements about the trial plan requirement are dicta. The court of appeals first held that State Farm had waived this issue by not bringing it to the court's attention until its motion for rehearing. *Id.* Then it stated that "[e]ven if this issue was not waived," a trial plan is not required. *Id.* As we noted in *Bernal*, conflicts jurisdiction requires that "[t]he conflict must be on the very question of law actually involved and determined." *Bernal*, 22 S.W.3d at 430 (quoting *Coastal Corp. v. Garza*, 979 S.W.2d 318, 319-20 (Tex. 1998)). Dicta cannot be the basis of conflicts jurisdiction. TEX. GOV'T. CODE ANN. § 22.001(a)(2); *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.2d 547, 552 (Tex. 2000).

Therefore, State Farm's petition is dismissed for want of jurisdiction.

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