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Appellate and Constitutional Law Update

May 27, 2026

## Texas Supreme Court Holds Exemplary-Damages Cap Applies Based On A Defendant's Proportionate Share Of Economic Damages

*K&K Inez Properties, LLC v. Kolle*, No. 24-0045 – Decided May 22, 2026

**A unanimous Texas Supreme Court held that Chapter 41's exemplary-damages cap applies defendant by defendant, based on each defendant's proportionate share of the economic-damages award—not the aggregate amount awarded.**

*"[W]e hold that the statute caps an individual defendant's liability for exemplary damages by comparing the exemplary-damages award to the amount of economic damages attributable to that defendant, based on the defendant's percentage of responsibility."*

JUSTICE HUDDLE, WRITING FOR THE COURT

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## Background:

Chapter 41 of the Texas Civil Practice and Remedies Code limits exemplary damages to the “greater of:” (1) “two times the amount of economic damages” plus up to \$750,000 in noneconomic damages or (2) “\$200,000.” Tex. Civ. Prac. & Rem. Code § 41.008(a)–(b).

A Victoria County jury found three defendants—David Kucera, Valerie Kucera, and their company (K&K Inez Properties)—liable to their neighbors, Clay and Lacy Kolle, for constructing a dam while developing an adjoining subdivision. The jury found for the Kolles on their nuisance, trespass, and Water Code claims and awarded them \$425,000 in economic damages. The jury apportioned responsibility 40% to K&K, 40% to David, and 20% to Valerie. The jury also found K&K and David grossly negligent and awarded \$1.25 million in exemplary damages. The trial court ultimately rendered judgment of \$900,000 in exemplary damages—\$250,000 from K&K to each plaintiff and \$200,000 from David to each plaintiff.

The Thirteenth Court of Appeals reduced the economic-damages award to \$175,000 but otherwise affirmed, and left the exemplary-damages awards undisturbed. The Kuceras sought review in the Texas Supreme Court, principally arguing that Chapter 41’s exemplary-damages cap applies based on each defendant’s proportionate share of the economic-damages award, rather than the total amount awarded.

## Issue:

Does Chapter 41’s exemplary-damages cap turn on the economic damages attributable to each defendant, rather than the total amount of economic damages awarded?

## Court’s Holding:

Yes. Section 41.008(b)’s reference to “the amount of economic damages” means the portion of the economic-damages award attributable to that defendant, not the aggregate award against all defendants.

## What It Means:

- By confirming that Chapter 41’s cap must be applied based on the economic damages attributable to that defendant, the Court’s decision meaningfully reduces defendants’ exemplary-damages exposure in multi-defendant cases. The Court underscored “the Legislature’s clear instructions that exemplary damages are specific to a defendant and must be tied to that defendant’s degree of culpability.” Op. 18.
- The Court also clarified that Chapter 41’s cap applies *per award*, not per plaintiff. So where, as here, the jury returns a single damages award for multiple plaintiffs, the cap applies once per defendant based on that single amount. The Court expressly reserved whether separate awards to plaintiffs seeking recovery for separate injuries should be combined for purposes of applying the cap. So defendants have a strong basis to challenge verdict forms that blur one injury into multiple claimant-specific awards.
- When actual damages are reduced on appeal, the exemplary-damages award must be reevaluated too—under both Chapter 41 and the constitution. Successful defendants should affirmatively press the appellate court to revisit the exemplary-damages award—or remand for the trial court to do so. That said, the Court also indicated that, because such

arguments arise from the appellate court's judgment, they can be asserted for the first time in the Supreme Court.

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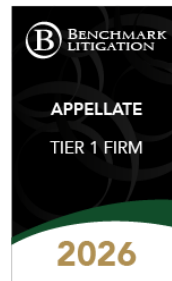


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The Court's opinion in *K&K Inez Properties, LLC* is available [here](#).

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

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