

SAMPLE ISSUES/POINTS PRESENTED

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PRACTICE BEFORE THE TEXAS SUPREME COURT

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CHAPTER 5

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Separating Snake Oil from Therapeutic Supplements: the Nexus Between Litigation and Regulation in the Dietary Supplement Industry, 35 U. TOL. L. REV. 317 (2004)

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SAMPLE ISSUES / POINTS PRESENTED

INTRODUCTION

The statement of issues presented is one of the first things a justice sees upon opening a petition for review. A well-crafted issue statement that succinctly presents the underlying legal question is more likely to spark a justice's interest than an issue statement that lacks context or merely asserts error.

A petition that presents an immediately compelling issue may also stand out in a crowded field. Each year, the Texas Supreme Court receives approximately one thousand petitions. In fiscal year 2004, less than one hundred petitions for review were disposed of in written opinions. Since 2001, the Court granted relief in less than three percent of petitions for writ of mandamus (approximately six of 250 filed each year). The justices must read twenty to twenty-five of those petitions each week. Most of the justices spend "a maximum of fifteen minutes per petition package, which includes reviewing the petition, court of appeals opinion, and response (if any)." Andrew Weber et al., *Inside the Supreme Court of Texas: How Petitions For Review Are Acted On Behind the Scenes*, State Bar of Texas Advanced Civil Appellate Practice Course (2003). Most petitions are denied after the Court's initial review.

Those that survive initial review face conference. During the Court's monthly conference, the justices discuss dozens of draft opinions and as many as ninety petitions for review. A clean statement of an issue presented may serve as a quick reminder or even a persuasive tool for persuading fellow Court members to study a petition more closely. Repeating the statement of the issue in the table of contents uses another opportunity to persuade and aid the Court.

While serving in these persuasive capacities, the statement of issues presented must fulfill a more basic function. The statement defines the parameters of the issues preserved for appellate review. TEX. R. APP. P. 53.2(f).

This article presents five suggestions for crafting issue statements in a way that helps the reader quickly understand why your case is important and why it is worthy of further review.¹

I. FRAME THE ISSUE TO HIGHLIGHT THE LEGAL QUESTION RAISED AND WHY IT IS IMPORTANT TO THE JURISPRUDENCE OF THE STATE.

The best issue statements alert the reader to the real issue in the case – what Bryan Garner calls the "deep issue." See Bryan A. Garner, *The Deep Issue: A New Approach to Framing Legal Questions*, 5 SCRIBES J. LEGAL WRITING 1, 3 (1994). Less successful issue statements may present only a surface issue that fails to alert the reader to the importance of the case. For example, the statement that "The trial court erred in denying petitioner's motion for summary judgment" presents only the surface issue; the reader has no idea why the petitioner might or might not have been entitled to summary judgment, and nothing in the issue statement suggests that the case could present a novel legal question.

By contrast, an issue statement that presents both the underlying legal question and a brief explanation of the issue's significance will more quickly grab the reader's attention and will provide a framework for understanding the subsequent argument. For example, the petitioner's issue statement in *1464-Eight, Ltd. v. Joppich*, ___S.W.3d___ (Tex. 2004) gets immediately to the deep issue and thus sparks interest in the case:

This Court has never addressed whether an option contract may be invalidated by proof that the nominal consideration recited in the agreement was not in fact given. The Restatement takes the position that an "option agreement is not invalidated by proof that the recited consideration was not in fact given." Did the court of appeals err in holding that evidence of a failure to deliver the nominal consideration recited in the option contract at issue precluded summary judgment for Petitioners?

This issue statement accomplishes several goals. First, it tells the reader what the issue is really about – must nominal consideration actually be paid? Second, the statement places the underlying legal issue in the procedural context of the case – we know how the court of appeals ruled. Finally, the reference to the Restatement alerts the reader that the issue is one that has attracted scholarly interest.

II. LIMIT THE NUMBER OF ISSUES PRESENTED TO MAXIMIZE THEIR IMPACT.

There is an inverse relationship between the number of issues presented and how compelling those issues appear. Presenting too many issues creates at least two significant problems. First, good issues may

¹ This article reflects solely the authors' views about the topics discussed and does not necessarily reflect the Court's views.

be “buried” among less compelling issues, thus taking the reader’s focus away from the issues that offer the best chance of success. Second, some judges feel that the presentation of too many issues diminishes the attorney’s overall credibility. Judge Aldisert, a federal judge on the U.S. Court of Appeals for the Third Circuit, writes that “[w]hen I read an appellant’s brief containing more than six points, a presumption arises that there is no merit to any of them.” Ruggero Aldisert, *WINNING ON APPEAL: BETTER BRIEFS AND ORAL ARGUMENT* § 8.6.

It may be necessary, in certain circumstances, to include more issues. But brief writers should heed the advice of Chief Justice Malcolm M. Lucas of California, who recommends that advocates “spend time on issues with potential merit,” as “shotgun approaches that do not distinguish between important and insignificant claims weaken [the] presentation.” *Id.* Former Texas Supreme Court Justice Deborah Hankinson suggests that “[u]sually, only one or two issues can be briefed effectively in a petition If more than one or two issues must be preserved, then list them as unbriefed issues in the petition.” Hankinson et al., *Issue Drafting/Issue Spotting*, State Bar of Texas Advanced Civil Appellate Practice Course (2003); see also Susan L. Bostic, *Sample Points of Error and Issues Presented in the Last Year: The Good, the Bad, and the Ugly*, State Bar of Texas Practice Before the Texas Supreme Court (2003).

In most situations, writers should list the issues briefed in the petition for review before the unbriefed issues. This puts the issues most likely to attract attention—those involving a split in the courts of appeals, issues of first impression, or other compelling arguments—before the reader immediately, while still preserving additional points for future expansion should the Court request full briefing on the merits. Keep in mind that the statement of the issues does not count toward the fifteen page limit for petitions for review. TEX. R. APP. P. 53.6.

Deciding which issues to feature in a petition for review and which issues to preserve by listing as unbriefed issues requires thoughtful consideration about what a brief on the merits, if requested, might look like. A thorough advocate will give this question serious thought, even roughing out a detailed outline of a brief on the merits, as part of the preparation of a petition for review and a statement of the issues presented. This exercise ensures that the most compelling issues are featured in the petition and that the statement of the issues raises all of the issues to be included in a brief on the merits. By outlining a full brief, an advocate can eliminate meritless or duplicative issues, thus streamlining the statement of issues presented in the petition.

III. KEEP YOUR ISSUE STATEMENTS GENERAL ENOUGH TO ENCOMPASS ALL CHALLENGES TO THE DECISION BELOW.

To preserve error while still limiting the total number of issues presented, make your issue statements broad enough to encompass all aspects of your complaint about the court of appeals’ decision.

Texas Rule of Appellate Procedure 53.2(f) provides that “[t]he statement of an issue or point will be treated as covering every subsidiary question that is fairly included.” Thus, a broader issue will encompass subsidiary questions, but a narrower issue may not encompass a broader challenge. If you narrow your issue statement too much, judges may decide that an argument is not “fairly included” under that issue. For example, in *Volkswagen of America, Inc. v. Ramirez*, ___S.W.3d___ 2004 Tex. LEXIS 1429 (Tex. 2004) (reh’g filed Feb. 1, 2005), the Court held that neither of the plaintiff’s two expert witnesses provided evidence of causation. Chief Justice Jefferson’s dissent, however, suggested that the petitioner’s issue statement challenged only one of the experts:

Volkswagen, in petitioning this court for review, did not complain that Cox’s testimony on causation was legally insufficient. The issue presented in Volkswagen’s petition for review was not briefed and referred to Walker, not Cox: “Was the unsupported testimony of the plaintiffs’ *accident reconstruction expert* [Walker] legally sufficient evidence of causation?” (Emphasis added.) Volkswagen first challenged Cox on causation in its reply brief on the merits

Id. (Jefferson, C.J., dissenting). The scope of the issue statement did not affect the Court’s disposition in *Volkswagen*. However, Chief Justice Jefferson’s dissent should alert careful advocates to make sure that their issues are broad enough to encompass all of the party’s related arguments or points of error. Thus, even when the parties’ disagreement focuses on one particular expert, a petitioner who wants to leave the door open for challenging other witnesses should frame the issue statement broadly enough to include those challenges. Writers must walk this line carefully, however. An overly broad issue will fail to provoke interest if it lacks context and depth.

IV. DON’T LET THE ISSUE STATEMENTS GET BOGGED DOWN IN MINUTIA.

Try to keep the issue statements free of acronyms, detailed facts, and complicated procedural history. Appellate lawyers Andrew Frey and Roy Englert point

out that the issue statement “is likely a judge’s first exposure to your side of the case,” and should be “a place to provide a concise overall view of what is at stake . . . not a place to bury a judge in detail. If judges must wade through facts, the significance of which is not immediately apparent, they may have a hard time grasping what your arguments are about.” Andrew L. Frey & Roy T. Englert, Jr., *How to Write a Good Appellate Brief*, LITIGATION, Winter 1994, at 6, 8. Judge Kozinski, a judge on the U.S. Court of Appeals for the Ninth Circuit, agrees; he described his reaction to a brief stating that “LBE’s complaint more specifically alleges that NRB failed to make an appropriate determination of RPT and TIP conformity to SIP,” by noting that “[e]ven if there was a winning argument buried in the midst of that gobbledygook, it was DOA.” Alex Kozinski, *The Wrong Stuff: How to Lose an Appeal*, 1992 BYU L. REV. 325, 328 (1992).

Assuming you decided to break the no-legal-talk-at-happy-hour rule (*and* you were having a drink with a bunch of appellate lawyers), how would you summarize your issue in that setting? Not with a lengthy description of the case’s procedural history, a series of unintelligible acronyms, or a dissertation of irrelevant facts and case law; instead, you would quickly get to the most interesting question. Your brief should likewise get to the point quickly. Bryan Garner suggests that most issue statements should be stated in 50 to 75 words, writing that “I haven’t yet encountered the legal issue that couldn’t be framed in 75 words.” Bryan A. Garner, *The Deep Issue A New Approach to Framing Legal Questions*, 5 SCRIBES J. LEGAL WRITING 1, 5 (1994). While there may be some disagreement about Garner’s word limit, there is little debate about the importance of a concise description of the core legal issue—in fact, the rules require it! TEX. R. APP. P. 53.2(f) (“The petition must state concisely all issues or points presented for review.”). Framing a concise legal question may take effort, but the effort will pay off by helping your reader grasp the underlying issue more quickly.

V. ADVOCATE FOR YOUR CLIENT WITHOUT BEING PATRONIZING.

Issue statements, like all sections of the brief, should be used as an opportunity to present the strongest case possible for the client. There is a risk, however, that advocacy may come across so heavy-handedly that it backfires. Frey and Englert offer a good example of such heavy-handedness in a criminal-law context:

Suppose your case presents a question of whether exigent circumstances entitled police officers to enter your client’s dwelling without a warrant; the police say they acted

to prevent the destruction of drugs that could be used as evidence. In such a case, you should not present a question such as “Whether the Fourth Amendment has been suspended as a result of the ‘War on Drugs.’”

Andrew L. Frey & Roy T. Englert, Jr., *How to Write a Good Appellate Brief*, LITIGATION, Winter 1994, at 6, 8. Frey and Englert point out that “start[ing] out so contentiously in the question presented” may convince the Court that “you are unwilling—or unable—to ever be balanced” and will therefore “cast a skeptical eye on everything else you say and assume that it is all slanted.” *Id.* Maintaining a more respectful tone will help the advocate keep credibility with the Court. However, truly open-ended issue statements miss an opportunity to persuade. Again, an advocate must balance the opportunity to persuade and to earn credibility with the Court.

CONCLUSION

The issue statement is likely to be the Court’s first introduction to the arguments put forth in the petition for review. By crafting an issue statement that concisely states the underlying legal issue and provides some indication of the issue’s importance, attorneys can make their petitions stand out in a crowded field of cases.

APPENDIX A

This appendix includes the issue statements contained in petitions filed with the Texas Supreme Court between January 27, 2004 and February 4, 2004. The issue statements are unedited and reflect the number of issues that the justices may see in one weeks' worth of petitions.

Cause number	Issues Presented in Petitions Filed Between January 27, 2004, and February 4, 2004	Court's Disposition as of Feb. 14, 2005
03-1183	<ol style="list-style-type: none"> 1) Contrary to the Opinion of the Sixth Court of Appeals, the Clarifying Order entered by the trial court is not a substantive change; it does not modify the final decree of divorce to an end that goes beyond facilitating the distribution of Gloria's fifty-percent share of the TRS plan benefits. 2) The Lower Appellate Court Erred in Determining that James McDonald's Motion for New Trial Preserved Error relating to his failure to Challenge Findings of Fact. 	Denied
03-1200	<ol style="list-style-type: none"> 1) The undisputed trial evidence established that the subject property, underground salt dome storage caverns, are not natural; they are man-made. The storage caverns are controlled, leased, operated, used, and taxed independently from the surface land which overlays them. The surface land overlying one of the caverns is owned by a person who has no ownership interest in the storage cavern. Does the separate listing for taxation of the surface land and the storage caverns constitute multiple appraisal? 2) Has the Court of Appeals usurped the function of the legislature by requiring that property which, in the Court's opinion, is not properly listed on the appraisal roll shall escape property taxation? 3) Pursuant to Tax Code §41.413(b), did the valuation protest by the owner of the storage caverns deprive the Courts of jurisdiction pursuant to Tax Code §41.413(b) to grant Respondent (the lessee) the relief requested? (unbriefed issue) 4) After finding that MCAD had subjected the underground storage caverns to unlawful multiple appraisal, did the Court of Appeals correctly hold that the case should be remanded to determine whether Coastal is entitled to attorney's fees? (unbriefed issue) 	Granted; still pending.
04-0086	<ol style="list-style-type: none"> 1) Error in holding the trial court abused its discretion in refusing to submit all of the exceptions to travel. 2) Error in holding the trial court abused its discretion in refusing to submit all of the exceptions to travel based upon conflicting evidence, an untrue fact. 3) Error in holding the trial court abused its discretion in refusing to submit all of the exceptions to travel where respondent failed to offer any evidence from the jury that the failure to so instruct probably caused an erroneous verdict. 4) Error in holding that the employer did not pay any part of Zellars' car 	Denied

Cause number	Issues Presented in Petitions Filed Between January 27, 2004, and February 4, 2004	Court's Disposition as of Feb. 14, 2005
	<p>expense. Error in holding the trial court abused its discretion in refusing to submit all of the exceptions to travel where the respondent filed only a "general denial."</p> <p>5) Error in holding the trial court abused its discretion in refusing to submit all of the exceptions to travel when the request was made "en mass" and some of the instructions did not relate to the issue.</p> <p>6) Error in reversing the trial court judgment awarding benefits because the undisputed evidence supported the jury's finding that Zellars died in the course and scope of his employment.</p> <p>7) Error in reversing the trial court judgment because respondent did not assert a point of error claiming the jury's finding was not supported by any evidence.</p> <p>8) Error in holding that the petitioners' attorney made improper argument where no objections were made to the argument, and in holding that the respondent's argument was precluded or limited by the court's charge.</p>	
03-1116	<p>1) The court should grant review to decide whether an epidemiological study establishing a "doubling of risk" from exposure is a "bright-line boundary" in all toxic tort poisoning cases.</p> <p>2) The court should grant review to decide whether or to what extent an appellate court can base its sufficiency-of-evidence review of the reliability of expert testimony regarding causation on scientific studies that are not in the appellate record</p> <p>3) The court should grant review to decide whether case law regarding asbestos precludes an award for physical pain and mental anguish when plaintiffs have suffered exposure to benzene.</p>	Denied
04-0110	<p>1) Whether the legislature intended Sections 16.322 and 16.323, Texas Water Code enacting new remedies for violation of flood plain regulations to be retroactively applied.</p>	Denied
04-0126	<p>1) Whether the trial court (a) erroneously denied Cervis' motion to compel arbitration and stay the proceedings, and (b) erroneously granted Sungate's motion to stay the arbitration.</p> <p>2) Whether the parties agreed to arbitrate if Sungate's representative (an experienced attorney litigator) signed an agreement that incorporated by reference a document that contained the arbitration clause.</p> <p>3) Whether any reliance on any alleged misrepresentations is legally unjustified and conclusively disproved because the contract has an integration clause that disclaims reliance on oral statements and states that the writing supersedes all prior promises.</p> <p>4) Whether there is any evidence of fraudulent inducement specifically</p>	Denied

Cause number	Issues Presented in Petitions Filed Between January 27, 2004, and February 4, 2004	Court's Disposition as of Feb. 14, 2005
	aimed at the arbitration agreement.	
	5) Whether Sungate's alleged claims for construction deficiencies (including claims against Cervis, a subcontractor) are within the scope of an arbitration clause that requires arbitration of any claims or disputes arising out of or related to the performance of the contract. 6) Whether the trial court or the arbitrator decides Sungate's Fraud Claim and Sungate's Argument That Peterson Did Not Satisfy A Condition Precedent To The Agreement.	
04-0067	1) Is Texas Health & Safety Code Chapter 841 punitive, and therefore unconstitutional? 2) Are Chapter 841 and the Final Judgment and Order of Civil Commitment unconstitutionally vague, and therefore, violate the separation of powers doctrine? 3) Do Texas Health & Safety Code §841.085 and the Final Judgment violate Petitioner's Fifth Amendment privilege against self-incrimination?	Denied
04-0100	1) Union gas is estopped from challenging the trial court's judgment because of its pleadings agreeing that Tittizer was entitled to her royalties, with no pleadings in the alternative. 2) The court of appeals erred in reversing the trial court and ruling that Tittizer was not entitled to pooled royalties on production between the date of first production and August 7, 2000.	Court requested briefing on the merits; still pending
03-0509	1) Does the Family Code's "Affirmative Defense to Motion for Enforcement of Child Support," § 157.008, afford a delinquent obligor a pecuniary benefit equal to twice the amount of his court-ordered support payments for periods when, with the obligee's consent, he has possession of his child in excess of court-ordered visitation periods: (1) a complete offset of his obligation for those periods without proof of the amount of actual support he provided during those periods and (2) a child support judgment against the sole managing conservator-obligee as a result of a retroactive modification that imposed, even years after the fact, the obligor's court-ordered support obligation, for those same excess possession periods, on the sole managing- conservator-obligee? 2) The Attorney General has standing to litigate the construction of a state statute, contest any claim or defense interposed against his motion to enforce a child support order, represent the interests of the state in the enforcement of child support obligations, and provide child support services equally to all individuals upon application as mandated by federal and state law.	Court requested briefing on the merits; still pending
03-1137	1) The Honorable John Gabriel made a substantial error of law on November 20, 1998, when he denied the bill of review on the basis that Muecke did not appeal and could not bring a bill of review within 4 years, and was not entitled to a ruling on the merits.	Denied

Cause number	Issues Presented in Petitions Filed Between January 27, 2004, and February 4, 2004	Court's Disposition as of Feb. 14, 2005
	<ol style="list-style-type: none"> 2) The Fourth Court of Appeals made an error of law in reviewing the Affidavit of Inability hearings of December 9 and December 21, 1998, and May 23, 2003. 3) The Fourth Court of Appeals erred on July 9, 2003, when it ruled the appeal was moot. 4) Hall, Bailey, and the and the Law Firm of Thorton, Summers, Bielin, Dunham and Brown, Inc. are in violation of the automatic stay and in contempt of court. 5) Hall's 1994 summary judgment motion was filed in bad faith and for the purpose of harassment (COA Briefs), and will not support a summary judgment, procedurally, on the facts, the accrual dates, or on the affidavits and excerpts attached. 6) This case is in public's interest because Hall has created a product of design, used by the family law, bankruptcy law attorneys and mortgage lenders and insurance companies, to force the divorced spouse to liquidate her homestead to pay off the lawyers and lienholders, contrary to the Texas Homestead Act, protecting the homestead from forced sale. 	
03-1153	<ol style="list-style-type: none"> 1) Does the Texas Department of Insurance have authority to void uninsured motorist and personal injury protection coverage required by the Legislature? 2) If the Texas Department of Insurance does have the authority to void these statutorily mandated coverages, may it do so without complying with the Texas Insurance Code and the Texas Administrative Procedure Act? 	Denied
03-1197	<ol style="list-style-type: none"> 1) Can a negligence action against a laboratory corporation in the business of providing biopsy analyses, which admittedly is not a "health care provider" covered by the Medical Liability and Insurance Improvement Act ("MLIIA"), nevertheless be barred by the MLIIA limitations provision if the person who performed the corporation's duty was a physician? As decided by the court of appeals, Issue One has two subparts. Can a laboratory company in that situation be liable for failing to perform its undertaking with care regardless of whether it performed its duty through an employee or through an independent contractor? Or, would the laboratory corporation's liability be necessarily vicarious of the person who negligently misread the slide, such that defenses available to that person would also be available to the laboratory corporation? 2) Even if the laboratory company's liability could only be vicarious of the person who negligently misread the slide under respondeat superior, does the vicarious-defense borrowing rule of <i>DeWitt v. Harris County</i> apply to the defense of limitations, which is generally held to be personal to the actor? 	Denied

Cause number	Issues Presented in Petitions Filed Between January 27, 2004, and February 4, 2004	Court's Disposition as of Feb. 14, 2005
04-0092	<ol style="list-style-type: none"> 1) Did the Court of Appeals err in its application of the rules of McConnell v. Southside Indep. School Dist. as to when a non-movant must except to or file a response to a motion for summary judgment so as to be able to complain of the action of the trial court on appeal ? 2) Did the Court of Appeals err in holding that because Thompson did not file a reply to Harco's motion for summary judgment, they may not, on appeal, contest the legal sufficiency of the grounds offered by Harco in support of its motion ? 3) Did the Court of Appeals err in holding Thompsons' brief was inadequate under TEX R APP. PRO. 38.1 to present the applicability of The Motor Carrier Act, 49 U.S.C. § 10521 (a) (1) (A) (1988) and obtain review of the trial court's granting of summary judgment for Harco and the refusal to grant summary judgment to Thompson ? 4) Did the Court of Appeals err in holding that Thompson was not entitled to summary judgment, even though Harco amended its answer and replaced its sworn answer that complied with rule 665 with an ordinary general denial, that did not answer the inquiries of the writ as required by TEX. R. Cry. P. 661. ? 	Denied
04-0096	<ol style="list-style-type: none"> 1) Plaintiffs' petition shows on its face that their complaints against Harris County relate to the design of a roadway and the failure to initially place various traffic control devices, both of which are discretionary, and for which, there is no waiver of immunity by virtue of §§ 101.056 and 101.060, Tex. Civ. Prac. & Rem. Code. 2) The court of appeals erred in holding that the condition of the roadway in question amounted to a special defect rather than design. 3) The court of appeals erred in relying on the absence of lighting to hold that the condition of the roadway in question amounted to a special defect. 4) The court of appeals erred in holding that the culvert in question satisfies the definition of a special defect. 	Denied
03-0753	<ol style="list-style-type: none"> 1) Did the court of appeals err to hold that Ms. Yeo had a constitutional due-process interest allowing her to swim in an intercollegiate meet? <ol style="list-style-type: none"> i) In Spring Branch I.S.D. v. Stamos, 695 S.W.2d 556 (Tex. 1985), this Court held that students have no constitutional due-process interest in their participation in extracurricular activities. Did the court of appeals err to ignore Stamos's bright-line rule and instead employ its own fact-specific test? ii) Due process protects interests that fit the constitutional categories of "liberty interest" or "property interest." Here, the court of appeals did not find that Ms. Yeo's interest fit into either category. Did the court of appeals erroneously extend due-process protections to an interest that does not fit into a 	Granted; still pending.

Cause number	Issues Presented in Petitions Filed Between January 27, 2004, and February 4, 2004	Court's Disposition as of Feb. 14, 2005
	constitutionally protected category?	
	<p>2) Did the court of appeals properly affirm the particular relief ordered by the district court, even though that relief is not aimed at securing a hearing for Ms. Yeo?</p> <p>i) The goal of due-process protection is minimizing the potential for erroneous deprivations of property or liberty interests. Yet Ms. Yeo does not dispute the facts underlying her sanction. Did the court of appeals correctly hold that more process was necessary despite the uncontested nature of the facts?</p> <p>ii) In <i>University of Texas Med. School v. Than</i>, 901 S.W.2d 926 (Tex. 1995), this Court held that the proper remedy for a dueprocess violation is to give the claimant the process that was due. Instead of ordering any hearing, the courts below imposed the substantive remedy of a permanent injunction that predetermined the result of such a hearing. Did the courts below overreach by ordering relief that exceeded any process to which Ms. Yeo might have been entitled?</p> <p>3) Did the court of appeals err to affirm Ms. Yeo's award of attorneys' fees? (Not briefed.)</p>	
03-1189	<p>1) The Putative Class Representatives Have No Standing. Standing is a prerequisite to class certification and a jurisdictional prerequisite to subject matter jurisdiction in both individual and class actions. A putative class representative with no valid claim has no standing to represent a putative class. To acquire standing, class representatives and class members must have suffered a legally cognizable injury. Concededly, the Gen-3 buckles in the class representatives' vehicles have never malfunctioned. No class representative has suffered any physical harm or property damage from the claimed defect.</p> <p>i) Did the court of appeals err in holding that the plaintiffs have standing to sue the manufacturer based on the hypothetical possibility that their products might one day malfunction?</p> <p>ii) Was it error for the court of appeals to hold that an allegation or proof that a product is defectively designed, without more, was sufficient under each pleaded liability theory to establish a legally compensable economic loss essential to the class representatives' standing to bring a class action?</p> <p>iii) Did the court of appeals err in holding that putative class representatives who have no legally-cognizable claims under liability theories invoked in the plaintiffs' petition as a matter of substantive legal doctrine, nonetheless have standing to prosecute class claims based on their legally flawed claims?</p> <p>iv) Was it error for the court of appeals to hold that putative class representatives' standing is determined only by the allegations contained in the plaintiffs' pleadings, notwithstanding evidence</p>	Granted; still pending.

Cause number	Issues Presented in Petitions Filed Between January 27, 2004, and February 4, 2004	Court's Disposition as of Feb. 14, 2005
	demonstrating that the class representatives have no legally-cognizable claims or injuries?	
	<p>2) The Putative Class Representatives Are Not Adequate Representatives.</p> <ul style="list-style-type: none">i) A named plaintiff in a class action must fairly and adequately protect the interests of the class, but cannot do so if there is a conflict between the representative and the class members. Presently, class claims are limited to redress for hypothetical injuries, but the entry of final judgment will forever bar plaintiffs that might sustain a concrete injury in the future.ii) Can named plaintiffs adequately represent the class given that a judgment in their favor will probably preclude the prosecution of subsequent claims of class members who might actually be injured in the future?iii) Are the proposed class representatives inadequate because of an irreconcilable conflict between the class representatives and class members?	
	<p>3) Application Of Multiple States' Laws Precludes Predominance.</p> <ul style="list-style-type: none">i) Before certifying a class action under Rule 42(b)(4), the trial court must find that common questions of law or fact predominate over the questions affecting individual members, that class-wide litigation is superior to other methods of dispute resolution, and that the class is manageable.ii) Here, the class claims asserted will require application of the law of 48 states and the District of Columbia. Established conflict of laws principles, bolstered by the Due Process, Commerce, and Full Faith and Credit Clauses of the United States Constitution, preclude Texas from regulating conduct that occurred in other jurisdictions and that had no effect on local residents. State laws vary widely on all of the plaintiffs' claims, making an orderly adjudication of the class claims impossible.iii) Did the court of appeals err by remanding this class certification order for consideration of the effect of multi-states' laws, when the application of negligent misrepresentation, consumer protection, and express and implied warranty laws for 48 states and the District of Columbia are so divergent that the predominance, manageability, and superiority elements of Rule 42 can never be satisfied?	

Cause number	Issues Presented in Petitions Filed Between January 27, 2004, and February 4, 2004	Court's Disposition as of Feb. 14, 2005
04-0069	<ol style="list-style-type: none"><li data-bbox="300 212 1209 1018">1) The Trial Court erred in regard to the entry of its sanction order on May 5, 2000. (CR 392-393) Pursuant to Rule 38.1(e) of the Texas Rules of Appellate Procedure, subsidiary issues relating to Issue 1 are as follows:<ol style="list-style-type: none"><li data-bbox="397 346 1209 409">i) The Trial Court erred in regard to the entry of its Supplemental Order for Sanctions on September 8, 2000. (CR 543-544)<li data-bbox="397 451 1209 546">ii) The Trial Court erred in regard to its striking Morgan's First Supplemental Pleading on September 7, 2000. (CR527-528) and (RR 5/197)<li data-bbox="397 588 1209 714">iii) The Trial Court erred on September 8, 2000 in regard to its refusing three sets of questions (Breach of Contract, Waiver, Accord & Satisfaction) for submission by Morgan. (CR 540, 541, 545)<li data-bbox="397 745 1209 808">iv) The Trial Court erred in denying subparagraph C of Morgan's Motion for New Trial. (CR 781)<li data-bbox="397 850 1209 913">v) The Trial Court erred in denying subparagraph D of Morgan's Motion for a New Trial. (CR 781)<li data-bbox="397 945 1209 1008">vi) The Trial Court erred in denying subparagraph D of Morgan's Motion for Judgment Notwithstanding the Verdict. (CR 780)<li data-bbox="300 1050 1209 1117">2) The Court of Appeals erred in affirming the Trial Court as to Issue No. 1, stated above.	Denied