
RECENT DEVELOPMENTS IN SUMMARY JUDGMENT

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Traditional Summary Judgments

- Movant has burden to show that there are no genuine issues of material fact is entitled to judgment as a matter of law. *Nixon v. Mr. Property Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985)
- A defendant-movant can meet this burden by:
 - Presenting affirmative evidence negating at least one element of a claim
 - By conclusively establishing each element of an affirmative defense
- A plaintiff-movant can meet this burden by conclusively establishing that it is entitled to judgment as a matter of law on its claim

Traditional Summary Judgments

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- A defendant-movant can meet this burden by:
 - Presenting affirmative evidence negating at least one element of a claim
 - By conclusively establishing each element of an affirmative defense
- A plaintiff-movant can meet this burden by conclusively establishing that it is entitled to judgment as a matter of law on its claim

Traditional Summary Judgments

- Reasons To File Motion For Summary Judgment
 - You might prevail and have judgment entered in your client's favor
 - Court may grant partial summary judgment which narrows issues for trial and can eliminate claims that cause problems
 - Educate the judge on merits of case
 - Learn about your opponent's case by forcing him to lay out his evidence
 - Encourage settlement

Traditional Summary Judgments

- Some Helpful Tips

- Don't move unless have good faith basis.

- Not too late/not too early

- Not too long

- Don't let evidence be too voluminous – must be a fact issue in there somewhere

- Be prepared to walk through everything at hearing

- Never count on having motion granted

Traditional Summary Judgments

Price v. American National Insurance Company

113 S.W.3d 424 (Tex. App. – Houston [1st Dist.] 2003, no pet.)

- American National defended insurance coverage suit based on suicide exclusion in life insurance policy
- Price sued American National for benefits
- American moved for traditional summary judgment based on policy's suicide exclusion

Traditional Summary Judgments

Price v. American National Insurance Company

113 S.W.3d 424 (Tex. App. – Houston [1st Dist.] 2003, no pet.)

- Court of appeals found inquest finding not conclusive because it was made prior to the autopsy and forensic tests
- Uncertified death certificate was not conclusive because it was opinion evidence regarding a subject not solely decided by expert testimony
- Autopsy report not conclusive because doctor did not explicitly state how his findings and conclusions supported his finding of suicide
- Investigative file could not be considered because was admitted only to show thoroughness of sheriff's department investigation and not the truth of the matter

