

UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION

Blackstone Claim Services, Inc. v. Aaron McKee

Adv. No. 25-05084-CAG (Bankr. W.D. Tex. Apr. 2, 2026) · No. Adv. No. 25-05084-CAG; underlying bankruptcy case No. 25-52804-CAG · Decided April 2, 2026

SUMMARY

This is an order of the United States Bankruptcy Court for the Western District of Texas granting in part and denying in part Blackstone Claim Services, Inc.'s Rule 12(b)(1) and Rule 12(b)(6) motion to dismiss Aaron McKee's counterclaims. The court held that it had jurisdiction over McKee's claims against Blackstone and that those claims adequately alleged standing and plausible grounds for relief at the pleading stage. The court dismissed McKee's third-party claims against Gary H. Pennington for lack of subject-matter jurisdiction.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Bankruptcy Court for the Western District of Texas, San Antonio Division                                                                                                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Craig A. Gargotta                                                                                                                                                                                                                                                                                                                                                                           |
| JURISDICTION          | United States Bankruptcy Court for the Western District of Texas, San Antonio Division                                                                                                                                                                                                                                                                                                      |
| DECIDED               | April 2, 2026                                                                                                                                                                                                                                                                                                                                                                               |
| DOCKET                | Adv. No. 25-05084-CAG; underlying bankruptcy case No. 25-52804-CAG                                                                                                                                                                                                                                                                                                                          |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                                                       |
| PROCEDURAL POSTURE    | Order resolving Plaintiff's Rule 12(b)(1) and 12(b)(6) motion to dismiss Defendant's counterclaims and Third-Party Defendant's partial joinder in that motion in a removed bankruptcy adversary proceeding.                                                                                                                                                                                 |
| STANDARD OF REVIEW    | On Rule 12(b)(1), the court considered subject-matter jurisdiction, standing, and related jurisdiction. On Rule 12(b)(6), the court accepted well-pleaded factual allegations as true, viewed them in the light most favorable to McKee, and determined whether the pleadings stated plausible claims for relief. Fraud-based claims were subject to Rule 9(b)'s particularity requirement. |

**PRECEDENTIAL VALUE**

Unknown; bankruptcy court order with no reported citation and source metadata indicating unknown precedential status.

**TOPICS**

motions to dismiss

subject matter jurisdiction

adversary proceedings

nondischargeable debts

chapter 11

**PRACTICE AREAS**

bankruptcy

civil procedure

contracts

commercial litigation

insurance

**QUESTIONS PRESENTED**

1. Whether the bankruptcy court had subject-matter jurisdiction over McKee's counterclaims against Blackstone and third-party claims against Pennington.
2. Whether McKee had Article III standing to assert his counterclaims against Blackstone.
3. Whether McKee's counterclaims were barred by res judicata or collateral estoppel based on his settlement and dismissal with prejudice of the Chubb litigation.
4. Whether McKee adequately pleaded DTPA claims under Texas Business and Commerce Code section 17.46(b)(5), (7), (12), and (24).
5. Whether McKee adequately pleaded negligence, negligence per se, and breach of contract.
6. Whether McKee adequately pleaded that the alleged debts were nondischargeable under 11 U.S.C. sections 523(a)(2)(A) and 523(a)(6).
7. Whether McKee should receive leave to amend deficient claims.

**HOLDINGS**

1. The bankruptcy court had jurisdiction over McKee's section 523 claims under its arising-under jurisdiction and over his state-law counterclaims under related-to jurisdiction because those claims could conceivably affect administration of Blackstone's bankruptcy estate.
2. The bankruptcy court lacked subject-matter jurisdiction over McKee's purely state-law third-party claims against Pennington and dismissed those claims with prejudice.
3. McKee adequately pleaded injury in fact, traceability, and redressability for his counterclaims against Blackstone, so the counterclaims were not subject to dismissal under Rule 12(b)(1).
4. Neither res judicata nor collateral estoppel barred McKee's counterclaims against Blackstone.
5. McKee adequately pleaded a DTPA claim under Texas Business and Commerce Code section 17.46(b)(5), but failed to state claims under subsections (b)(7), (b)(12), and (b)(24); those deficient claims were dismissed with prejudice.
6. McKee adequately pleaded negligence and negligence per se based on alleged violations of Texas Insurance Code sections 4102.102 and 4102.159.

7. McKee adequately pleaded a breach-of-contract claim against Blackstone despite not expressly pleading his own performance because he alleged that Blackstone materially breached first, excusing his further performance.
8. McKee adequately pleaded nondischargeability under section 523(a)(2)(A) for the surviving DTPA section 17.46(b)(5) claim, but not for the negligence or breach-of-contract claims.
9. McKee adequately pleaded nondischargeability under section 523(a)(6) for the surviving DTPA claim and the breach-of-contract claim, but not for negligence.
10. The court denied McKee's request to amend the dismissed claims.

## KEY QUOTATIONS

*“A matter falls within the court’s subject matter jurisdiction if the matter arises under a provision of title 11, or if the matter arises in or is related to the bankruptcy case.”* (Jurisdiction section I)

*“There are three elements that a plaintiff must prove to establish Article III standing: injury in fact, traceability, and redressability.”* (Analysis section I)

*“It is a fundamental principle of contract law that when one party to a contract commits a material breach of that contract, the other party is discharged or excused from further performance.”* (Analysis section II.D)

*“A ‘willful and malicious’ injury results from an act done with the actual intent to cause injury, not from an act done intentionally that causes injury.”* (Analysis section II.E.2)

## FACTUAL BACKGROUND

During a February 2021 freeze in Bexar County, Texas, pipes in McKee's home froze and subsequently leaked, allegedly causing extensive property and electrical damage. McKee retained Blackstone, a public insurance adjuster owned by Pennington, to assist with preparing and presenting an insurance claim to Chubb, and Blackstone assessed more than \$7 million in alleged damages. After Pennington's expert testimony was excluded in McKee's insurance litigation against Chubb, McKee settled with Chubb for \$1.75 million and later asserted claims against Blackstone and Pennington alleging deficient documentation, misrepresentations, negligence, breach of contract, and nondischargeability.

## PROCEDURAL HISTORY

Blackstone filed a state-court action against Aaron McKee before filing a Chapter 11 Subchapter V bankruptcy petition. McKee asserted counterclaims against Blackstone and third-party claims against Gary H. Pennington. Blackstone removed the litigation to the bankruptcy court, filed an amended complaint, and moved to dismiss McKee's counterclaims under Rules 12(b)(1) and 12(b)(6); Pennington joined in part. The court dismissed McKee's third-party claims against Pennington for lack of subject-matter jurisdiction, dismissed certain DTPA claims with prejudice, and allowed the remaining counterclaims against Blackstone to proceed.

## DISPOSITION

other

## CASES CITED

- Legal Xtranet, Inc. v. AT&T Management Services, L.P. (In re Legal Xtranet), 453 B.R. 699 (Bankr. W.D. Tex. 2011)
- Parkhouse v. Johnson (In re Johnson), No. 11-06020, 2012 WL 1110342 (Bankr. W.D. Tex. Apr. 2, 2012)
- GDC Investco LP v. Mazav Management, LLC (In re GDC Technics, LLC), No. 25-05063, 2026 WL 227170 (Bankr. W.D. Tex. Jan. 27, 2026)
- Feld v. Zale Corp. (In re Zale Corp.), 62 F.3d 746, 752 (5th Cir. 1995)
- Executive Benefits Insurance Agency v. Arkison, 573 U.S. 25, 33 (2014)
- Wellness International Network, Ltd. v. Sharif, 575 U.S. 665, 685 (2015)
- Ward v. Cross Keys Bank (In re Karccredit, LLC), No. 21-30649, 2022 WL 4103265 (5th Cir. Sept. 7, 2022) (per curiam)
- United States v. Ruiz, 536 U.S. 622, 628 (2002)
- Walker v. Cadle Co. (In re Walker), 51 F.3d 562, 569, 573 (5th Cir. 1995)
- In re Redf Marketing, LLC, 536 B.R. 646, 663 (Bankr. W.D.N.C. 2015)
- United States v. Lujan, 504 U.S. 555, 560-61 (1992)
- Morrison v. Sonia (In re Jillian Morrison, L.L.C.), 482 F. App'x 872 (5th Cir. 2012) (per curiam)
- Spokeo, Inc. v. Robins, 578 U.S. 330 (2016)
- DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 352 (2006)
- Abraugh v. Altimus, 26 F.4th 298, 302 (5th Cir. 2022)
- Wendt v. 24 Hour Fitness USA, Inc., 821 F.3d 547, 550 (5th Cir. 2016)
- Gonzalez v. Kay, 577 F.3d 600, 603 (5th Cir. 2009)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Harold H. Huggins Realty, Inc. v. FNC, Inc., 634 F.3d 787, 796 (5th Cir. 2011)
- True v. Robles, 571 F.3d 412, 417-18 (5th Cir. 2009)
- Hershey v. Energy Transfer Partners, LP, 610 F.3d 239, 245-46 (5th Cir. 2010)
- Roebuck v. Dothan Securities, Inc., 515 F. App'x 275, 280 (5th Cir. 2013) (per curiam)
- Innova Hospital San Antonio, LP v. Blue Cross & Blue Shield of Georgia, Inc., 892 F.3d 719, 726 (5th Cir. 2018)
- Schott v. Massengale, No. CV-185-759, 2019 WL 4738795 (M.D. La. Sept. 14, 2019)
- Life Partners Creditors' Trust v. Crowley (In re Life Partners Holdings, Inc.), 926 F.3d 103, 117 (5th Cir. 2019)
- Johnson v. City of Houston, 444 F. App'x 26, 30 (5th Cir. 2011) (per curiam)
- Meza v. General Battery Corp., 908 F.2d 1262, 1265 (5th Cir. 1990)
- Gulf Island-IV, Inc. v. Blue Streak-Gulf Island Operations, 24 F.3d 743, 746 (5th Cir. 1994)
- Sacks v. Texas Southern University, 83 F.4th 340, 344-45 (5th Cir. 2023) (per curiam)
- Test Masters Educational Services, Inc. v. Singh, 428 F.3d 559, 571-72 (5th Cir. 2005)
- Taylor v. Sturgell, 553 U.S. 880, 898 (2008)
- Lawlor v. National Screen Service Corp., 349 U.S. 322, 328 (1955)

- D-1 Enterprises, Inc. v. Commercial State Bank, 864 F.2d 36, 40 (5th Cir. 1989)
- Petro-Hunt, L.L.C. v. United States, 365 F.3d 385, 396 (5th Cir. 2004)
- Avondale Shipyards, Inc. v. Insured Lloyd's, 786 F.2d 1265, 1272-73 (5th Cir. 1986)
- Arizona v. California, 530 U.S. 392, 414 (2000)
- Pasada Del Rey v. Pearson (In re Pearson), 120 B.R. 396, 398 (Bankr. N.D. Tex. 1990)
- Anthony v. Marion County General Hospital, 617 F.2d 1164, 1169-70 (5th Cir. 1980)
- Gabbert v. Stevens (In re Stevens), No. 22-05073, 2023 WL 4687827 (Bankr. W.D. Tex. July 21, 2023)
- Patek v. Alfara (In re Primera Energy, LLC), 579 B.R. 75, 165 (Bankr. W.D. Tex. 2017)
- Brittan Communications v. Southwestern Bell Telephone Co., 313 F.3d 899, 907 (5th Cir. 2002)
- McCarthy v. Wisch Auto Group, Inc., No. 14-24-00040-CV, 2026 WL 771396 (Tex. App.—Houston [14th Dist.] Mar. 19, 2026)
- Bartlett v. Schmidt, 33 S.W.3d 35, 39 (Tex. App.—Corpus Christi-Edinburg 2000, pet. denied)
- Gann v. Anheuser-Busch, Inc., 394 S.W.3d 83, 88 (Tex. App.—El Paso 2012, no pet.)
- Johnson v. Enriquez, 460 S.W.3d 669, 673-74 (Tex. App.—El Paso 2015, no pet.)
- Zavala v. Trujillo, 883 S.W.2d 242, 246 (Tex. App.—El Paso 1994, writ denied)
- Thomas v. Uzoka, 290 S.W.3d 437, 445 (Tex. App.—Houston [14th Dist.] 2009)
- MDK Sociedad de Responsabilidad Limitada v. Proplant Inc., 25 F.4th 360, 368 (5th Cir. 2022)
- Pathfinder Oil & Gas, Inc. v. Great Western Drilling, Ltd., 574 S.W.3d 882, 890 (Tex. 2019)
- Martin Resource Management Corp. v. Federal Insurance Co., No. 20-40571, 2021 WL 4269565 (5th Cir. Sept. 20, 2021) (per curiam)
- Lormand v. U.S. Unwired, Inc., 565 F.3d 228, 256 (5th Cir. 2009)
- In re GDC Technics, LLC, 643 B.R. 417 (Bankr. W.D. Tex. 2022)
- Mustang Pipeline Co. v. Driver Pipeline Co., 134 S.W.3d 195, 196 (Tex. 2004) (per curiam)
- Kim v. Nationwide Mutual Insurance Co., 614 F. Supp. 475, 492 (N.D. Tex. 2022)
- Bailey v. Cook (In re Bailey), 34 F. App'x 150, 152 (5th Cir. 2002) (per curiam)
- Bennett v. Lindsey (In re Lindsey), 733 F. App'x 190, 192-93 (5th Cir. 2018) (per curiam)
- K.V. Chowdary & Valley Gastroenterology Clinic, P.A. (In re Ozcelebi), 640 B.R. 884, 896-97 (Bankr. S.D. Tex. 2022)
- Husky International Electronics, Inc. v. Ritz, 578 U.S. 355 (2016)
- RecoverEdge L.P. v. Pentecost, 44 F.3d 1284, 1292-93 (5th Cir. 1995)
- Saenz v. Gomez (In re Saenz), 899 F.3d 384, 394 (5th Cir. 2018)
- Triumphant Gold Ltd. v. Matloff (In re Matloff), No. 24-10439, 2025 WL 2848990 (5th Cir. Oct. 8, 2025)
- Friendly Finance Service Mid-City, Inc. v. Modicue (In re Modicue), 926 F.2d 452, 453 (5th Cir. 1991)
- State of Texas ex rel. Board of Regents of the University of Texas System v. Walker, 142 F.3d 813, 823 (5th Cir. 1998)
- Kawaauhau v. Geiger, 523 U.S. 57, 61, 64 (1998)
- Miller v. J.D. Abrams, Inc. (In re Miller), 156 F.3d 598, 603 (5th Cir. 1998)

- Ragupathi v. Bairrington (In re Bairrington), 183 B.R. 754, 759, 761 (Bankr. W.D. Tex. 1995)
- Williams v. International Brotherhood of Electrical Workers Local 520 (In re Williams), 337 F.3d 504, 510-11 (5th Cir. 2003)
- Dussouy v. Gulf Coast Investment Corp., 660 F.2d 594, 597 (5th Cir. 1981)
- Mayeaux v. Louisiana Health Service & Indemnity Co., 376 F.3d 420, 425 (5th Cir. 2004)
- Forman v. Davis, 371 U.S. 178, 182 (1962)
- Farmers Texas County Mutual Insurance Co. v. 1st Choice Accident & Injury, L.L.C., 168 F.4th 271, 279 (5th Cir. 2026)
- Stripling v. Jordan Production Co., 234 F.3d 863, 873 (5th Cir. 2000)
- Terry v. Texas Partners Bank (In re Chris Pettit & Associates), 670 B.R. 602, 611 (Bankr. W.D. Tex. 2025)
- In re The Academy, Inc., 288 B.R. 286, 289 (Bankr. M.D. Fla. 2002)
- Mihov v. United States, 655 B.R. 584, 589-90 (S.D. Ind. 2023)
- Cody, Inc. v. County of Orange (In re Cody, Inc.), 338 F.3d 89, 94 (2d Cir. 2003)

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