

CLOSE THE DOOR BEHIND YOU: HOW THE TEXAS SUPREME COURT
LEFT THE CONSTITUTIONALITY OF SECTION 5.014(B) OPEN IN *IN RE*
GEOMET RECYCLING

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INTRODUCTION

One of the fundamental principles of the United States' system of government is its doctrine of separation of powers. This principle maintains balance between the three branches of government. When one branch oversteps, the inherent rights of another branch are impeded. That is the current situation posed by a section of the Texas Civil Practice and Remedies Code. Section 51.014(b)'s automatic stay of all proceedings, with no discretion given to the courts, impermissibly impedes the judicial branch's inherent power to preserve the rights of parties when other matters arise that require a timely hearing.

Section 51.014(b) of the Texas Civil Practice and Remedies Code institutes an automatic stay of "all other proceedings in the trial court pending resolution of that [interlocutory] appeal."¹ This automatic stay of all proceedings in the trial court does not arise in every interlocutory appeal.² The legislature carefully selected four circumstances in which an interlocutory appeal would activate the automatic stay and prevent all proceedings in the trial court.³ These instances are: the certification of a class in a class-action suit, the denial of a motion for summary judgment based on immunity by an officer or employee of the state or political subdivision of the state, the granting or denial of a plea to the jurisdiction by a governmental

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¹TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(b).

²*Id.*

³*Id.*

unit, and the denial of a motion to dismiss under the Texas Citizens Participation Act.⁴

The plain language of Section 51.014(b) seems to institute the automatic stay in the above four instances without exception.⁵ However, some courts of appeal have taken the stance that a court of appeals has no authority to lift the stay, while others have held the automatic stay may be lifted for a “limited purpose.”⁶

These two conflicting views converge in the *In re Geomet Recycling, LLC* case.⁷ The parties to the *In re Geomet Recycling* case include affiliated scrap metal recycling companies as the Real Parties in Interest (RPI) and Geomet Recycling, as well as other individuals, as the Relators.⁸ The trial court issued a temporary restraining order enjoining Geomet Recycling from using the RPI’s trade secrets and confidential information in Geomet’s business.⁹ Prior to a temporary injunction hearing, Geomet filed a motion to dismiss under the Texas Citizens Participation Act, which prevents the filing of meritless lawsuits intended to silence citizens who exercise their First Amendment right of free speech.¹⁰ The motion to dismiss was denied, and Geomet appealed the decision, which triggered the automatic stay under Section

⁴ *Id.*

⁵ *Id.*

⁶ Compare *In re Univ. of the Incarnate Word*, 469 S.W.3d 255, 259 (Tex. App.—San Antonio 2015, no pet.), and *In re Texas Educ. Agency*, 441 S.W.3d 747, 750 (Tex. App.—Austin 2014, no pet.), with *Bishop v. City of Austin*, 03-16-00580-CV, 2016 WL 5349384, at *1 (Tex. App.—Austin Sept. 20, 2016, no pet.) (not designated for publication).

⁷ Compare Brief of Relators at 24, *In re Geomet Recycling, LLC*, No. 18-0443, available at <http://www.search.txcourts.gov/Case.aspx?cn=18-0443&coa=cossup>, with Brief of Real Parties in Interest at 16, *In re Geomet Recycling, LLC*, No. 18-0443, available at <http://www.search.txcourts.gov/Case.aspx?cn=18-0443&coa=cossup>.

⁸ Brief of Relators, *supra* note 7, at 14. The RPI include: EMR (USA Holdings) Inc., EMR Gold Recycling LLC, Gold Metal Recyclers Management LLC, Gold Metal Recyclers Ltd., GMY Enterprises LLC, GMY Ltd., Gold Metal Recyclers – Gainesville LLC, Gold Metal Recyclers – Fort Worth LLC, Gold Metal Recyclers – Oklahoma LLC, and Goldberg Industries Inc. *Id.* at 2. The Relators include: Geomet Recycling LLC, Richard Goldberg, Kenneth Goldberg, Josh Applebaum, Alicia McKinney, Eloisa Medina, Lee Wakser, Spencer Lieman, Mikel Shecht, Laura Myers, Henry Jackson, and Kelly Couch. *Id.* In a mandamus proceeding, the real parties in interest are those parties whose interest would be directly affected. 10 William V. Dorsaneo III, *Texas Litigation Guide* § 152.03, LEXIS (database updated Jan. 2020). Relators, on the other hand, are the parties that are seeking relief through the mandamus action. *Id.*

⁹ *Id.*

¹⁰ *Id.*; Laura Lee Prather & Justice Jane Bland, *Bullies Beware: Safeguarding Constitutional Rights Through Anti-SLAPP in Texas*, 47 TEX. TECH L. REV. 725, 730–732 (2015).

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51.014(b).¹¹ The Fifth Court of Appeals subsequently ordered the stay lifted for the “limited purpose” of conducting a temporary injunction hearing and a contempt hearing in the trial court.¹²

The Texas Supreme Court, however, did not agree with the Fifth Court of Appeals and conditionally granted Geomet’s writ of mandamus.¹³ The writ was conditioned on the Fifth Court of Appeals refusing to vacate its lift-stay order.¹⁴ Therefore, the Texas Supreme Court has taken the stance that, other than waiver by both parties, a court of appeals may not lift the Section 51.014(b) stay for any reason.¹⁵

In its opinion, the Texas Supreme Court failed to find any reason to question the constitutionality of Section 51.014(b), as RPI argued.¹⁶ However, the Texas Supreme Court did not entirely dispose of the idea of potential constitutionality issues.¹⁷ The court opined, “[i]f EMR actually had no recourse for the preservation of its rights during an interlocutory appeal, we would need to address its argument that such an arrangement raises serious constitutional questions. But EMR does have recourse.”¹⁸ This statement by the court leaves the door open for the court to consider the constitutionality of Section 51.014(b) if a party has no recourse to prevent irreparable harm.¹⁹ The final portion of this Article proposes a potential situation in which the Texas Supreme Court would likely consider the constitutionality of Section 51.014(b).

Part I of this Article will address both the legislative history and relevant case law surrounding Section 51.014(b). Part II will review the facts, arguments, and the Texas Supreme Court’s opinion in *In re Geomet Recycling*. Part III will delve into the potential future implications that the court’s opinion may have on Section 51.014(b). Specifically, at some juncture in the future, the Texas Supreme Court will need to address Section 51.014(b) and the Texas Constitution’s separation-of-powers doctrine.

¹¹ Brief of Relators, *supra* note 7, at 16; TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(b).

¹² Brief of Relators, *supra* note 7, at 17.

¹³ *In re Geomet Recycling LLC*, 578 S.W.3d 82, 92 (Tex. 2019).

¹⁴ *Id.*

¹⁵ *Id.* at 86, 92 n.1.

¹⁶ *Id.* at 89.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

I. HISTORY

A. Legislative History

In 2003 the Texas Legislature added the language “stays all other proceedings in the trial court pending resolution of that appeal” to Section 51.014(b).²⁰ The change was made as part of the immense tort reform that occurred in 2003 by way of House Bill 4.²¹ Because of the enormity of House Bill 4, the changes to Section 51.014(b) did not have much commentary ink spilled over them compared to other changes in the bill, like the introduction of the noneconomic damage cap in healthcare liability claims.²² In fact, the Senate Research Center’s Bill Analysis stated that the changes to Section 51.014(b) were “non-substantive.”²³

The previous language of Section 51.014(b) read, “[a]n interlocutory appeal under Subsection (a) . . . shall have the effect of staying the commencement of a trial in the trial court pending resolution of the appeal.”²⁴ The Texas Legislature in three provisions changed the language from just “commencement of trial” to the more restrictive “all other proceedings.”²⁵ Additionally instructive, Black’s Law Dictionary defines trial as “[a] formal judicial examination of evidence and determination of legal claims in an adversary proceeding.”²⁶ On the other hand, Black’s Law Dictionary provides that the term “proceeding” means “[t]he regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment.”²⁷

While the legislature may not have intended to make a substantive change, the term “proceeding” is broader than the term “trial.” Further, the term “proceeding” has long been associated with actions commenced before trial.²⁸ Some actions, like depositions, could have potentially been conducted

²⁰ Act of June 2, 2003, 78th Leg., R.S., ch. 204, § 1.03, 2003 Tex. Gen. Laws 847, 849 (codified at TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(b)).

²¹ Tex. H.B. 4, 78th Leg., R.S. § 1.03 (2003); see also Michael S. Hull *et al.*, *House Bill 4 and Proposition 12: An Analysis with Legislative History, Part One*, 36 TEX. TECH L. REV. 1 (2005).

²² Senate Research Ctr., Bill Analysis, Tex. H.B. 4, 78th Leg., R.S. (2003).

²³ Senate Research Ctr., Bill Analysis, Tex. H.B. 4, 78th Leg., R.S. (2003).

²⁴ Tex. H.B. 978, 77th Leg., R.S. § 1 (2001).

²⁵ Compare *id.* with TEX. H.B. 4, 78th Leg., R.S. § 1.03 (2003).

²⁶ *Trial*, BLACK’S LAW DICTIONARY (11th ed. 2019).

²⁷ *Proceeding*, BLACK’S LAW DICTIONARY (11th ed. 2019).

²⁸ EDWIN E. BRYANT, THE LAW OF PLEADING UNDER THE CODES OF CIVIL PROCEDURE, 3 (1894).

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by the trial court under the prior language while the interlocutory appeal was pending.

Additionally, the specific section that activates the automatic stay in *In re Geomet Recycling* is Section 51.014(a)(12).²⁹ Subsection (a)(12) was added by the Texas Legislature in 2013, after the tort reform changes.³⁰ The provision was added to clarify that a party may take up a motion to dismiss under Section 27.003 of the Texas Civil Practice and Remedies Code, also known as the Texas Citizens Participation Act, on interlocutory appeal.³¹ The Second Court of Appeals in Fort Worth previously held that Section 27.003 did not allow for an interlocutory appeal.³² Therefore, the purpose of adding Subsection (a)(12) was to solidify that the legislature intended for the parties to have the ability to appeal a Section 27.003 decision.³³

Furthermore, the Texas Legislature added Subsection (a)(12) to Section 51.014(b) in the same legislative session.³⁴ Consequently, when an interlocutory appeal is taken under Section 51.014(a)(12) the automatic stay under Section 51.014(b) is activated.³⁵ The legislature did not provide much insight into why it was necessary to activate the stay in this situation.³⁶ The most likely reason is due to Section 27.003(c) of the Civil Practice and Remedies Code, which institutes a similar stay that suspends “all discovery.”³⁷ Given this language, the legislature may have assumed the automatic stay in Section 51.014(b) operated much like the stay in Section 27.003(c). However, it’s worth noting that the trial court may *sua sponte*, on a showing of good cause, lift the Section 27.003(c) stay of all discovery to allow specified and limited discovery.³⁸ Therefore, the two stays operate very differently when it comes to a court’s ability to lift the stay.

²⁹ TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(12).

³⁰ Act of May 24, 2013, 83rd Leg., R.S., ch. 1042, § 4, 2033 Tex. Gen. Laws 2499, 2500 (codified at TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(12)).

³¹ Senate Research Ctr., Bill Analysis, Tex. H.B. 2935, 83rd Leg., R.S. (2013).

³² *Id.*

³³ *Id.*

³⁴ Act of May 24, 2013, 83rd Leg., R.S., ch. 1042, § 4, 2033 Tex. Gen. Laws 2499, 2500 (codified at TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(b)).

³⁵ Senate Research Ctr., Bill Analysis, Tex. H.B. 2935, 83rd Leg., R.S. (2013).

³⁶ *See id.* (indicating a lack of discussion on the necessity for a stay under Subsection (a)(12)).

³⁷ TEX. CIV. PRAC. & REM. CODE ANN. § 27.003(c).

³⁸ *Id.*; TEX. CIV. PRAC. & REM. CODE ANN. § 27.006(b).

B. Case Law

As early as 2011, some Texas courts have lifted the automatic stay of Section 51.014(b).³⁹ In *Zumwalt v. City of San Antonio*, several parties filed an unopposed joint motion to lift the stay for the limited purpose of allowing the trial court to enter an agreed final judgment on a settlement and sever the settling parties.⁴⁰ The Third Court of Appeals in Austin granted this joint motion to lift the stay without much legal analysis.⁴¹

Shortly after *Zumwalt*, the Fifth Court of Appeals in Dallas lifted a Section 51.014(b) stay in *City of Dallas v. Brown*.⁴² The stay was lifted for the limited purpose of allowing the trial court to: (1) render an order on appellee's temporary restraining order; (2) hold a hearing and render an order on appellee's application for a temporary injunction; and (3) rule on the remainder of appellants' plea to the jurisdiction.⁴³ Several cases followed, until the First Court of Appeals in Houston noted that a Section 51.014(b) stay only prevented a trial court from taking action on its own.⁴⁴ However, an appellate court could lift the stay for a limited purpose.⁴⁵

At the same time, there were courts who expressed that the plain language of the statute allowed no discretion.⁴⁶ For example, the Fourth Court of Appeals in San Antonio followed the plain language approach in *In re University of the Incarnate Word*.⁴⁷ In that case, the trial court granted the plaintiff's motion to compel discovery responses while the Section 51.014(b) stay was active.⁴⁸ The Fourth Court of Appeals ultimately concluded that the

³⁹*Zumwalt v. City of San Antonio ex rel. San Antonio Water Sys. Bd. of Trustees*, 03-11-00301-CV, 2011 WL 6009357, at *1 (Tex. App.—Austin Nov. 29, 2011, no pet.) (not designated for publication).

⁴⁰*Id.*

⁴¹*Id.*

⁴²*City of Dallas v. Brown*, 373 S.W.3d 204, 207 (Tex. App.—Dallas 2012, pet. denied).

⁴³*Id.*

⁴⁴*City of Sealy v. Town Park Ctr.*, 01-17-00127-CV, 2017 WL 3634025, at *1 (Tex. App.—Houston [1st Dist.] Aug. 24, 2017, no pet.) (mem. op., not designated for publication).

⁴⁵*Id.* at *3 n.1.

⁴⁶*Sheinfeld, Maley & Kay, P.C. v. Bellush*, 61 S.W.3d 437, 439 (Tex. App.—San Antonio 2001, no pet.); *see also In re Univ. of the Incarnate Word*, 469 S.W.3d 255, 259 (Tex. App.—San Antonio 2015, no pet.).

⁴⁷469 S.W.3d at 259.

⁴⁸*Id.* at 257.

trial court abused its discretion and conditionally granted the writ of mandamus vacating the trial court's order compelling discovery.⁴⁹

Additionally, some courts of appeal have written seemingly contradictory opinions. The Third Court of Appeals in Austin, for example, lifted the Section 51.014(b) stay in *Bishop v. City of Austin*⁵⁰ and also stated that the Section 51.014(b) stay provides no discretion to lift the stay in *In re Texas Education Agency*.⁵¹ Another example is *In re I-10 Colony, Inc.*⁵² and *City of Sealy v. Town Park Center*,⁵³ both of which were decided by the First Court of Appeals in Houston, yet reached opposite conclusions. In *In re I-10 Colony, Inc.*, the First Court of Appeals remarked that Section 51.014(b) creates a bright-line rule staying all other proceedings in the trial court pending resolution of the interlocutory appeal.⁵⁴ A few years later, the same court commented in a footnote that the appellate court may lift the stay for a limited purpose in *City of Sealy v. Town Park Center*.⁵⁵

Furthermore, the RPI rely on Texas Rule of Appellate Procedure 29.3, which allows the appellate court to issue any temporary orders to preserve parties' rights.⁵⁶ However, Texas courts have uniformly dealt with conflicts between judicial rules and legislative statutes since at least 1913.⁵⁷ As early as 1913, the Texas Supreme Court recognized that judicial rules may not set aside statutes.⁵⁸ The Third Court of Appeals in Austin also recently expressed that Rule 29.3 provides no authority to lift the Section 51.014(b) stay.⁵⁹ This uniformity is due in large part to the Texas Legislature consistently stating,

⁴⁹ *Id.* at 259.

⁵⁰ No. 03-16-00580-CV, 2016 WL 5349384, at *1 (Tex. App.—Austin Sept. 20, 2016, no pet.) (not designated for publication).

⁵¹ 441 S.W.3d 747, 750 (Tex. App.—Austin 2014, no pet.).

⁵² *In re I-10 Colony, Inc.*, No. 01-14-00775-CV, 2014 WL 7914874, at *2 (Tex. App.—Houston [1st Dist.] Feb. 24, 2014, no pet.) (mem. op., not designated for publication).

⁵³ *City of Sealey v. Town Park Ctr.*, No. 01-17-00127-CV, 2017 WL 3634025, at *1 (Tex. App.—Houston [1st Dist.] Aug. 24, 2017, no pet.) (mem. op., not designated for publication).

⁵⁴ 2014 WL 7914874 at *2.

⁵⁵ 2017 WL 3634025, at *3 n.1.

⁵⁶ TEX. R. APP. P. 29.3; Brief of Real Parties in Interest, *supra* note 7, at 10.

⁵⁷ *Missouri, K. & T. Ry. Co. v. Beasley*, 155 S.W. 183, 187 (Tex. 1913).

⁵⁸ *Id.*

⁵⁹ *Superior HealthPlan, Inc. v. Badawo*, 03-18-00691-CV, 2018 WL 6729849, at *1 (Tex. App.—Austin Dec. 21, 2018, no pet.) (not designated for publication); *Brewster v. Auto Title Serv.*, 03-17-00397-CV, 2017 WL 2858936, at *1 (Tex. App.—Austin June 28, 2017), *appeal decided*, 03-17-00397-CV, 2018 WL 6694918 (Tex. App.—Austin Dec. 20, 2018, no pet.) (not designated for publication).

since 1891, that the Texas Supreme Court can make rules “not inconsistent with the laws of the state.”⁶⁰ Currently, Article V § 31 of the Texas Constitution provides that, “[t]he Supreme Court shall promulgate rules of civil procedure for all courts *not inconsistent with the laws of the state* . . .”⁶¹ It appears quite clear that statutes trump rules of appellate procedure. Therefore, Rule 29.3 does not provide a ground to lift the Section 51.014(b) stay.

II. *IN RE GEOMET RECYCLING, LLC*

A. *Facts*

In this case, the RPI are an affiliation of scrap metal recycling companies named EMR, Inc.⁶² In 2011, the RPI decided to purchase the Relators’ scrap metal recycling business for one hundred million dollars.⁶³ Then in 2017, the Relators decided to form a new scrap metal recycling business, Geomet Recycling, LLC.⁶⁴ Several of EMR’s employees left to join Geomet Recycling.⁶⁵ Geomet subsequently filed suit alleging that the defecting employees were exploiting EMR’s confidential information.⁶⁶

Among other claims, the RPI sought injunctive relief.⁶⁷ On October 18, 2017, the trial court issued a temporary restraining order, which prevented Geomet Recycling from using EMR’s confidential information.⁶⁸ On October 31, 2017, the parties and trial court agreed to extend the Temporary Restraining Order to December 14, 2017.⁶⁹ The next day, November 1, 2017, Geomet filed a motion to dismiss under the Texas Citizens Participation Act.⁷⁰ Meanwhile, the RPI alleged that Geomet was violating the Temporary

⁶⁰TEX. CONST. ART. V, § 25 (repealed 1985). The 1895 version of the constitution is available at <https://www.sll.texas.gov/library-resources/collections/historical-texas-statutes/#1895> (noting that Section 25 was adopted September 22, 1891).

⁶¹TEX. CONST. ART. V, § 31(b) (emphasis added).

⁶²Brief of Relators, *supra* note 7, at 14.

⁶³Brief of Real Parties in Interest, *supra* note 7, at 3.

⁶⁴*Id.*

⁶⁵*Id.*

⁶⁶*Id.* at 4.

⁶⁷*Id.*

⁶⁸*Id.*

⁶⁹*Id.* at 4–5; TEX. R. CIV. P. 680.

⁷⁰Brief of Real Parties in Interest, *supra* note 7, at 5.

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Restraining Order.⁷¹ A contempt hearing and temporary injunction hearing were scheduled for March 22, 2018.⁷²

On February 2, 2018, the trial court held a hearing on Geomet's Motion to Dismiss.⁷³ The trial court denied the Motion to Dismiss in an order handed down on March 2, 2018.⁷⁴ Subsequently, Geomet took an interlocutory appeal of the motion which automatically stayed all trial court proceedings pursuant to Sections 51.014(a)(12) and (b) of the Texas Civil Practice and Remedies Code.⁷⁵ All the while, the Temporary Restraining Order remained in place through the consent of all parties.⁷⁶

On March 22, 2018, the RPI filed a motion to lift-stay in the Fifth Court of Appeals.⁷⁷ The RPI asked the Court of Appeals to lift the stay so that the trial court may hold the contempt and temporary injunction hearings as scheduled.⁷⁸ The Fifth Court of Appeals subsequently issued an order granting the RPI's Motion to Lift Stay for the limited purpose of allowing the trial court to conduct the hearings.⁷⁹ Pursuant to Rule 52.10 of the Texas Rules of Appellate Procedure, Geomet filed a petition for writ of mandamus to contest the Court of Appeals' lift-stay order.⁸⁰ Then on June 7, 2018, the Supreme Court of Texas stayed the Fifth Court of Appeals' order to lift the stay.⁸¹

B. Arguments of the Parties

The basis of Geomet's argument takes a plain language approach to the interpretation of Section 51.014(b).⁸² Specifically, Geomet argues three points: (1) Section 51.014(b) does not provide Texas appellate courts with discretion to lift the automatic stay; (2) subsequently, the Fifth Court of Appeals had no discretion to lift the automatic stay and allow the trial court

⁷¹ *Id.*

⁷² *Id.* at 5–6.

⁷³ *Id.* at 6.

⁷⁴ *Id.*

⁷⁵ *Id.*; Brief of Relators, *supra* note 7, at 16; TEX. CIV. PRAC. & REM. CODE § 51.014(a)(12), (b).

⁷⁶ Brief of Real Parties in Interest, *supra* note 7, at 5.

⁷⁷ *Id.* at 6.

⁷⁸ *Id.*

⁷⁹ Brief of Relators, *supra* note 7, at 17.

⁸⁰ *Id.*

⁸¹ Brief of Real Parties in Interest, *supra* note 7, at 7.

⁸² See Brief of Relators, *supra* note 7, at 21.

to conduct hearings; and (3) if the Fifth Court of Appeals did have discretion, it improperly exercised it.⁸³

Geomet points to the absence of language in Section 51.014 authorizing courts of appeal to lift the automatic stay in Section 51.014(b).⁸⁴ However, Geomet concedes that the parties may agree to waive the automatic stay.⁸⁵ Geomet also argues that cases that have lifted the automatic stay of Section 51.014(b) have done so in support of appellate proceedings.⁸⁶ A district court signing confidentiality orders to supplement the appellate record and conducting a hearing on a settlement are examples that Geomet uses to help draw this distinction.⁸⁷ Geomet contends that the Fifth Court of Appeals in this case was not supporting the appellate proceedings and therefore impermissibly lifted the automatic stay.⁸⁸

Further, Geomet asserts that there is no statutory language whatsoever granting the courts of appeal power to lift a Section 51.014(b) stay.⁸⁹ According to Geomet, no court of appeals allowing trial court action to take place during a Section 51.014(b) stay has done so with reference to statutory language.⁹⁰ Additionally Geomet warns of the dangers of allowing a court of appeals to lift a statutory stay for a vaguely defined “limited purpose.”⁹¹

Conversely, the RPI’s argument centers around the inherent powers of the judicial branch and separation-of-powers principles.⁹² The RPI argue two points: (1) Rule 29.3 of the Texas Rules of Appellate Procedure allows the appellate court to lift the Section 51.014(b) stay; and (2) if Section 51.014(b) is construed to categorically withhold inherent judicial powers, then Section 51.014(b) violates the Texas Constitution’s separation-of-powers doctrine.⁹³

First, the RPI rely heavily on Rule 29.3 which states “[w]hen an appeal from an interlocutory order is perfected, the appellate court may make *any* temporary orders necessary to preserve the parties’ rights until disposition of

⁸³ See generally *id.* at 20–32.

⁸⁴ *Id.* at 21.

⁸⁵ *Id.* at 22.

⁸⁶ *Id.* at 21–22.

⁸⁷ *Id.*

⁸⁸ *Id.* at 23.

⁸⁹ *Id.* at 25.

⁹⁰ *Id.*

⁹¹ *Id.* at 28.

⁹² Brief of Real Parties in Interest, *supra* note 7, at 7–8.

⁹³ See generally *id.* at 9–14, 16–23.

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the appeal.”⁹⁴ The RPI contend that when the Fifth Court of Appeals lifted the automatic stay, it did so to preserve the parties’ rights.⁹⁵ This also comports with a court’s inherent power to preserve the status quo.⁹⁶ Additionally, the RPI seize on Geomet’s attempted distinction and state that the stay was lifted in support of the appellate court proceedings.⁹⁷ Therefore, this lift-stay order falls in line with appellate court precedent.⁹⁸

Second, the RPI argue that if Section 51.014(b) is interpreted to categorically withhold inherent judicial power, then it violates the Texas Constitution.⁹⁹ The RPI focus on two of the courts’ inherent powers: the power to preserve the status quo and the power to punish by contempt.¹⁰⁰ These inherent powers extend from the Texas Constitution’s separation-of-powers doctrine.¹⁰¹ The Texas Legislature may regulate these inherent powers.¹⁰² However, the legislature may not destroy them without seizing the inherent powers, thus violating the separation-of-powers doctrine.¹⁰³

C. Texas Supreme Court’s Opinion

The Texas Supreme Court’s unanimous opinion in *In re Geomet Recycling* very closely follows the amicus curiae brief filed by the Texas Attorney General.¹⁰⁴ While ultimately granting the writ of mandamus, the Texas Supreme Court did not attempt to find a distinction between lifting the stay in aid of appellate or trial court proceedings.¹⁰⁵ Rather, the Texas Supreme Court held that all trial court proceedings are stayed under Section 51.014(b).¹⁰⁶ Specifically, the court explained, “[t]he statute stays ‘all other

⁹⁴ TEX. R. APP. P. 29.3 (emphasis added).

⁹⁵ Brief of Real Parties in Interest, *supra* note 7, at 10.

⁹⁶ *Id.*

⁹⁷ *Id.* at 11.

⁹⁸ *Id.* at 13.

⁹⁹ *Id.* at 16.

¹⁰⁰ *Id.* at 17.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 20.

¹⁰⁴ Compare *In re Geomet Recycling, LLC*, 578 S.W.3d 82 (Tex. 2019), with Brief for the State of Texas as Amicus Curiae, *In re Geomet Recycling, LLC*, No. 18-0443, available at <http://www.search.txcourts.gov/Case.aspx?cn=18-0443&coa=cossup>.

¹⁰⁵ See *Geomet*, 578 S.W.3d at 91.

¹⁰⁶ *Id.* at 87.

proceedings in the trial court,’ not ‘some’ or ‘most’ such proceedings.”¹⁰⁷ Furthermore, the supreme court agreed with the Texas Attorney General’s argument that prior cases that purported to lift the stay for a limited purpose were really both parties agreeing to waive the stay.¹⁰⁸

The court began its analysis with examining the statutory text of Section 51.014.¹⁰⁹ The statute itself, the court noted, contains no exceptions to the automatic stay.¹¹⁰ Without express legislative direction, the Texas Supreme Court chose to follow the principle that the courts have “no right to engraft upon the statute . . . provisions not placed there by the legislature.”¹¹¹ Therefore, the court held that Section 51.014(b) creates a “clear and definite rule” without exception.¹¹²

Subsequently, the Texas Supreme Court looked for an exception to Section 51.014(b) outside the language of the statute.¹¹³ The RPI directed the court to Rule 29.3 and its purported grant of authority to appellate courts, the ability to issue any temporary order to preserve parties’ rights.¹¹⁴ However, the Texas Supreme Court decided to follow the line of cases dating back to 1913 and reaffirmed that Rule 29.3 grants authority to issue orders that are consistent with the law.¹¹⁵

The RPI further directed the court to Rule 29.4 which provides, “while an appeal from an interlocutory order is pending, only the appellate court . . . may enforce the order. But the appellate court may refer any enforcement proceeding to the trial court.”¹¹⁶ The Texas Supreme Court quickly determined that Rule 29.4 is inapplicable to this situation due to the RPI wishing to enforce a TRO order that is not on appeal.¹¹⁷ Additionally, the court noted that, even if Rule 29.4 was applicable to this case, it would also have to operate consistently with the law.¹¹⁸

¹⁰⁷ *Id.* (emphasis added).

¹⁰⁸ *Id.* at 87 n.1; Brief for the State of Texas as Amicus Curiae at 8, *In re Geomet Recycling, LLC*, No. 18-0443.

¹⁰⁹ See *Geomet*, 578 S.W.3d at 86.

¹¹⁰ *Id.* at 87.

¹¹¹ *Id.* (citing *Iloff v. Iloff*, 339 S.W.3d 74, 80–81 (Tex. 2011)).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 88.

¹¹⁶ *Id.*; TEX. R. APP. P. 29.4.

¹¹⁷ *Geomet*, 578 S.W.3d at 88.

¹¹⁸ *Id.*

Finally, the court briefly addressed the RPI's constitutional attacks on Section 51.014(b).¹¹⁹ The Texas Supreme Court acknowledged that courts have inherent powers such as the criminal contempt power.¹²⁰ However, the Texas Legislature has some limited authority to curb courts' criminal contempt power.¹²¹

The court ultimately sidestepped the constitutional issue by stating "if [the RPI] actually had no recourse for the preservation of its rights during an interlocutory appeal, we would need to address its argument that such an arrangement raises serious constitutional questions."¹²² The court further reasoned that the RPI had recourse through the flexible Rule 29.3, which broadly empowers courts of appeal to preserve parties rights.¹²³ Ultimately, the Texas Supreme Court held that the Fifth Court of Appeals exceeded its authority by lifting the Section 51.014 stay.¹²⁴

III. FUTURE IMPLICATIONS

The *In re Geomet Recycling* case will likely have two major impacts. First, the Texas Supreme Court resolved a split among the courts of appeal. Second, this opinion could be the beginning of the end for the constitutionality of Section 51.014(b) as written.

Beginning with the court split, as mentioned above, several courts of appeal previously held that the Section 51.014(b) stay only prevented the trial court from taking action on its own.¹²⁵ Additionally, these courts of appeal thought that they had the power to lift the stay and order proceedings in the trial court for a "limited purpose."¹²⁶ The Texas Supreme Court, however, in *In re Geomet Recycling* clearly stated that courts of appeal have no known basis to lift the stay for a limited purpose.¹²⁷ The one exception to this absolute and automatic stay is the ability of both parties to agree to waive the

¹¹⁹ *Id.* at 89.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *City of Sealy v. Town Park Ctr.*, No. 01-17-00127-CV, 2017 WL 3634025, at *1 (Tex. App.—Houston [1st Dist.] Aug. 24, 2017, no pet.) (mem. op., not designated for publication).

¹²⁶ *Id.* at *1 n.1.

¹²⁷ 578 S.W.3d at 87.

stay, which in effect lifts the stay.¹²⁸ Therefore, the court definitively resolved the split among the courts of appeal.

Furthermore, the court's language at the end of the opinion may lend support to a future Texas Supreme Court that finds Section 51.014(b) unconstitutional. The specific language in *In re Geomet Recycling* provides "if [the RPI] actually had no recourse for the preservation of its rights during an interlocutory appeal, we would need to address its argument that such an arrangement raises serious constitutional questions."¹²⁹ There may come a situation in which the court would likely have to address the constitutionality of Section 51.014(b) and may find that the section violates the Texas Constitution.

A situation in which the Texas Supreme Court may have to address the constitutionality would arise in a situation where a key witness that is facing a terminal illness may be unavailable to testify by the time the interlocutory appeal is resolved. The interlocutory appeal in *In re Geomet Recycling* was filed by Geomet in March 2018 and wasn't fully resolved until June 2019.¹³⁰ In a year and three months a terminally ill witness's condition could change substantially. In a situation such as this, the affected party likely would not have recourse through the appellate court because of the automatic stay. Therefore, the automatic stay in Section 51.014(b) would intrude on the court's inherent judicial power to preserve parties' rights, thus infringing on the separation-of-powers doctrine.

IV. CONCLUSION

Ultimately, before the *In re Geomet Recycling* case, there were two lines of thought about the application of Section 51.014(b). The court, in *In re Geomet Recycling*, definitively held that the Section 51.014(b) stay is not subject to lift-stay orders by the appellate court for a "limited purpose."¹³¹ However, the most interesting paragraph of the opinion might be the one in which the court stated "[i]f EMR actually had no recourse for the preservation of its rights . . . we would need to address its . . . constitutional questions."¹³² As this Article demonstrates, there is at least one situation in which one of

¹²⁸ *Id.* at 87 n.1.

¹²⁹ *Id.* at 89.

¹³⁰ Brief of Real Parties in Interest, *supra* note 7, at 6.

¹³¹ 578 S.W.3d at 88.

¹³² *Id.* at 89.

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the parties would have no recourse for the preservation of its rights.¹³³ If this scenario presents itself, the Texas Supreme Court, by its own words, would need to address whether the Section 51.014(b) stay violates the Texas Constitution. This Article concludes that it does.

¹³³ See *supra* Part III.