

- I. Definition of declaratory judgment
 - a. Black's "A binding adjudication that establishes the rights and other legal relations of the parties without providing for or ordering enforcement.
 - b. Under the Texas Civil Practice and Remedy Code declaratory judgments are remedial in nature having the purpose of settling and affording relief from uncertainty and insecurity with respect to rights, status and other legal relations.
- II. Preclusion doctrine
 - a. Definition "A declaratory judgment action is not appropriate where plaintiff's cause of action is mature and enforceable in a pending suit that involves the same parties and the same issues as alleged in the declaratory judgment" *Tuckerv. Graham*, 878sw2d 681, 683. (Tex.App.-Eastland 1994, no writ).
 - b. Same issues standard
 - i. *Winslow v. Acker*, 781 sw2d 322, 328
 - 1. "...When a declaratory judgment counterclaim has greater ramifications than the original suit, the court may allow the counterclaim."
 - 2. In *Winslow* the court stated that the declaratory judgment did have greater ramifications than the original suit. The original suit was for recovery of alleged proportion of royalties. The declaratory judgment counterclaim sought a final determination as to the rights of the parties in their ongoing relationship. Because the declaratory judgment sought the resolution of a matter beyond the scope of the original, pending suit, it was a proper use of the declaratory judgment act.
 - ii. *Monterey Networks, Inc. v. Alcatel USA, Inc* 2002 WL 461550 Not designated for publication.
 - 1. Distinguishes *BHP* by showing that the parties in *BHP* had an ongoing relationship that was effected by the declaratory judgment counterclaim, beyond what would have occurred in the pending suit. *Monterey* has no such ongoing relationship, in fact the plaintiff and defendant in *Monterey* were business competitors. Citing to a number of other courts, the court in *Monterey* concluded that "In the absence of an ongoing relationship, courts have rejected the type of argument Monterey makes."
- III. Cases that apply the Preclusion doctrine
 - a. Prior cases
 - i. *Texas A&M University System v. Luxemburg*, 93 sw3d 410, Court of Appeals, Houston (14th. Dist.). 2002
 - ii. *Koch Oil Company v. Wilbur* 895 sw2d 854, Court of Appeals, Beaumont 1995
 - iii. *Tucker v. Graham* 878 sw2d 681 Court of Appeals, Eastland 1994

- iv. Boatman v. Lites 970 sw2d 41, Court of Appeals, Tyler 1998
- v. Milner v. City of Leander, 64 sw3d 33, Court of Appeals, Austin 2000
- vi. John Chezik Buick Company v. Friendly Chevrolet Co., 749 sw2d 591, Court of Appeals, Dallas 1988
- vii. Redwine v. AAA Life Insurance Co., 852 sw2d 10, Court of Appeals, Dallas. 1993

b. This case

- i. Statement of facts in this case
- ii. How court should apply the doctrine to conform with the previous cases.

IV. Conclusion

- a. The other courts of appeals have already considered this matter and decided that Dec. judge doesn't work.
- b. This case is very similar to the cases heard by the other courts of appeals.
- c. The decision as it stands now will place this court at odds with the other courts of appeals.