SUMMARY JUDGMENTS IN TEXAS:
STATE AND FEDERAL PRACTICE*

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INTRODUCTION

This Article addresses the confluence of procedural changes that have shaped summary judgment practice. These changes are built upon a framework set out in the federal summary judgment trilogy—Celotex, Matsushita, and Liberty Lobby—and the application of the Texas “no-evidence” summary judgment rule. Also at play are the gatekeeping functions expressed in the U.S. Supreme Court opinion in Daubert v. Merrell Dow Pharmaceuticals, Inc. and the Texas Supreme Court opinion in E.I. du Pont de Nemours & Co. v. Robinson and their impact upon expert testimony as a component of summary judgment practice. Most recently, the advent of a “reasonable juror” standard for evaluating the sufficiency of the evidence plays a role in the changing framework upon which summary judgment practice has been built. Upon these pillars, this Article examines the procedural and substantive aspects of obtaining, opposing, and appealing a summary judgment, reviews the types of cases amenable to summary judgment, and, finally, provides an overview of federal summary judgment practice.

Texas Rule of Civil Procedure 166a, which governs summary judgment practice, permits a party to obtain a prompt

4. Tex. R. Civ. P. 166a(i).
8. Prior to the January 1, 1988, amendments to the Texas Rules of Civil Procedure, this Rule was designated 166-A rather than 166a. Tex. R. Civ. P. 166a historical note; TIMOTHY PATTON, SUMMARY JUDGMENTS IN TEXAS § 1.01 (3d ed. 2008).
9. See generally DAVID HITTNER ET AL., FEDERAL CIVIL PROCEDURE BEFORE TRIAL: 5TH CIRCUIT EDITION ch. 14 (The Rutter Group eds., 2009) (discussing federal summary judgment practice); PATTON, supra note 8, at 1-1 to -2 (discussing summary judgment