



After Berk v. Choy: What the Supreme Court's Ruling means for Texas Certificate of Merit Requirements Against Design Professionals in the Context of Federal Litigation

The U.S. Supreme Court's January 20, 2026 decision in *Berk v. Choy* held that a state law requiring an affidavit of merit to accompany a complaint does not apply in federal court when it conflicts with the federal rules of civil procedure. The opinion, which addressed Delaware's medical-malpractice affidavit statute, has immediate implications for analogous certificate-of-merit regimes, including Texas's requirement for claims against architects, engineers, and other design professionals.

To expand, the *Berk* Court squarely held that Delaware's statute mandating an affidavit of merit to accompany a medical-malpractice complaint cannot be enforced in federal court. The *Berk* Court reasoned that the Federal Rules of Civil Procedure, in essence, answer the same questions the Delaware statute at issue purports to answer, and therefore the Federal Rules of Civil Procedure are preemptive. Specifically, the Court states that Federal Rule of Civil Procedure 8 specifies what a complaint must contain at the outset of litigation and that Federal Rule of Civil Procedure 12 provides the exclusive merits-based grounds for dismissal at the pleading stage, prohibiting consideration of matters outside of the pleadings. In other words, *Berk* concludes that a state-law demand for an expert affidavit as a condition to initiating litigation conflicts with this procedural framework.

Berk goes even further to reject the argument that the Federal Rules leave space for state affidavit requirements, declining to recharacterize the Delaware statute as an early evidentiary step, and that Federal Rule of Civil Procedure 56 already provide the exclusive mechanism for testing proof in federal litigation. And to fully close the loop, *Berk* also rejected the argument that a state law affidavit-of-merit requirement fell under Federal Rule of Civil Procedure 11's language on verified pleadings.

The very clear and sweeping opinion of the U.S. Supreme Court, will likely have the same preemptive impact on Texas Civil Practice and Remedies Code §150.002 which requires claimants bringing an action against a design professional to present, at the time of filing suit, a certificate-of-merit addressing the professional-standards the claimant alleges the design professional breached.

Berk creates a new potential exposure for design-professionals where established state law protections to liability have previously applied. While providing additional protection

for design-professionals, §150.002 has certainly created a tedious, and in some circumstances, material hurdle to recovery of damages stemming from defective design.

The overall impact and definite effect of *Berk* on the applicability of §150.002's certificate-of-merit requirements in federal litigation remains to be seen. However in the near future, it is likely to see design-defect claimants favor the federal forum over Texas state courts where diversity jurisdiction exists.

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