
EMPLOYMENT - GEORGIA

Kautz v. Powell

Supreme Court of Georgia - June 15, 2015 - S.E.2d - 2015 WL 3658804

Mayor brought declaratory judgment action, seeking a declaration that she had sole authority to terminate the employment of the city attorney. The Superior Court entered judgment finding that authority to terminate city attorney was vested in the city council. Mayor appealed. The Court of Appeals affirmed. Mayor petitioned for a writ of certiorari.

The Supreme Court of Georgia held that mayor retained the power to remove city attorney after appointing him or her for an otherwise indefinite period of time.

Mayor retained the power to remove city attorney after appointing him or her for an otherwise indefinite period of time, regardless of city charter provision that vested city council with all powers of government of city. While city charter provided city council with powers not expressly granted to mayor, it was not specific enough to counter the universally accepted rule that is provided by law giving mayor the power to remove city attorney as incident to her power to appoint.

GOVERNANCE - GEORGIA

Lue v. Eady

Supreme Court of Georgia - June 15, 2015 - S.E.2d - 2015 WL 3655127

City council members and other citizens filed complaint against city mayor in her official capacity, seeking her removal from office for violations of the Open Meetings Act and other alleged wrongdoing. Following entry of temporary restraining order removing mayor from office, the Superior Court denied recusal motion and motions to dismiss, and entered interlocutory injunction order reinstating mayor with conditions. Mayor appealed.

The Supreme Court of Georgia held that:

- Trial judge was not disqualified from presiding over action;
- Meeting of three city council members plus mayor was not subject to Open Meetings Act;
- City council members and citizens were not entitled to interlocutory injunction requiring compliance with Open
- Meetings Act for meetings not involving quorum of city council members;
- Interlocutory injunction order regarding right of mayor to vote was consistent with charter;
- City council members and citizens failed to demonstrate need for interlocutory injunction preventing termination of city employees;
- City council members and citizens were not entitled to civil penalties against mayor in her official capacity for violation of Act; and
- City council members and citizens were not entitled to injunctive relief to nullify city council

decisions.

MUNICIPAL ORDINANCE - GEORGIA

Oasis Goodtime Emporium I, Inc. v. City of Doraville

Supreme Court of Georgia - June 15, 2015 - S.E.2d - 2015 WL 3658847

Strip club brought action against city, its mayor, city council, and city clerk, challenging city's sexually oriented businesses ordinances. The trial court entered judgment on the pleadings in favor of city. Strip club appealed.

The Supreme Court of Georgia held that:

- Club lacked standing to challenge validity of notice to city of bill to amend city charter;
- Ordinances were content-neutral, and, thus, subject to intermediate judicial scrutiny;
- Ordinances furthered the important government interest of preventing negative secondary effects of such businesses;
- Ordinances passed intermediate judicial scrutiny;
- Provision of ordinances prohibiting full nudity struck a constitutionally permissible fit between reducing undesirable secondary effects and protecting free speech; and
- Strip club lacked standing to challenge provision that prohibited the sale of alcohol in establishments that featured nudity.

ANNEXATION - INDIANA

Town of Zionsville v. Town of Whitestown

Court of Appeals of Indiana - June 2, 2015 - N.E.3d - 2015 WL 3478326

First town filed suit against second town, challenging validity of reorganization plan with township and seeking a declaratory judgment invalidating the plan. Second town counterclaimed, contending that first town lacked authority to pursue its annexation plans for portions of the township. Towns cross-moved for summary judgment. The Superior Court granted summary judgment for first town. Second town appealed.

The Court of Appeals held that:

- Second town's appeal was not moot; as matters of first impression,
- Second town was authorized under Government Modernization Act to exercise powers of a township when it adopted its plan;
- Adjacency requirement of the Act was met; and
- Reorganization plan was first in time over annexation efforts.

ZONING - NEW HAMPSHIRE

Forster v. Town of Henniker

Supreme Court of New Hampshire - June 12, 2015 - A.3d - 2015 WL 3638597

Christmas tree farm owner appealed town zoning board of adjustment determination that weddings

were not an accessory use of his farm and not permitted in zoning district. The Superior Court affirmed, and farm owner appealed.

The Supreme Court held that:

- Statutory definition of "agriculture" did not include "agritourism," and thus did not permit farm to host weddings;
- Statutory definition of "agritourism" did not impliedly preempt town ordinance which prohibited farm owner from hosting weddings on his property; and
- Use of Christmas tree farm to host weddings and wedding receptions was not permitted as an "accessory use" of the farm.

ZONING - NEW JERSEY

Grabowsky v. Township of Montclair

Supreme Court of New Jersey - June 15, 2015 - A.3d - 2015 WL 3649579

Property owner filed complaint in lieu of prerogative writs against township and township officials, challenging township zoning ordinance permitting construction of assisted living facility, and alleging that the township mayor and a councilmember had conflicts of interest preventing them from voting on the ordinance. The Superior Court granted summary disposition in favor of defendants, and owner appealed. The Superior Court, Appellate Division, affirmed. Owner petitioned for certification.

The Supreme Court of New Jersey held that:

- Alleged comment of mayor that he might seek to admit his mother in facility did not give rise to disqualifying personal interest, but
- Mayor and councilmember had disqualifying personal interests to the extent they held leadership positions in church adjacent to proposed facility.

EMINENT DOMAIN - NORTH CAROLINA

Town of Midland v. Wayne

Supreme Court of North Carolina - June 11, 2015 - S.E.2d - 2015 WL 3747169

Town brought two actions to condemn portions of two adjacent tracts of land owned by defendant landowner and a limited liability company (LLC) for purposes of an easement in which to construct a natural gas pipeline and a fiber optic line, and landowner counterclaimed for inverse condemnation. The Superior Court concluded that an inverse condemnation had occurred outside the easement, and that no unity of ownership existed between landowner's tract and the other tract. Town appealed, and landowner cross-appealed.

The Supreme Court of North Carolina held that:

- Town's condemnation action interfered with landowner's vested right to develop future phases of subdivision under development plan, and
- Adjacent tracts could be treated as a "unified tract."

Trial court's findings of fact sufficiently supported its conclusion that town's condemnation action

interfered with landowner's vested right to develop future phases of subdivision under residential development plan previously approved by zoning commission. Landowner in good faith reliance had made substantial expenditures of money, time, and labor based on the development plan, thus supporting his common law vested right to develop the subdivision in accordance with the plan.

ZONING - OHIO

Apple Group, Ltd. v. Granger Twp. Bd. of Zoning Appeals

Supreme Court of Ohio - June 17, 2015 - N.E.3d - 2015 -Ohio- 2343

Developer appealed denial by township's board for zoning appeals of its application for 176 variances. The Court of Common Pleas affirmed. Developer appealed. The Court of Appeals affirmed. Developer sought review.

The Supreme Court of Ohio held that:

- A township's comprehensive plan may be included within its zoning resolution and need not be a separate and distinct document, and
- Township's zoning regulation was intended to be a comprehensive plan.

A township's comprehensive plan may be included within its zoning resolution and need not be a separate and distinct document. Statute requires that zoning regulations be adopted pursuant to a plan that is comprehensive, or all-encompassing, in the sense that the plan addresses the specific goals and objectives for the entire township.

Township's zoning regulation was intended to be a comprehensive plan under statute that allowed township to regulate land use in accordance with a comprehensive plan, where its zoning resolution was an exhaustive document, which consisted of more than 100 pages and incorporated an attached zoning districts map, and the resolution's stated purpose was to promote and protect the health, safety, morals, and welfare of the residents of the unincorporated area of the township, conserve and protect property and property values, provide for the maintenance of its rural character, and to manage orderly growth and development.

INVERSE CONDEMNATION - TEXAS

Harris County Flood Control District v. Kerr

Supreme Court of Texas - June 12, 2015 - S.W.3d - 2015 WL 3641517

Landowners and former landowners whose properties were damaged by flooding brought action against flood control district and county for inverse condemnation and nuisance. The County Court at Law denied district and county's plea to the jurisdiction. District and county appealed.

The Supreme Court of Texas held that:

- Fact issue existed as to intent element of landowners' inverse condemnation claims;
- Fact issue existed as to causation element of landowners' inverse condemnation claims; and
- Fact issue existed as to "public use" element of landowners' inverse condemnation claims.

Genuine issue of material fact existed as to whether flood control district and county were

substantially certain their alleged actions in approving development of homes without appropriately mitigating the development would cause flood damage to homes in the flood plain, thus precluding summary judgment for district and county as to the intent element of landowners' inverse condemnation claims.

Genuine issue of material fact existed as to whether flood control district's and county's alleged actions in approving development of homes without appropriately mitigating the development resulted in flood damage to homes in flood plain, thus precluding summary judgment for district and county as to the causation element of landowners' inverse condemnation claims.

Genuine issue of material fact existed as to whether flood control district and county acted for a public use in allegedly approving new development and drainage plans causing flood damage to homes in flood plain, thus precluding summary judgment for district and county as to the "public use" element of landowners' inverse condemnation claims.

BALLOT INITIATIVE - TEXAS

Dacus v. Parker

Supreme Court of Texas - June 12, 2015 - S.W.3d - 2015 WL 3653295

Voters filed election contest against City, seeking declaration that a drainage systems and streets funding measure was invalid due to use of a misleading proposition on the ballot. The District Court entered summary judgment in favor of City. The Houston Court of Appeals affirmed. Voters' petition for review was granted.

The Supreme Court of Texas held that:

- Supreme Court had jurisdiction to review decision of Court of Appeals with respect to election contest in order to resolve conflict among courts of appeal, and
- Ballot proposition's failure to mention drainage charges to be imposed on most real property owners rendered funding measure invalid.

Failure of ballot proposition for a proposed city charter amendment to mention drainage charges to be imposed on most real property owners across the city rendered drainage systems and streets funding measure invalid. By omitting the drainage charges, the proposition failed to substantially submit the measure with such definiteness and certainty that voters would not be misled.

MUNICIPAL ORDINANCE - CALIFORNIA

People v. Campuzano

Appellate Division, Superior Court, San Diego County - June 5, 2015 - Cal.Rptr.3d - 2015 WL 3529738

Defendant stopped for riding on a bicycle in a business district filed motion to suppress, claiming he did not violate city ordinance. The Superior Court denied the motion, and defendant appealed. The Appellate Division of the Superior Court reversed and remanded. The Court of Appeal remanded the matter with directions to vacate.

The Appellate Division of the Superior Court held that:

- City ordinance prohibiting operating a bicycle on a “sidewalk fronting” a business does not apply to the entire block, but
- Police officers’ misinterpretation of ordinance provided them with probable cause to arrest defendant under Fourth Amendment.

City ordinance defining the offense of operating “a bicycle upon any sidewalk fronting any commercial business establishment” prohibits only bicycle operation on that portion of the sidewalk fronting commercial business establishments or places that are open for the trading of commodities or services.

PENSIONS - CONNECTICUT

Kiewlen v. City of Meriden

Supreme Court of Connecticut - June 9, 2015 - A.3d - 317 Conn. 139

Pensioners brought action against city and municipal pension board, alleging improper calculation of health insurance emoluments. The Superior Court entered judgment in favor of city and board. Pensioners appealed.

The Supreme Court of Connecticut held that:

- City charter prohibited city from decreasing health insurance emolument of widows of retirees, but
- Charter did not prohibit city from decreasing emolument of retirees.

Under city charter, widows of deceased city police officers and firefighters were entitled to collect pension that was one half of what their spouses were collecting at the time of their death, and therefore widows were entitled to health insurance emolument based on their status when their spouses died and city was not permitted to reduce their health insurance emolument when the number of dependents they could claim decreases.

City charter did not require retirees’ pension benefits to be determined as of a particular point in time, and therefore charter did not prohibit city from reducing health insurance emolument of retired police officers and firefighters when number of dependents they could claim decreased.

PENSIONS - CONNECTICUT

Awdziewicz v. City of Meriden

Supreme Court of Connecticut - June 9, 2015 - A.3d - 317 Conn. 122

Retired police officers and firefighters brought action against city, seeking a writ of mandamus to prohibit city from reducing their pension benefits by imposing a health insurance cost share requirement on them, and alleging city had breached their retirement contracts, the implied covenant of good faith and fair dealing, violated a stipulated judgment and their right to due process and equal protection. The Superior Court rendered judgment for the city, and retired police and firefighters appealed.

The Supreme Court of Connecticut held that:

- City charter and stipulated judgment did not preclude city from imposing a health care cost share

requirement on retired police officers and firefighters;
- Evidence proffered by retired police officers and firefighters regarding the additional benefits included in collective bargaining agreements was inadmissible for purposes of showing that the city selectively applied a health insurance cost share requirement on retirees; and
- Retired police and firefighters failed to state a claim against city for violation of statute that prohibited the diminishment or reduction of retirement benefits under municipal pension and retirement systems.

PENSIONS - ILLINOIS

Village of Westmont v. Illinois Mun. Retirement Fund

Appellate Court of Illinois, Second District - May 26, 2015 - Not Reported in N.E.3d - 2015 IL App (2d) 141070

In 2013, it came to the attention of the Illinois Municipal Retirement Fund (IMRF) Staff that the Village of Westmont had not enrolled its part-time firefighters who worked 1,000–plus hours per year in IMRF and did not otherwise provide them with a local pension fund. As such, IMRF Staff reclassified Westmont's "part-time, 1000–plus" firefighters from "IMRF Authorized Agent Manual Group IV Firefighters" (said firefighters being excluded from IMRF participation, because, under IMRF's reading, their employing municipalities do provide them with a local pension fund) to "IMRF Authorized Agent Manual Group VI Firefighters" (said firefighters being required to participate in IMRF, because, under IMRF's reading, their employing municipalities do not provide them with a local pension fund). The IMRF created each of these "Group" classifications in its IMRF Authorized Agent Manual (IMRF manual or, simply, manual), which set forth the IMRF's administrative rules, and which the IMRF had drafted to explain and carry out pertinent dictates of the Illinois Pension Code.

Westmont appealed the Staff's reclassification to the the IMRF Board of Trustees. It argued that, under a plain reading of the manual, its part-time, 1000–plus firefighters fit into Group IV, and that, in any case, IMRF Staff was estopped from reclassifying its part-time, 1000–plus firefighters. The Board affirmed the Staff's reclassification from Group IV to Group VI. It stated that allowing a Group IV classification conflicted with the requirement of the Pension Code that municipalities such as Westmont, who have not employed at least one full-time firefighter, and, therefore, have not provided a local pension for its firefighters, must enroll its part-time, 1000–plus firefighters in the IMRF pension. Westmont appealed to the circuit court. The circuit court affirmed the Board. Westmont appealed.

The Appellate Court held that the IMRF Board and the circuit court correctly upheld the IMRF Staff's removal of Westmont's Group IV status, thereby requiring Westmont to enroll its part-time firefighters who worked 1,000–plus hours per year, for whom Westmont did not provide a local pension, in IMRF's pension fund. The reclassification was consistent with the Illinois Pension Code, and the prior classification, which had resulted in a coverage gap for the "part-time, 1000–plus" firefighters, had not been consistent with the Pension Code.

REDEVELOPMENT AUTHORITY - MASSACHUSETTS

Nantasket Beachfront Condominiums, LLC v. Hull Redevelopment Authority

Appeals Court of Massachusetts - June 5, 2015 - N.E.3d - 2014 WL 9866719

Purchaser brought action against municipal redevelopment authority that terminated contract for purchase and development of real property. The Superior Court Department granted summary judgment in favor of authority. Purchaser appealed.

The Appeals Court held that:

- Participation of board members with purported conflicts of interest did not render termination of contract bad faith breach;
- Purchaser's failure to pay required extension deposits was not excused by authority's purported breach;
  Authority did not suspend right to terminate contract; and
- Liquidated damages in amount of $857,500 did not amount to illegal penalty.

EMPLOYMENT - MINNESOTA

Peterson v. Richfield Civil Service Com'n

Supreme Court of Minnesota - June 10, 2015 - N.W.2d - 2015 WL 3609217

Police officer petitioned for writ of certiorari challenging denial of promotion based on results of civil service test conducted by municipal police and fire civil service commission. The Court of Appeals affirmed. Police officer appealed.

The Supreme Court of Minnesota held that civil service commission impermissibly failed to consider "records" during police promotional process.

Municipal police and fire civil service commission failed to consider records kept in the regular course of the administration of civil service, and therefore violated statute governing civil service commissions in police promotional process, where promotional process included only a written examination, consisting of 40 percent of the applicant's total score, and an oral interview, consisting of 60 percent of the applicant's total score.

PENSIONS - NEW JERSEY

Burgos v. State

Supreme Court of New Jersey - June 9, 2015 - A.3d - 2015 WL 3551326

Members of public pension funds and unions acting on behalf of public employees brought declaratory judgment action against state, alleging that prior and current fiscal year appropriation acts did not provide sufficient funding to meet amounts called for under amendments to statute granting members non-forfeitable right to receive benefits that introduced contractual terms in connection with state's payment of its annual required contribution (ARC) to pension funds, which members and unions argued created enforceable contract that was entitled to constitutional protection against impairment.

The Superior Court granted members and unions summary judgment on impairment-of-contract claims, granted application for declaratory judgment filed by members and unions, and denied state's motion to dismiss. State filed motion for direct certification, which was granted.

The Supreme Court of New Jersey held that:

- Legislature and Governor clearly expressed intent that statute create contractual right, but
- Governor and legislature were without authority to enact and enforce long-term financial agreement through statute.

Legislature and Governor clearly expressed intent that amendments to statute granting members of public pension funds non-forfeitable right to receive benefits create contractual right to timely and recurring annual required contribution (ARC) payments to public pension funds to reduce unfunded liability of funds to safe levels, as would support members' argument that statute created contractual right that was protected from unconstitutional impairment. The statute expressly referenced a contractual right to method of ARC payments three times, and statute denoted state's failure to make ARC payments an impairment, which invoked language of Contracts Clauses under State and Federal Constitutions.

Governor and legislature, acting without voter approval, were without authority to enact and enforce legally binding long-term financial agreement in connection with state's payment of its annual required contribution (ARC) to public pension funds through statute granting members of funds non-forfeitable right to receive benefits, such that contract rights set forth in statute did not create legally binding financial contract enforceable against state, since Debt Limitation Clause and Appropriation Clause of state Constitution conflicted with contractual language of statute. Amount of monies statute purported to contractually require state annually to dedicate to pay down unfunded liability of pension funds substantially exceeded limits allowed under Debt Limitation Clause, and without voter approval, agreement was enforceable only as agreement subject to appropriation, which under Appropriations Clause rendered it subject to annual budgetary appropriations process.

Governor and legislature, acting without voter approval, were without authority to enact and enforce legally binding long-term financial agreement in connection with state's payment of its annual required contribution (ARC) to public pension funds through statute granting members of funds non-forfeitable right to receive benefits, such that contract rights set forth in statute did not create legally binding financial contract enforceable against state, since Debt Limitation Clause and Appropriation Clause of state Constitution conflicted with contractual language of statute.

LIABILITY - NEW YORK

Deleon v. New York City Sanitation Dept.

Court of Appeals of New York - June 10, 2015 - N.E.3d - 2015 N.Y. Slip Op. 04788

Motorist brought action against city to recover damages for injuries sustained when city sanitation street sweeper operator rear-ended motorist's vehicle. The Supreme Court, Bronx County, granted city's motion for summary judgment. Motorist appealed. The Supreme Court, Appellate Division, modified and affirmed. City appealed.

The Court of Appeals held that:

- Recklessness standard applied, and
- A fact issue existed as to whether street sweeper operator could have avoided collision.

Recklessness standard, rather than negligence, applied to motorist's action against city to recover damages for personal injuries sustained after city sanitation street sweeper operator rear-ended motorist's vehicle. Street sweeper fell under exception to rules of road that provided recklessness standard for vehicles "actually engaged in work on a highway."

A genuine issue of material fact existed as to whether street sweeper operator could have avoided rear-ending motor vehicle after motorist allegedly made abrupt lane change, precluding summary judgment on motorist's claim against city to recover damages for injuries sustained in collision.

LIABILITY - NEW YORK

Shipley v. City of New York

Court of Appeals of New York - June 10, 2015 - N.E.3d - 2015 N.Y. Slip Op. 04791

Decedent's next of kin brought action against city and city's office of medical examiner, asserting that medical examiner violated common-law right of sepulcher by failing to notify next of kin, before decedent's burial, that decedent's brain had been retained for further examination and testing as part of autopsy. At conclusion of defendants' case, the Supreme Court, Richmond County, granted directed verdict to next of kin on issue of liability, and later entered judgment upon jury's award of $1 million in total damages to two of the next of kin, and denied defendants' motion to set aside jury's verdict as excessive. Defendants appealed. The Supreme Court, Appellate Division, affirmed as modified, determining that jury's award of $1 million for past pain and suffering was excessive, and remitting. Leave to appeal was granted to defendants.

The Court of Appeals held that medical examiner was not obligated, by statute or common law, to notify decedent's next of kin that one or more organs and/or tissues had been retained for further examination and testing as part of authorized autopsy.

UTILITIES - OHIO

In re Application of Ohio Power Co.

Supreme Court of Ohio - June 2, 2015 - N.E.3d - 2015 -Ohio- 2056

Electric utility filed application seeking approval of mechanism to recover accumulated deferred fuel costs and carrying charges that had been incurred during prior electric security plan (ESP) period. The Public Utilities Commission of Ohio (PUCO) entered orders approving phase-in recovery rider (PIRR) for utility to recover deferred fuel costs and carrying charges, but entered subsequent order reducing amount of utility's carrying charge recovery. Utility appealed, and organization of industrial electric customers cross-appealed.

The Supreme Court of Ohio held that:

- PUCO acted beyond its statutory authority in reducing amount of recoverable carrying charges, and
- Relitigation of issue of whether accumulated deferred income taxes were required to be included in calculation of carrying charges was precluded under doctrine of collateral estoppel.

SCHOOLS - TENNESSEE

Smith v. Jefferson County Bd. of School Com'rs

United States Court of Appeals, Sixth Circuit - June 11, 2015 - F.3d - 2015 WL 3620473

Former teachers at public alternative school brought § 1983 action against county school board and

its members, alleging that, by closing the school and contracting with a self-proclaimed "religious institution" to operate the school, defendants violated teachers' Establishment Clause and due process rights. The District Court granted summary judgment for defendants. Teachers appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. On remand, a bench trial was held on the Establishment Clause claim. The United States District Court entered judgment in favor of teachers, and awarded damages and an injunction. School board appealed.

The Court of Appeals held that contract between school board and self-proclaimed "religious institution" did not violate Establishment Clause.

Sole motivation for contract was to reconcile school board's budget, contract did not coerce students to partake in religious activity of any kind, either directly or through peer pressure, reasonable observer would not interpret contract as school board's endorsement of religion, as students in alternative program encountered only incidental religious references, which were not targeted specifically at them, and contract did not foster excessive entanglement with religion, but involved only payment by school board in exchange for provision of essential educational services.

EASEMENTS - VIRGINIA

Marble Technologies, Inc. v. Mallon

Supreme Court of Virginia - June 4, 2015 - S.E.2d - 2015 WL 3505097

Property owners brought declaratory judgment action against business, seeking determination that coastline easement moved with the mean high water line as the beach eroded. The Circuit Court ruled that property owners had variable express easement that moved with mean high water line. Business appealed.

The Supreme Court of Virginia held that deed and map unambiguously fixed the easement at the specific location indicated on the map, and thus easement was extinguished by erosion of beach.

Deed distributing land subject to easement, and map depicting the easement as a 20-foot road along coastline, unambiguously fixed the easement at the specific location indicated on map, and thus easement was extinguished for being submerged under water by erosion of coastline over time. Map depicted easement as existing along "present" mean high water, which meant the line as it existed when the map was created, map utilized metes and bounds and a stationary marker to show easement's location, and nothing on the map or in the deed indicated that the easement was to move with the changing coastline.

EMINENT DOMAIN - CALIFORNIA

City and County of San Francisco v. PCF Acquisitionco, LLC

Court of Appeal, First District, Division 3, California.May 26, 2015 - Cal.Rptr.3d - 15 Cal. Daily Op. Serv. 5238 - 2015 Daily Journal D.A.R. 5735

City brought eminent domain action against landowner. The Superior Court entered judgment on special jury verdict determining the total compensation to be awarded, and denied landowner's motion to recover its litigation expenses. Landowner appealed.

The Court of Appeal held that city's final offer of compensation for taking of landowner's property

was not “reasonable” because it was contingent.

City’s final offer of compensation in eminent domain action was not “reasonable” under the statute providing for an award of the eminent domain defendant’s litigation expenses when the plaintiff’s final offer is unreasonable and the defendant’s final demand is reasonable, where city’s offer was contingent on the approval of the Federal Transportation Authority, the board of directors of the city municipal transportation agency, and the city board of supervisors, absent evidence that landowner had any assurance that the approvals would be forthcoming, or even that it would know whether it had a binding settlement within the 20 days before the trial was to commence.

ATTORNEYS' FEES - CALIFORNIA

Animal Protection and Rescue League v. City of San Diego

Court of Appeal, Fourth District, Division 1, California - May 27, 2015 - Cal.Rptr.3d - 15 Cal. Daily Op. Serv. 5251 - 2015 Daily Journal D.A.R. 5754

Plaintiffs brought action for writ of mandate and injunctive relief against city, seeking an order requiring city to vacate and set aside planning commission’s denial of a permit for guideline rope at pool to protect seals from humans and to reinstate the findings of a hearing officer in support of the permit. After city filed answer in which it confessed error, the Superior Court granted petition for writ of mandate and awarded attorney’s fees under the private attorney general statute. City appealed.

The Court of Appeal held that city was an “opposing party” liable for attorney’s fees under the private attorney general statute.

City was an “opposing party” liable for attorney fees under the private attorney general statute in action for writ of mandamus seeking an order requiring city to vacate and set aside planning commission’s denial of a permit for guideline rope at pool to protect seals, even though city did not oppose the writ and did not take any adverse position, but rather confessed error at the inception of the case. City was the named respondent to the petition, city was responsible for initiating and maintaining actions or policies that gave rise to the litigation, and plaintiffs obtained a judgment against city.

LIABILITY - CALIFORNIA

State Dept. of State Hospitals v. Superior Court of Los Angeles County

Supreme Court of California - June 1, 2015 - P.3d - 2015 WL 3451562

Sister of rape and murder victim killed by parolee four days after release from prison brought action against State Department of Mental Health and its acting directors, alleging that they breached mandatory duties under the Sexually Violent Predators Act (SVPA) and committed negligence, and seeking a writ of mandamus to compel them to perform their duties. The Superior Court overruled defendants’ demurrers, and defendants petitioned for writ of mandate. The Court of Appeal granted petition in part and denied it in part.

On review, the Supreme Court of California held that:

- SVPA requirement that the Department designate two psychiatrists or psychologists to conduct

evaluations was a non-discretionary mandatory duty;
- Department did not have any mandatory duty to conduct an in-person evaluation;
- The harm to the public caused by parolee's release was the kind of risk the mandatory duty to designate two evaluators was designed to forestall; but
- Department's breach of its duty to designate a second evaluator was not a proximate cause of rape and murder committed by parolee.

State Department of Mental Health's breach of its duty to designate a second evaluator for Sexually Violent Predator Act (SVPA) evaluation of prisoner was not a proximate cause of rape and murder committed by prisoner four days after his release, and thus did not support liability under the Government Claims Act, since concluding that the appointment of a second evaluator would have prevented prisoner's release would require courts to posit a subsequent unbroken series of discretionary findings contradicting the first evaluator's conclusion and leading to civil commitment.

CONTRACTS - CALIFORNIA

Davis v. Fresno Unified School District

Court of Appeal, Fifth District, California - June 1, 2015 - Cal.Rptr.3d - 2015 WL 3454720

Taxpayer filed suit against school district and contractor, challenging noncompetitive bid contract between district and contractor for construction of middle school, which contained lease-leaseback arrangement, and alleging that district's board breached its fiduciary duties and that contractor had impermissible conflict of interest. The Superior Court sustained demurrers filed by district and contractor. Taxpayer appealed.

The Court of Appeal held that:

- Exception to competitive bidding in statute permitting school boards to construct schools under lease-leaseback contracts was applicable to entire lease-leaseback arrangement;
- As a matter of first impression, true lease was required to satisfy competitive bidding exception for lease-leaseback agreements;
- As a matter of first impression, terms of lease supported taxpayer's allegation that lease-leaseback agreement was not a true lease;
- As a matter of first impression, district was required to use school for period of time during lease term to qualify for competitive bidding exception;
- As a matter of first impression, taxpayer alleged facts sufficient to support theory that lease was subject to competitive bidding due to failure to satisfy statutory criteria for use of school; but
- Taxpayer failed to allege facts sufficient to state claim for breach of fiduciary duty; and
- Taxpayer alleged sufficient facts to state cause of action for violation of conflict of interest under statute barring public officials from being interested in contracts formed in their official capacities.

Exception to competitive bidding in statute governing lease-leaseback method of constructing school, under which school leased land it owned to contractor for nominal amount and contractor agreed to build school facilities on that site, was not limited to site leases, but rather was applicable to entire lease-leaseback arrangement. Bidding procedures set forth in statute providing that leases entered into by school district were subject to competitive bidding did not apply to lease-leaseback agreements.

True lease, rather than traditional construction contract designated a lease by parties, was required to satisfy criteria for exception to competitive bidding under statute governing lease-leaseback

method of constructing school, under which school leased land it owned to contractor for nominal amount and contractor agreed to build school facilities on that site. Generally, words in statute were used to indicate substance, not merely as labels, exceptions to competitive bidding requirements were to be strictly construed and restricted to circumstances that truly satisfied statutory criteria, and there was no legislative history stating or implying that criteria for exception was satisfied by any document labeled as a lease.

Terms of lease between school district and contractor under contract to build school regarding construction, payment, use, possession, and ownership of new facilities adequately supported taxpayer's allegation that arrangement was not a true lease that provided financing for project, as required to satisfy criteria for exception to competitive bidding under statute governing lease-leaseback method of constructing school, under which school leased land it owned to contractor for nominal amount and contractor agreed to build school facilities on that site, such that allegations were sufficient to state cause of action for violation of competitive bidding requirements. Substance of payment terms in facilities lease was that of compensation for construction, not payment for period of use for facilities, and district never occupied or used facilities before making its final payment.

School district was required to use newly constructed school buildings during period of time during lease term in order for district's lease-leaseback arrangement with contractor for construction of school to qualify for exception to competitive bidding created by statute governing lease-leaseback method of constructing school, under which school leased land it owned to contractor for nominal amount and contractor agreed to build school facilities on that site. Lease-leaseback arrangement qualified for exception only if instrument containing leaseback required contractor to construct building or buildings on demised premises for use of district during term of lease, and reference to term of lease in statute supported inference that language pertaining to school's use of building during lease was intended to have substance, rather than merely specifying de minimis requirement.

Taxpayer alleged facts sufficient to support his legal theory that facilities lease under contract between school district and contractor to build middle school was subject to competitive bidding because district failed to satisfy statutory criteria for use of buildings by district during term of lease, as required for exception to competitive bidding to apply under statute governing lease-leaseback method of constructing school, under which school leased land it owned to contractor for nominal amount and contractor agreed to build school facilities on that site. Taxpayer alleged that district did not have right or practical ability to have beneficial occupancy of demised premises during term of lease, which directly addressed whether lease provided for construction of buildings for use by district during term of lease.

Statutory scheme authorizing lease-leaseback arrangements for school construction projects did not restrict use of arrangements to situations in which school district did not have sufficient available funds to cover costs of building new facilities. There was no express provision in statutes limiting district's use of lease-leaseback arrangements to such situations, there was no ambiguous provision in statutes that could have been construed in manner to include such limitation, and report of executive officer to Allocation Board, which administered and implemented school facilities construction program, did not state that legislation restricted availability of lease-leaseback method to situations in which other funding was not available.

Taxpayer failed to allege facts sufficient to state claim for breach of fiduciary duty against school district and contractor related to school board's approval of expenditures for multi-million dollar project to construct middle school pursuant to lease-leaseback agreement. Taxpayer's complaint requested that contractor return money paid to it under lease-leaseback agreement, but did not allege that contractor was subject to fiduciary duty, complaint did not allege that school board

profited from transactions and did not request restitution or disgorgement of profits, and relief sought for alleged breach of fiduciary duty was against contractor, a party that did not have a fiduciary duty.

Contractor, as corporate consultant in charge of constructing middle school pursuant to noncompetitive bid contract with school district containing lease-leaseback agreement, was not a public official subject to conflict of interest provision in Political Reform Act, such that taxpayer failed to state cause of action against contractor for violating conflict of interest prohibition in Act, despite contention that contractor had prior contract with district that created conflict of interest precluding contractor from being awarded lease-leaseback contracts. Although taxpayer's allegation that contractor provided services to district as a consultant was sufficient to raise possibility that contractor was a public official under Act, taxpayer also alleged that contractor was at all times a corporation, and as a corporation, contractor fell outside regulatory definition of consultant.

Taxpayer alleged sufficient facts to state cause of action against contractor, as corporate consultant, for violation of conflict of interest provision in statute barring public officials or employees from being personally financially interested in contracts they formed in their official capacities, stemming from contractor's lease-leaseback contracts with school district to construct middle school. Taxpayer alleged that contractor served as a professional consultant to district and had a hand in designing and developing plan and specifications for middle school, which was sufficient to state that contractor was an employee for purposes of statute and participated in making contracts, and taxpayer's allegations sufficiently stated that contractor was financially interested in contracts for purposes of statute.

INVERSE CONDEMNATION - CALIFORNIA

Honchariw v. County of Stanislaus

Court of Appeal, Fifth District, California - June 3, 2015 - Cal.Rptr.3d - 2015 WL 3504816

Landowner contended that the trial court erred when it applied the 90–day statute of limitations contained in Government Code section 66499.371 to his inverse condemnation action and concluded the action was untimely. Landowner argued that California law allowed him to postpone bringing a complaint for just compensation until after he successfully challenged the local government's land use decision in a mandamus proceeding.

The Court of Appeal affirmed the trial court's ruling that the 90–day statute of limitation in section 66499.37 applied to the inverse condemnation action.

While the court agreed that a land owner may elect to pursue a damage claim for an unconstitutional taking after a mandamus proceeding results in a final judgment, the initial mandamus action must result in "a final judgment establishing that there has been a compensable taking of the plaintiff's land."

Here, the landowner's mandamus action did not seek or establish that an unconstitutional taking occurred when the county denied his subdivision application. Therefore, the landowner did not qualify for the two-step procedure identified in *Hensler*. As a result, the unconstitutional taking claim in his inverse condemnation action was time barred under section 66499.37.

DEDICATION - ILLINOIS

Republic Bank of Chicago v. Village of Manhattan

Appellate Court of Illinois, Third District - May 15, 2015 - N.E.3d - 2015 IL App (3d) 130379

Mortgagee brought foreclosure actions against multiple defendants, seeking to foreclose on roads and outlots contained in two failed subdivisions located in village. Village moved to dismiss. The Circuit Court dismissed action. Mortgagee appealed.

The Appellate Court held that:

- Village's acceptance of dedication of roads and outlots in subdivisions, between four and six years after developers made offers to dedicate such roads and outlots, was timely;
- Mortgagee's mere filing of foreclosure complaint to foreclose on roads and outlots did not act as revocation of developers' offers to dedicate such roads and outlots to village;
- Village was not required to improve streets and outlots of subdivisions in order to prove acceptance of statutory dedication of such streets and outlots; and
- Mortgagee impliedly consented to dedication of streets and outlots.

EMINENT DOMAIN - KENTUCKY

Bluegrass Pipeline Company, LLC v. Kentuckians United to Restrain Eminent Domain, Inc.

Court of Appeals of Kentucky - May 22, 2015 - S.W.3d - 2015 WL 2437864

Bluegrass Pipeline Company, LLC proposes a 24–inch pressurized underground pipeline for transporting natural gas liquids from the Marcellus and Utica shale formations in Pennsylvania, West Virginia, and Ohio, to the Gulf of Mexico.

The Circuit Court granted Kentuckians United to Restrain Eminent Domain, Inc's ("KURED") motion for summary judgment, issuing a declaratory judgment that Bluegrass did not have the right to invoke eminent domain. Bluegrass appealed.

The Court of Appeals held that:

- There existed a justiciable controversy because Bluegrass was claiming that it had the power to condemn property under eminent domain and was actively negotiating with landowners, and thus the matter was appropriate for declaratory judgment; and
- KURED possessed associational and citizen standing to bring declaratory judgment action.

IMMUNITY - MARYLAND

Zilichikhis v. Montgomery County

Court of Special Appeals of Maryland - May 28, 2015 - A.3d - 2015 WL 3451752

Pedestrian who slipped an fell in county-owned parking garage brought action against county and private companies that operated and maintained garage. The Circuit Court entered summary judgment in favor of defendants, and pedestrian appealed.

The Court of Special Appeals held that:

- Pedestrian's answers to interrogatories were inadmissible to oppose summary judgment;
- Photographs and expert opinion based on the photographs were inadmissible to oppose summary judgment;
- County and private companies lacked knowledge of oil spot upon which pedestrian had slipped; and
- County was entitled to governmental immunity from liability.

Pedestrian who slipped and fell in parking space in county-owned parking garage did not fall in a public way, and thus county was entitled to governmental immunity from liability for pedestrian's injuries; there was no showing that parking space was located on any walking route, and county's duty to maintain its sidewalks and footways would not be expanded to include all of the parking spaces within a public parking garage.

SECURITIES - NEW YORK

U.S. v. Heinz

United States Court of Appeals, Second Circuit - June 4, 2015 - F.3d - 2015 WL 3498664

Defendants were convicted in connection with schemes to defraud municipalities, the Department of the Treasury, and the Internal Revenue Service by manipulating the bidding process for municipal bond reinvestment agreements and other municipal finance contracts while employed at UBS Financial Services, Inc.

On appeal, the Defendants contended that the District Court erred by denying their motion to dismiss the superseding indictment as time barred, arguing that the District Court should have applied the five- or six-year statute of limitations for wire fraud and wire fraud conspiracies.

The Court of Appeals affirmed the District Court's conclusion that the evidence the Government intended to submit at trial was enough to permit a jury to find that the Defendants' conduct "affected a financial institution" within the meaning of 18 U.S.C. § 3293(2), and thereby extended the statute of limitations to ten years under § 3293(2).

The Court based its "affected a financial institution" analysis on the fact that, as a direct result of Defendants' conduct, the employer banks had entered into settlement agreements in which they admitted wrongdoing, accepted responsibility for the illegal conduct of the former employees, and agreed to pay more than $500 million in fines and restitution to federal agencies and municipalities.

PENSIONS - RHODE ISLAND

City of Cranston v. International Broth. of Police Officers, Local 301.

Supreme Court of Rhode Island - May 29, 2015 - A.3d - 2015 WL 3451962

City filed motion to vacate an arbitration award in favor of police officer on ground that arbitrator exceeded his authority in enforcing round-up rule contained in collective bargaining agreement (CBA), whereby officer's employment for 19 years, six months, and one day was treated as 20 years for purposes of pension eligibility, despite requirement of the Municipal Employee Retirement System (MERS) that employees complete a full 20 years of employment to be eligible. The Superior

Court granted city's motion. Police union appealed.

The Supreme Court of Rhode Island held that round-up rule was in direct contravention of state law, and thus arbitrator exceeded his authority in enforcing it.

Round-up rule employed by collective bargaining agreement (CBA) and city ordinance, whereby 19 years, six months, and one day was treated as a full 20 years for calculation of pension eligibility, was in direct contravention of statute governing pension eligibility for members of Municipal Employee Retirement System (MERS), which required a complete 20 years of employment, and thus arbitrator exceeded his authority in deciding that a MERS member could utilize rule. Neither union nor city had authority to adopt a contract provision or ordinance in conflict with state law, but, rather, the authority to define a year of service remained with the retirement board.

IMMUNITY - ALABAMA

Ex parte Brown

Supreme Court of Alabama - May 22, 2015 - So.3d - 2015 WL 3367665

Police officer petitioned for writ of mandamus directing the Circuit Court to enter summary judgment in his favor based on State-agent immunity and statutory immunity on claims filed against him by administrator of estate of motorist who was killed as a result of crash with suspect whom officer had just stopped pursuing at high speeds.

The Supreme Court of Alabama held that:

- Officer satisfied his initial burden of showing that he qualified for State-agent immunity;
- Officer's admission that he was unaware of his department's pursuit policy was not a material consideration; and
- Any violation by officer of the policy did not result in loss of his State-agent immunity.

Any violation by city police officer of city's pursuit policy did not result in loss of his state-agent immunity from action by administrator of estate of motorist who was killed as a result of crash with suspect whom officer had just stopped pursuing, where policy, which set forth criteria by which decisions were made and was qualified by the need to maintain the safety of the officer and the public, left a significant degree of discretion to the officer in the exercise of officer's pursuit duties, and, thus, policy and procedure constituted guidelines, not detailed rules and regulations, such as those stated on a checklist that had to be followed.

IMMUNITY - IDAHO

James v. City of Boise

Supreme Court of Idaho, Boise, April 2015 Term - May 21, 2015 - P.3d - 2015 WL 2412189

Plaintiff filed a complaint alleging a violation of Idaho Tort Claims Act against police officers and city after she was bitten by a police dog while officers were responding to a burglary in process call. The District Court dismissed all of plaintiff's claims with prejudice. Plaintiff appealed.

The Supreme Court of Idaho held that:

- The use of a police dog to find and seize the plaintiff, whom officers believed was a possibly armed suspect involved in a burglary in progress, from a dark basement was objectively reasonable, and thus officers did not use excessive force;
- Evidence failed to establish that police officers acted with malice or criminal intent when they sent police dog to find and seize plaintiff; and
- Police department's implementation of a "bit and hold" method of training its police dogs, rather than a "bark and hold" method, did not provide a valid basis for plaintiff's negligent failure to train, supervise or control police dog claim.

MUNICIPAL ORDINANCE - IOWA

Baker v. City of Iowa City

Supreme Court of Iowa - May 22, 2015 - N.W.2d - 2015 WL 2445108

Small employer, who refused to hire applicant as a resident manager, brought action against city and city human rights commission for a declaratory judgment that ordinances prohibiting employment and housing discrimination were unconstitutional, and seeking § 1983 damages based on the city's enforcement of the ordinances, and writ of certiorari and a stay of administrative proceedings. The district court allowed employer to amend their petition to include First Amendment claims, but entered summary judgment in favor of city and commission. Employer appealed and city cross-appealed.

The Supreme Court of Iowa held that:

- Trial court did not abuse its discretion in allowing employer to amend its petition;
- Ordinances were not unconstitutional as applied to employer with regard to freedom of association;
- Ordinances were not unconstitutional as applied to employer with regard to rights to commercial speech;
- Employer's procedural due process rights were not violated by application of ordinance;
- Application or ordinances to employer did not violate employer's substantive due process rights;
- Ordinances did not violate employer's equal protection rights; and
- Employer was not a prevailing party for the purposes of claim for attorney fees for federal constitutional violations.

STATUTES - KANSAS

University of Kansas Hosp. Authority v. Board of County Comm'rs of Unified Government of Wyandotte County/Kansas City

Supreme Court of Kansas - May 22, 2015 - P.3d - 2015 WL 2445571

State university hospital brought action against board of county commissioners and state highway patrol seeking to recover the cost of medical treatment provided to an indigent arrested person. The District Court denied highway patrol's motion for summary judgment and granted hospital summary judgment. Highway patrol appealed.

The Supreme Court of Kansas held that arrestee was in custody of highway patrol, and thus, pursuant to statute, state highway patrol was liable for cost of medical care provided to arrestee.

Indigent arrestee was in the custody of the state highway patrol at time decision was made to obtain medical treatment for arrestee, and thus, pursuant to statute, state highway patrol was liable for the cost of medical care provided to him. At scene of car crash the state trooper had arrested and handcuffed the individual and placed him in back of patrol car, where the individual requested medical treatment, the trooper delivered him in handcuffs to the hospital and advised hospital personnel that arrestee was left for treatment on "police hold," returning the following day to transport him to jail upon his release.

BOND VALIDATION - LOUISIANA

Louisiana Local Government Facilities and Community Development Authority v. All Taxpayers

Supreme Court of Louisiana - April 17, 2015 - So.3d - 2015-0417 (La. 4/17/15)

The Louisiana Local Government Environmental Facilities and Community Development Authority ("LCDA") filed a motion for judgment pursuant to the Louisiana Bond Validation Act seeking to validate the issuance of certain municipal bonds.

The district court denied the motion, expressing concerns over publication of notice. On appeal, the court of appeal found the district court erred in finding proper notice was not given. Nonetheless, the majority of the court of appeal, over two dissents, affirmed the district court's judgment on different grounds, finding LCDA did not introduce into the record the resolution authorizing the issuance of the bonds. A petition for review followed.

The Supreme Court of Louisiana reversed, holding that the court of appeal erred in finding LCDA's motion to validate defective because it failed to introduce the resolution into the record.

The Court noted that the Bond Validation Act is silent with regard to what evidence a governmental entity must introduce to meet its burden of proof in connection with a motion for judgment to validate bonds and that it is not the function of the judicial branch in a civilian legal system to legislate by inserting provisions into statutes where the legislature has chosen not to do so.

LIABILITY - MONTANA

Kent v. City of Columbia Falls

Supreme Court of Montana - May 19, 2015 - P.3d - 2015 MT 139

Estate brought action against city for negligence in connection with individual's fall while skateboarding along a paved walking path and his subsequent fatal head injury. The District Court entered summary judgment in favor of city. Estate appealed.

The Supreme Court of Montana held that public duty doctrine did not apply where there were fact issues regarding whether city was actively involved in design and approval of path with dangerous grade.

Genuine issues of material fact existed whether city was actively involved in design of walking path, knew of its dangerous grade, and had statutory authority to compel modification to path but exercised its statutory and contractual authority to approve it, thus precluding summary judgment on the basis of the public duty doctrine on estate's claims against city for violation of its statutory

duty and voluntary assumption of a duty to act with ordinary care to protect the public in using trail system, in connection with individual's fall while skateboarding along path and his subsequent fatal head injury.

EMINENT DOMAIN - NEW HAMPSHIRE

Kingston Place, LLC v. New Hampshire Department of Transportation

Supreme Court of New Hampshire - May 22, 2015 - A.3d - 2015 WL 2437609

Landowner brought declaratory judgment and inverse condemnation action against Department of Transportation (DOT), alleging that DOT's long delay in taking a portion of landowner's property had created cloud on petitioner's title. The Superior Court granted summary judgment to DOT. Landowner appealed.

The Supreme Court of New Hampshire held that:

- Vote by special committee, determining that there was an occasion to lay out proposed limited access highway, was not a vote by a commission to acquire property through condemnation proceedings, and therefore vote did not trigger application of statute requiring that a condemnor provide notice of its offer to purchase property to condemnee within a reasonable time following vote, and
- Any delay by DOT did not constitute a taking that would support an inverse condemnation action.

Vote by special committee of Department of Transportation (DOT), determining that there was an occasion to lay out proposed limited access highway, was not a vote by a commission to acquire property through condemnation proceedings, and therefore vote did not trigger application of statute requiring that a condemnor provide notice of its offer to purchase property to condemnee within a reasonable time following vote, despite argument that plans for proposed limited access highway included a drainage easement on landowner's property. Vote was merely by a special committee and was only the first step in the two-step process for the commission itself to vote on whether to acquire property.

Any delay between vote of special committee of the Department of Transportation (DOT) and a vote by a DOT commission to initiate eminent domain proceedings to acquire portion of landowner's property did not constitute a taking, as could support landowner's inverse condemnation action, despite argument that delay impacted ability of existing structures on property to be expanded and precluded landowner's ability to construct an additional building. Such delay alone did not amount to an invasion of property or deprivation of use and enjoyment of property.

UTILITIES - NEW JERSEY

Kiejdan Family, LLC v. Borough of Woodbine

Superior Court of New Jersey, Appellate Division - May 26, 2015 - Not Reported in A.3d - 2014 WL 8881145

New Jersey law requires a municipality that provides solid waste collection services to its residents to reimburse multifamily dwellings for the cost of providing such service, up to the amount the municipality would have expended had it provided such services directly to the multifamily dwelling. As an alternative to reimbursement, the statute permits a municipality to provide solid waste

collection services to multifamily dwellings in the same manner as provided to the residents who live along public roads and streets.

Borough denied owner of apartment complex the statutory reimbursement, asserting that it would pick up solid waste at the apartment complex provided residents placed their trash at "curbside," a task the owner claimed was impractical and inimical to the public health. The trial court entered judgment in favor of apartment complex, ruling that requiring the apartment complex to place solid waste curbside was not a reasonable statutory alternative to reimbursing Woodbine Manor for solid waste collection. The Borough appealed.

The appeals court affirmed, holding that the trial court's opinion that the Borough had not offered Woodbine Manor a reasonable alternative to statutory reimbursement and that curbside collection on Webster Street was arbitrary was supported by ample credible evidence in the record and based on a correct interpretation of the Supreme Court's pronouncements.

FINRA ARBITRATION - NEW YORK

J.P. Morgan Securities LLC v. Quinnipiac University

United States District Court, S.D. New York - May 22, 2015 - Slip Copy - 2015 WL 2452406

Quinnipiac University initiated an arbitration against J.P. Morgan Securities LLC ("JPMS") before the Financial Industry Regulatory Authority ("FINRA"). Quinnipiac brought claims arising out of financial losses it claimed to have sustained as a result of its 2007 issuance of auction rate securities ("ARS"), with respect to which JPMS served as underwriter and broker-dealer.

JPMS's moved to preliminarily and permanently enjoin the FINRA arbitration, arguing that, as a result of the forum-selection clause in the parties' BrokerDealer Agreement, FINRA lacked jurisdiction over the FINRA arbitration.

The District Court ruled in favor of JPMS, citing Second Circuit precedent holding that the FINRA arbitration rules had been superseded by forum selection clauses requiring "all actions and proceedings" related to the transactions between the parties to be brought in court.

DAMAGES - PENNSYLVANIA

Glencannon Homes Ass'n, Inc. v. North Strabane Tp.

Commonwealth Court of Pennsylvania - April 22, 2015 - A.3d - 2015 WL 1809237

Homeowners' association brought action against school district and township, asserting claims of negligence and violation of Storm Water Management Act (SWMA). After jury trial, the Court of Common Pleas entered judgment in favor of association but reduced damages. District and township appealed and association cross-appealed.

The Commonwealth Court held that:

- Limitations period for claims did not accrue until association discovered source of flowage and that sediment was emanating from outside association property;
- As a matter of apparent first impression, statutory cap providing that, in actions against local agencies, "[d]amages arising from the same cause of action or transaction or occurrence or series

of causes of action or transactions or occurrences shall not exceed $500,000 in the aggregate" allowed damages of $500,000 against each individual local agency defendant;
- Award of damages to association on both its negligence claim and its claim for violation of SWMA was not duplicative;
- Whether township's improvements to street, including paving and addition of curbing, resulted in a dangerous condition, as could trigger utility service facilities exception to township's immunity under the Political Subdivision Tort Claims Act (PSTCA), was jury question; and
- Engineer's expert testimony for association was based upon adequate factual foundation and thus was neither speculative nor conjecture.

STANDING - WASHINGTON

City of Burlington v. Washington State Liquor Control Bd.

Court of Appeals of Washington, Division 1 - May 26, 2015 - P.3d - 2015 WL 3385108

City sought review of decision of the Liquor Control Board to grant spirits license to applicant and to allow applicant to relocate the license of a former state-run liquor store. The Superior Court dismissed petition for lack of standing. City appealed.

The Court of Appeals held that:

- City satisfied "zone of interest" requirement for standing;
- Trial court was to consider city's supplemental declarations on the issue of standing;
- City satisfied "injury in fact" requirement for standing; and
- A court order reversing Board's decision would remedy city's alleged injury, thus supporting finding of standing.

ZONING - WASHINGTON

Cannabis Action Coalition v. City of Kent

Supreme Court of Washington, En Banc - May 21, 2015 - P.3d - 2015 WL 2418553

Interest group and individuals sued city, seeking to have city zoning ordinance prohibiting medical marijuana collective gardens declared preempted and invalid under Medical Use of Cannabis Act (MUCA). The Superior Court granted city summary judgment, dismissed claims of those individuals who did not reside or operate collective garden in city, and enjoined all plaintiffs from violating ordinance. Interest group and individuals appealed.

The Supreme Court of Washington held that:

- MUCA did not impliedly preempt field of medical marijuana, and
- MUCA did not conflict with ordinance.

Medical Use of Cannabis Act (MUCA) did not impliedly preempt field of medical marijuana, and thus MUCA did not preempt city zoning ordinance prohibiting medical marijuana collective gardens on such basis; MUCA expressly contemplated local regulation of medical marijuana.

Medical Use of Cannabis Act (MUCA) did not conflict with city zoning ordinance prohibiting medical marijuana collective gardens, such that MUCA did not preempt ordinance on such basis, despite contention that provision of MUCA contemplating local regulation of medical marijuana applied only

to commercial, licensed producers, and that MUCA granted right to engage in collective garden, which ordinance prohibited. City's zoning power under MUCA was not limited to commercial, licensed producers, but rather MUCA provided local jurisdictions with authority to enact zoning requirements pertaining to land use activity of participating in collective gardens, and ordinance concerned such a land use, making it otherwise consistent with state law.

CONTRACTS - WYOMING

Western Wyoming Const. Co., Inc. v. Board of County Com'rs of County of Sublette

Supreme Court of Wyoming - May 27, 2015 - P.3d - 2015 WY 77

Low bidder on highway construction project brought action against Board of County Commissioners after they awarded the contract to a higher bidder. The District Court granted Commissioners' motion for summary judgment and low bidder appealed.

The Supreme Court of Wyoming held that commissioners' utilization of the known and unannounced criteria of county of residence in awarding the contract opened for competitive bid constituted an illegal exercise of discretion.

Under public improvement statute requiring contracts to be awarded to lowest bidder deemed qualified and responsible, county commissioners' award of public works contract to second lowest bidder on basis of that bidder's residency in county was abuse of discretion, where residency criterion was not only unannounced to the bidders, but also known to the commissioners and intentionally concealed, and the commissioners could not articulate a standard for deciding when a local bid could be higher than another bid but still be in the best interest of the project.

PENSIONS - CALIFORNIA

Marzec v. California Public Employees Retirement System

Court of Appeal, Second District, Division 3, California - May 8, 2015 - Cal.Rptr.3d - 15 Cal. Daily Op. Serv. 4587 - 2015 Daily Journal D.A.R. 5078

Former police officers and firefighters employed by local public agencies that provide employee retirement benefits through the California Public Employees' Retirement System (CalPERS) brought putative class actions against CalPERS.

In order to enhance their service retirement benefits, plaintiffs had purchased additional years of service credit through one of several optional programs offered by CalPERS. Subsequently, each plaintiff was disabled on the job and took an industrial disability retirement under the Public Employees' Retirement Law (PERL) before reaching service retirement age. As a result, CalPERS pays each plaintiff a monthly disability retirement allowance of 50 percent of his or her final compensation. CalPERS *does not*, however, pay plaintiffs any additional allowance as a result of their purchase of additional years of service credit.

Former police officers and firefighters sued CalPERS for breach of statutory duty, breach of contract, rescission, breach of fiduciary duty, and violations of due process and equal protection

The Superior Court sustained demurrer without leave to amend and granted judgment on pleadings.

Former police officers and firefighters appealed.

The Court of Appeal held that:

- Purchases of service credit were not contributions in respect to service rendered in a "category of membership" giving rise to a right to an annuity upon disability retirement;
- Failing to provide additional income for the service credit purchases upon disability retirement was not a breach of contract;
- Former police officers and firefighters stated a cause of action for rescission;
- Former police officers and firefighters stated a cause of action for breach of fiduciary duty;
- Failing to provide additional income for the service credit purchases upon disability retirement did not violate equal protection; and
- Failing to provide additional income for the service credit purchases upon disability retirement was not an unconstitutional impairment of contract.

Police officers' and firefighters' purchases of additional years of military service credit and "additional retirement service credit" were not contributions in respect to service rendered in a "category of membership" under the PERL provision stating that a disability retiree is entitled to an annuity in addition to a disability allowance if he or she has made contributions in respect to service rendered in a "category of membership" other than the category in which he or she was serving when he or she became disabled.

CalPERS offer letters for police officers and firefighters to purchase additional years of military service credit and "additional retirement service credit" did not include a promise that the purchases would result in additional income upon disability retirement, and thus the failure to provide additional income was not a breach of contract, even though the letters identified an "estimated monthly pension increase" for each purchaser, where the letters contained a warning that if the purchasers took disability retirement "this additional service credit may not benefit" them.

Former police officers and firefighters stated a cause of action against CalPERS for rescission of their contracts to purchase additional years of military service credit and "additional retirement service credit" that did not result in additional income to them because they received disability retirements, in alleging that as a result of the totality of CalPERS's disclosures to its members their consent to the contracts was induced by mistake of fact and law, fraud, and undue influence, and enforcement of the contracts would be contrary to public policy.

Former police officers and firefighters stated a cause of action against CalPERS for breach of fiduciary duty in connection with CalPERS's sale to them of additional years of military service credit and "additional retirement service credit" that did not result in additional income to them because they received disability retirements, in alleging that CalPERS failed adequately to disclose the risk of forfeiting the investments if they took industrial disability retirement, since CalPERS owed fiduciary duties to the officers and firefighters as a public pension system.

Former police officers and firefighters who received no benefit from additional years of military service credit and "additional retirement service credit" that they bought from CalPERS before disability retirement were not similarly situated with CalPERS members who received disability retirement without purchasing additional years of service credit, and thus CalPERS's allegedly disparate treatment of members who purchased the credits in accepting payment from them without giving them any additional benefits did not violate equal protection.

CalPERS failure to grant former police officers and firefighters any benefit from additional years of

military service credit and “additional retirement service credit” that they purchased from CalPERS before disability retirement was not an unconstitutional impairment of contract, since the officers’ and firefighters’ rights to service retirement benefits were subject to conditions and contingencies requiring them to remain in their local safety positions until at least age 50, and those conditions never matured because they took industrial disability retirement before age 50.

PENSIONS - ILLINOIS

In re Pension Reform Litigation

Supreme Court of Illinois - May 8, 2015 - N.E.3d - 2015 IL 118585

Members of public retirement systems and groups representing those members brought actions challenging constitutionality of law amending the Pension Code by significantly lowering benefits for anyone first contributing to State pension systems after January 1, 2011. Actions were consolidated. The Circuit Court declared the law unconstitutional in its entirety as a violation of the pension protection clause, and permanently enjoined its enforcement. State appealed.

The Supreme Court of Illinois held that:

- Act violated Pension Protection Clause;
- Contracts Clause was not a valid affirmative defense to violation of Pension Protection Clause; and
- State’s police powers was not valid affirmative defense to violation of Pension Protection Clause.

Act amending the Pension Code by significantly lowering retirement annuity benefits for anyone first contributing to State-funded pension systems after January 1, 2011 violated Pension Protection Clause. Protections afforded to pension benefits attached once an individual first embarked upon employment in a position covered by a public retirement system, not when the employee ultimately retired, and, accordingly, once an individual began work and became a member of a public retirement system, any subsequent changes to the Pension Code that would have diminished the benefits conferred by membership in the retirement system could not be applied to that individual.

Violation of Pension Protection Clause by act amending Pension Code to significantly lower retirement annuity benefits for anyone first contributing to State-funded pension systems after January 1, 2011 could not be upheld under Contracts Clause, even though retirement systems contained a total of only 41.1% of the funding necessary to meet their accrued liabilities and total unfunded liabilities approached $100 billion. Act was not a last resort, rather, it was an expedient to break a political stalemate, repercussions of underfunding public pension systems were well known when legislature enacted provisions of Pension Code which act sought to change, General Assembly understood provisions would be subject to Pension Protection Clause, and funding problems which developed were foreseeable.

Violation of Pension Protection Clause by act amending Pension Code to significantly lower retirement annuity benefits for anyone first contributing to State-funded pension systems after January 1, 2011 could not be upheld on the basis of police powers, even though retirement systems contained a total of only 41.1% of the funding necessary to meet their accrued liabilities and total unfunded liabilities approached $100 billion. Clause’s protections could not be overridden by General Assembly, people of Illinois yielded none of their sovereign authority through Clause, rather,

they simply withheld an important part of their authority, and there was no police power to disregard the express provisions of Constitution.

ANNEXATION - INDIANA

Fight Against Brownsburg Annexation v. Town of Brownsburg

Court of Appeals of Indiana - May 15, 2015 - N.E.3d - 2015 WL 2328736

After the Town of Brownsburg introduced an ordinance to annex 4,461 acres north of the town, several affected landowners formed a group called Fight Against Brownsburg Annexation ("FABA") and filed a remonstrance petition with the trial court. Brownsburg moved to dismiss the petition under Trial Rule 12(B)(1) and 12(B)(6), and, following a hearing, the trial court dismissed the remonstrance petition.

FABA appealed, arguing that the trial court erred both when it dismissed the petition under Trial Rule 12(B)(1) and when it concluded that FABA had failed to obtain a sufficient number of signatures in support of its remonstrance petition.

The Court of Appeals held that:

- A trial court has subject matter jurisdiction to determine whether a remonstrance petition is facially sufficient under Indiana Code Section 36–4–3–11;
- A party seeking to challenge a remonstrance petition under that statute may not move to dismiss the petition under Trial Rule 12(B)(1);
- Landowner signatures on the the remonstrance petition were valid regardless of whether they were obtained after the ordinance was introduced or after it was adopted; and
- The amendments to the annexation ordinance between the time it was introduced and the time it was adopted did not substantively change the ordinance, so the amendments were not akin to the repeal and replacement of an ordinance, and thus FABA's petition was not moot.

TORT CLAIMS - NEW JERSEY

Beyer v. Sea Bright Borough

Superior Court of New Jersey, Appellate Division - May 19, 2015 - A.3d - 2015 WL 2359767

Arrestee moved for leave to file late notice of claim against police officer, as required by the New Jersey Tort Claims Act. The Superior Court denied motion. Arrestee appealed.

The Superior Court, Appellate Division, held that arrestee's attorney's fatal illness and related incapacity constituted "extraordinary circumstances" that would allow arrestee to file late notice of claim.

Arrestee's attorney's fatal illness and related incapacity, resulting in failure to file arrestee's notice of claim against police officer as required by New Jersey Tort Claims Act, constituted "extraordinary circumstances" that would allow arrestee to file late notice of claim. Failure to act due to serious incapacity or death was not a routine matter, and remedy of malpractice might not have been available to arrestee since it was not clear whether attorney had engaged in any malpractice.

LIABILITY - NEW YORK

Fryc-Cannella v. Town of North Hempstead

Supreme Court, Appellate Division, Second Department, New York - April 29, 2015 - N.Y.S.3d - 127 A.D.3d 1135 - 2015 N.Y. Slip Op. 03498

Pedestrian filed a personal injury action against town after she tripped and fell on an elevated sidewalk in front of her home. The Supreme Court, Nassau County, granted town summary judgment. Pedestrian appealed.

The Supreme Court, Appellate Division, held that town's liability for pedestrian's injuries from tripping and falling on elevated sidewalk in front of her home in town parking lot was precluded under municipal law barring municipal liability for injuries caused by defect or dangerous condition without prior written notice to municipality of alleged defect or dangerous condition, where town did not receive prior written notice of the condition that allegedly caused pedestrian's injuries.

FIRST AMENDMENT - NORTH CAROLINA

Lund v. Rowan County, N.C.

United States District Court, M.D. North Carolina - May 4, 2015 - F.Supp.3d - 2015 WL 2072345

County residents brought § 1983 action against county, alleging that county violated establishment clause of First Amendment by using commissioner-led prayers to open meetings of county board of commissioners. Residents moved for summary judgment.

The District Court held that board practice violated establishment clause.

Practice of county board of commissioners in opening meetings with commissioner-led prayers did not fit within legislative prayer exception for purposes of determining whether practice violated establishment clause of First Amendment. The practice inherently discriminated and disfavored religious minorities, since all faiths but those of the five elected commissioners were excluded.

Practice of county board of commissioners in opening meetings with commissioner-led prayers constituted unconstitutional coercion in violation of the establishment clause of the First Amendment. Board maintained exclusive and complete control over content of prayers, practice inherently excluded religious views of any but five elected commissioners, audience members were invited to stand for the prayer and the immediately-following pledge of allegiance to the flag, and commissioners made public statements indicating frustration and disapproval of minority religious views.

STANDING - OHIO

Wooster v. Enviro-Tank Clean, Inc.

Court of Appeals of Ohio, Ninth District, Wayne County - May 18, 2015 - Slip Copy - 2015 - Ohio- 1876

City brought action against industrial waste treatment facility for public nuisance and injunctive

relief, alleging that odors from facility's operation endangered the health, safety, or welfare of the public or caused unreasonable injury or damage to property. The Court of Common Pleas entered summary judgment in favor of facility. City appealed.

The Court of Appeals held that:

- Complaint did not put facility on notice that city sought relief based upon damage to city-owned property, and thus trial court did not err in declining to consider allegations of such damage in deciding facility's summary judgment motion, and
- Trial court erred in dismissing city's complaint due to lack of allegations concerning damage to city-owned property.

City's complaint for public nuisance and injunctive relief against industrial waste treatment facility did not put facility on notice that city sought relief based upon damage to city-owned property, even though allegations in complaint mentioned "damage to property," and thus trial court did not err in declining to consider allegations of such damage in deciding facility's summary judgment motion. Complaint stated that facility's actions caused harm to city's citizens and injury and discomfort to those living in proximity to facility, and no allegations mentioned damages to city-owned property or city workers.

Trial court erred in dismissing city's complaint for public nuisance and injunctive relief against industrial waste treatment facility due to lack of allegations concerning damage to city-owned property, even though court correctly cited law concerning common law standing. Facility acknowledged that statute permitted a city law director to bring an action in the name of the state to abate nuisance but court did not address issue, and court did not consider individual counts of complaint to determine whether it was possible that city might have standing on some counts even if it lacked standing on others.

CONTRACTS - TEXAS

Gil Ramirez Group, L.L.C. v. Houston Independent School Dist.

United States Court of Appeals, Fifth Circuit - May 18, 2015 - F.3d - 2015 WL 2383797

Contractor brought action against school district, district trustee, consulting companies, and competitors, asserting claims for violation of Racketeer Influenced and Corrupt Organizations Act (RICO) and tortious interference with business relations based on alleged bribery to procure construction contracts. Defendants moved for summary judgment and to dismiss. The United States District Court granted motions in part and denied in part. Contractor appealed.

The Court of Appeals held that:

- Non-renewal of contract provided no basis for RICO claims;
- Genuine issue of material fact existed as to whether sudden decline in contractor's assignments for district construction projects was RICO injury;
- School district was not proper RICO defendant;
- Trustee was not "employee" of school district, and thus trustee was not immune from liability under Texas Tort Claims Act (TTCA);
- Trustee was not employee of school district acting within the scope of his duties with respect to alleged bribery scheme, and thus trustee was not entitled to immunity under Texas Education Code; and

- District and trustee did not discriminate against contractor in violation of Equal Protection Clause by awarding contracts to competitors that engaged in bribery.

IMMUNITY - ALABAMA

Ex parte Dixon Mills Volunteer Fire Dept., Inc.

Supreme Court of Alabama - May 15, 2015 - So.3d - 2015 WL 2340222

Driver and his passenger, who were injured when their car collided with fire truck, sued volunteer fire department and its assistant fire chief, asserting claims of negligence and wantonness and seeking damages for injuries sustained in the accident. The trial court denied department's and fire chief's motion for a summary judgment. Department and chief filed petition for writ of mandamus.

The Supreme Court of Alabama held that:

- Fire chief did not act willfully or wantonly, and thus, chief was entitled to immunity under Volunteer Service Act, and
- Fire department was expressly foreclosed under Volunteer Service Act from vicariously sharing immunity with the firefighters based on the master-servant relationship.

Volunteer fire department, whose truck collided with car, thereby injuring car's occupants, was a "nonprofit organization," as that term was defined in the Volunteer Service Act, for purposes of determining whether department was entitled to immunity under Act as to occupants' negligence claim. Fire department was incorporated specifically for the purpose of forming a non-profit corporation exclusively for charitable purposes within the meaning of Internal Revenue Service regulations, and fire department's original source of funding consisted of donations of equipment from other fire departments.

Although fire chief knowingly entered the intersection, nothing in record indicated that fire chief acted willfully or wantonly in doing so, and thus, chief was entitled to immunity under Volunteer Service Act with respect to negligence claims brought by occupants of car, who were injured when fire truck collided with their car. Firefighters shouted to chief that a vehicle was approaching, and having already committed to proceeding through the intersection, chief accelerated in an attempt to clear the intersection before making contact with occupants' oncoming vehicle.

LIABILITY - ARIZONA

Guerra v. State

Supreme Court of Arizona - May 8, 2015 - P.3d - 2015 WL 2194581

Family members who had been erroneously informed by public safety officers that their daughter had been killed in single-vehicle accident, when in fact she had survived, brought action against state for negligence, negligent training, and intentional infliction of emotional distress. The Superior Court granted summary judgment to state and denied family members' cross-motion for partial summary judgment on issue of duty. Family members appealed.

The Supreme Court of Arizona held that, as a matter of first impression, officers did not assume a duty of care to family by undertaking to provide the next-of-kin notification.

Department of Public Safety (DPS) officers did not assume a legal duty of care to an accident victim's family when, after completing their investigation into identity of passenger who was killed in single-vehicle rollover accident, officers erroneously advised the family of surviving passenger with a next-of-kin notification that their daughter had died in the accident. The undertaking by the police to make a report and assure appropriate action would be taken did not create a special relationship from which a duty was born.

Police officers do not owe a duty to a victim's family or friends by undertaking to investigate a crime or accident and identify victims, for purposes of a negligence claim, and no principled distinction exists between the investigation and notification of next-of-kin for purposes of imposing a duty.

BONDS - ILLINOIS

UMB Bank, National Association v. Leafs Hockey Club, Inc.

United States District Court, N.D. Illinois, Eastern Division - May 11, 2015 - Not Reported in F.Supp.3d - 2015 WL 2258461

On March 2, 2015, the Court granted UMB Bank, N.A.'s (the "Trustee") motion for summary judgment against Leafs Hockey Club, Inc. (the "Club") based on the Club's breach of the parties' Guaranty Agreement.

The underlying facts of the case are that the Illinois Finance Authority issued $20 million in bonds, the proceeds of which were loaned to LHC, LLC ("LHC") under the Loan Agreement. Under the Loan Agreement and the Guaranty Agreement, LHC was the borrower and the Club was the guarantor. The bonds at issue consisted of four different series maturing in different years with different rates of interest. Following LHC's default, the Trustee sent notices of acceleration and filed a proof of claim in LHC's bankruptcy case reflecting the full $20 million in bond proceeds as outstanding. Despite guarantying repayment, the Club never made any payments pursuant to its obligations under the Guaranty Agreement.

Following the grant of summary judgment, the Court directed the Trustee to file a motion to prove up damages, including the exact amount of principal, interest, and fees owed by the Club due to its breach of the Guaranty Agreement, along with the supporting documentation and citations to relevant sections of the Trust Indenture, Guaranty Agreement, and/or Loan Agreement. The Court requested the supporting documentation and citations to the relevant contracts because the parties' summary judgment Local Rule 56.1 Statements of Facts and Responses were confusing and incomplete, especially regarding the calculation of fees and interest.

The Trustee submitted the affidavit and deposition transcript of Virginia Housum, a Senior Vice President and Workout Specialist in the Corporate Trustee Department at UMB, the individual principally responsible for determining the best mechanisms for collecting on the loan at issue in this lawsuit, ascertaining and calculating the unpaid amounts due, and ensuring repayment of debt service on the loan.

The Club was granted leave to file a Rule 56.1 Statement of Facts in response to the Trustee's motion to prove up damages.

The District Court held that:

- The DTC transfer documents, EMMA documents, and Wells Fargo's Notices relied upon, and submitted by, Housman to establish the outstanding principal and interest were admissible

pursuant to the business records exception to the hearsay rule;
- Housman had sufficiently authenticated the documentation;
- The documentary evidence supporting the amount of Trustee's fees was reasonable, despite Housman's failure to attach the time-keeping records delineating her tasks;
- The Trustee's fees documentation was admissible, despite the Club's hearsay and authentication arguments; and
- The Trustee's motion to prove up damages was granted.

EMINENT COMAIN - KANSAS

Neighbor v. Westar Energy, Inc.

Supreme Court of Kansas - May 8, 2015 - P.3d - 2015 WL 2145634

Landowner timely appealed eminent domain appraisers' award to District Court, and District Court later granted his motion to dismiss it without prejudice. About five months later the landowner appealed again, relying on saving statute. The District Court declared second appeal untimely and dismissed with prejudice. Landowner appealed.

The Supreme Court of Kansas held that:

- A party appealing appraisers' award is entitled to rely on saving statute, and
- Landowner was entitled to file his eminent domain appeal under saving statute within 6 months of initial dismissal without prejudice; disapproving *Elwood-Gladden Drainage District v. Ramsel*, 206 Kan. 75, 476 P.2d 696, and *City of Wellington v. Miller*, 200 Kan. 651, 438 P.2d 53.

As a "civil action," landowner's eminent domain appeal was governed by time limitation in code of civil procedure, and although provision of Eminent Domain Procedure Act provided a different time limitation for filing an eminent domain appeal, 30 days from the filing of the appraisers' report, neither it nor rest of the Act specifically provided a time limitation different from the code of civil procedure for saving a dismissed eminent domain appeal.

ZONING - MISSISSIPPI

Cleveland MHC, LLC v. City of Richland

Supreme Court of Mississippi - May 14, 2015 - So.3d - 2015 WL 2250376

Mobile-home park owner sought review of decision of city board of aldermen finding that, under city zoning ordinance, when an existing mobile home was removed from park, home could not be replaced. The Circuit Court affirmed. Owner appealed. The Court of Appeals reversed. City petitioned for certiorari.

The Supreme Court of Mississippi held that:

- As a matter of first impression, mobile-home park as a whole, rather than individual lots within park, were the nonconforming use resulting from park's location in industrial-zoned portion of city, and
- City's interpretation of non-conforming use ordinance to apply on a lot-by-lot basis within mobile-home park was arbitrary and capricious.

Mobile-home park as a whole, rather than individual lots within park, were the nonconforming use resulting from park's location in industrial-zoned portion of city, which prohibited industrial property from being used for residential purposes, where one entity owned the entire mobile-home park property and operated the park thereon, and individual lots in park were rented to tenants, not owned individually.

City's interpretation of non-conforming use ordinance to apply on a lot-by-lot basis within mobile-home park, rather than to park as a whole, was arbitrary and capricious, where city had not interpreted or enforced the ordinance in that way for more than 30 years, and city's interpretation deprived park owner of its constitutional right to enjoy its property, as city's interpretation of ordinance would have effectively destroyed park.

MUNICIPAL ORDINANCE - TEXAS

City of Dallas v. TCI West End, Inc.

Supreme Court of Texas - May 8, 2015 - S.W.3d - 2015 WL 2147986

City brought action against developer for demolishing a historic building in violation of city ordinances and for fraud. Texas Historical Commission (THC) intervened to recover damages for demolition of historic structure without appropriate written permission from municipality. The District Court entered judgment on special jury verdict for city and THC in part, and granted developer's motion for judgment notwithstanding the verdict (JNOV) in part. City's petition for review was granted.

The Supreme Court of Texas held that:

- Statutes authorizing municipalities to bring civil actions and to recover civil penalties for violations of ordinances provided City authority to bring action against developer, and
- Statute authorizing municipalities to recover civil penalties for violation of ordinances applied to instances in which a defendant violated an ordinance after receiving notice of an ordinance's provisions or failed to take action necessary for compliance with the ordinance after receiving such notice.

Statutes authorizing municipalities to bring civil actions and to recover civil penalties for violations of ordinances provided City authority to bring action against developer for demolishing a historic building in violation of city ordinances. Interpretation of statute as incorporating a health-and-safety limitation was contrary to the plain and unambiguous language in the statute and would have rendered meaningless and redundant language in that section expressly circumscribing other categories of ordinances enforceable.

Statute authorizing municipalities to recover civil penalties for violation of ordinances applied to instances in which a defendant violated an ordinance after receiving notice of an ordinance's provisions or failed to take action necessary for compliance with the ordinance after receiving such notice, for purposes of determining whether City could seek penalties from developer for demolishing a historic building in violation of city ordinances.

LIABILITY - CALIFORNIA

Castro v. County of Los Angeles

United States Court of Appeals, Ninth Circuit - May 1, 2015 - F.3d - 15 Cal. Daily Op. Serv. 4248

Arrestee brought action against county, sheriff's department, and two officers under § 1983 for violation of the Fourth Amendment right to be protected from harm by other inmates, arising out of attack against by another arrestee with whom he was jailed. A jury returned a verdict for arrestee, and the District Court denied defendants' motion for judgment as a matter of law. Defendants appealed.

The Court of Appeals held that:

- Right of inmates to be protected from attacks by other inmates was established with sufficient clarity to guide a reasonable officer;
- Substantial evidence supported jury's determination that officer was deliberately indifferent to a substantial risk of serious harm to arrestee;
- Sufficient evidence supported jury's determination that officer's deliberate indifference was actual and proximate cause of harm to arrestee;
- Sufficient evidence supported jury's determination that supervising officer was aware of, but disregarded, risk to arrestee posed by other inmate;
- Design of a jail by municipality is the result of a series of deliberate choices that render the design a formal municipal policy for the purposes of municipal liability under § 1983;
- Arrestee failed to establish that county had actual knowledge of risk of harm from design of jail, as required to establish liability under § 1983; and
- Award of future damages to arrestee was supported by the record.

SPECIAL ASSESSMENTS - FLORIDA

Morris v. City of Cape Coral

Supreme Court of Florida - May 7, 2015 - So.3d - 2015 WL 2095788

City filed complaint to validate special assessment for purposes of funding city's fire-protection services. The Circuit Court entered judgment of validation, and property owners appealed.

The Supreme Court of Florida held that:

- City had the legal authority to levy special assessment for purposes of funding city's fire-protection services;
- In an apparent matter of first impression, city's two-tier methodology for assessing developed and undeveloped property was a reasonable method of apportioning costs associated with providing fire-protection services and was not arbitrary; and
- Property owners were not denied procedural due process.

City's two-tier methodology for assessing developed and undeveloped property was a reasonable method of apportioning the costs associated with providing fire-protection services to all property owners, and was not arbitrary. The city contracted for a study to determine the best method to apportion the costs of fire services, and by adopting the approach recommended in the study, attempted to apportion costs based on the general availability of fire protection services to all property owners in tier 1, and in tier 2, provided the additional benefit to improved property owners of protecting structures from damage.

MUNICIPAL ORDINANCE - ILLINOIS

Wortham v. City of Chicago Dept. of Administrative Hearings

Appellate Court of Illinois, First District, Fifth Division - May 1, 2015 - N.E.3d - 2015 IL App (1st) 131735

Dog owner sought administrative review of ALJ's determination that dog owner's three Rottweilers were dangerous animals. The Circuit Court affirmed. Dog owner appealed.

The Appellate Court held that:

- City ordinance defining dangerous animal did not provide for defense of provocation where a dog provoked another dog, and
- ALJ's consideration of witness's testimony about prior altercation between one Rottweiler and witness's dog did not deprive dog owner of right to fair hearing.

IMMUNITY - ILLINOIS

Nichols v. City of Chicago Heights

Appellate Court of Illinois, First District, Fourth Division - April 30, 2015 - N.E.3d - 2015 IL App (1st) 122994

Homeowners brought negligence action against city for flood damage to their homes. The Circuit Court granted summary judgment in favor of city. Homeowners appealed.

The Appellate Court held that:

- City was immune from liability under Local Governmental and Governmental Employees Tort Immunity Act;
- City was not negligent under doctrine of res ipsa loquitur; and
- Alderman's affidavit satisfied rule governing affidavits in support of summary judgment.

City was immune from liability, under the Local Governmental and Governmental Employees Tort Immunity Act, for purported negligence in homeowners' action arising from flood damage to their homes. Decisions made regarding maintenance and improvement of city's sewer system were discretionary in nature and required deliberation and exercise of judgment, rather than merely executed a set task, as evidenced by letters from mayor that included specific plans for sewer system and engineering invoices for flow monitoring, preparing proposal for sewer cleaning, reviewing sewer cleaning proposals, and meeting with city staff and sanitary district, letter from mayor showed how mayor and city council made policy determination when they recognized that problem with sewer system existed and attempted to find a solution within its budgetary constraints, and, even if city were negligent in maintenance of sewer, it would still be immune from liability under the Act.

City was not negligent under doctrine of res ipsa loquitur for flood damage done to homes. According to homeowners' expert, while city's alleged failure to perform maintenance added to sewer system's existing problems and played a significant role in flooding of homes, there were also many other avenues, such as inflow entering the system from other connections to the system, ground water entering system from defects in main line and private lateral lines owned by homeowners, or any defect causing stoppage in the flow of water in sewer pipe, from which water could have infiltrated the system, resulting in the system to be overwhelmed and eventually causing

surcharge into homeowners' basements.

ZONING - MAINE

Hartwell v. Town of Ogunquit

Supreme Judicial Court of Maine - May 5, 2015 - A.3d - 2015 ME 51

Abutting landowners sought judicial review of town planning board's site plan review and design review approval of property owner's application to convert his garage into a lobster pound. The Superior Court vacated the approval, and property owner appealed.

The Supreme Judicial Court of Maine held that:

- Town planning board lacked the authority to ignore the plain language of zoning ordinance by waiving any design review submission standards in its approval of property owner's application for approval to convert his garage into a lobster pound, and
- Town planning board's failure to make sufficient and clear findings of fact with regard to the scope of property owner's proposed use of converted garage, and whether certain sues would convert a permissible retail lobster pound into a prohibited restaurant, necessitated remand for the board to make such findings.

INVERSE CONDEMNATION - NEBRASKA

6224 Fontenelle Boulevard, L.L.C. v. Metropolitan Utilities District

Court of Appeals of Nebraska - May 5, 2015 - N.W.2d - 22 Neb.App. 872

Metropolitan Utilities District installed a gas regulator station in the public right-of-way in front of home. Homeowner brought an inverse condemnation proceeding alleging that MUD had engaged in a taking which caused damage to the property through the installation of a "dangerous, obnoxious, and unsightly" gas regulator station.

The District Court granted MUD's motion for summary judgment and homeowner appealed.

The Court of Appeals noted that this case featured a question of first impression, due to the fact that the homeowner had alleged an inverse condemnation action where there had been no physical intrusion or taking of its property, but only a damaging of the property by virtue of a loss of value to the property. "Thus, we ask, In an inverse condemnation action, must there be an actual physical taking or invasion of the landowner's property?"

The court concluded that, in an action for inverse condemnation due to a governmental taking or damaging of a landowner's property without the benefit of condemnation proceedings, actual physical construction or physical damaging is not necessary for compensation. As such, the district court erred, as a matter of law, in determining that the homeowner was not entitled to the benefit of inverse condemnation proceedings based on there being no actual taking or physical invasion of the property.

However, the court also found that a diminution in property value alone was not a taking or damaging of the property, but, instead, is a measure of just compensation when such taking or damaging is otherwise proved.

UTILITIES - NEW JERSEY

388 Route 22 Readington Realty Holdings, LLC v. Township of Readington

Supreme Court of New Jersey - May 5, 2015 - A.3d - 2015 WL 1983043

After township declined property developer's demand that the township, in accordance with sewer allocation ordinance, recapture sufficient sewer capacity to allow its construction project to proceed, developer filed a complaint in lieu of prerogative writs against the township and multiple private entities to compel the transfer of allocated but unused sewer capacity. On cross-motions for summary judgment, the Superior Court affirmed validity of the ordinance, but determined that township's blanket policy of not recalling unused sewer capacity violated principles of *First Peoples*. Township appealed. The Superior Court, Appellate Division reversed. Developer appealed.

The Supreme Court of New Jersey held that:

- Ordinance provided adequate standards to guide township's discretion when considering whether to repurchase sewer capacity; but
- As applied, ordinance violated dictates of *First Peoples*; and
- Supreme Court would order township both to undertake a detailed analysis of the unused capacity in the hands of private parties and to explain whether any of that capacity could be recalled.

Sewer allocation ordinance, which provided developers with option to purchase sewer connection permits before making application for development approvals, and which contemplated that township would retain control over sold, but unused, permits by repurchasing such permits, provided adequate standards to guide the exercise of municipal discretion when considering whether or when to repurchase sewer capacity. The ordinance set temporal limits on the right of a property owner to keep unused sewer capacity, and provided that an allocation agreement could be extended upon application to the township if there was a showing of good cause.

Sewer allocation ordinance, providing developers with option to purchase sewer connection permits before making application for development approvals, and which contemplated that township would retain control over sold, but unused, permits by repurchasing such permits, as applied, violated dictates of *First Peoples* and requirements of Municipal Land Use Law, where despite the ordinance, township had maintained a blanket policy of not repurchasing unused sewer capacity allocated to developers.

Supreme Court would order township committee to undertake a critical review of unused sewer capacity, identified by property developer seeking to construct a retail outlet and restaurant, and to determine whether any such capacity could be recaptured from other developers who had purchased sewer connection permits, to satisfy property developer's development needs.

PENSIONS - OREGON

Moro v. State

Supreme Court of Oregon - April 30, 2015 - P.3d - 2015 WL 1955591

Active and retired members of the Public Employee Retirement System petitioned for judicial review of legislation aimed at reducing the cost of retirement benefits, which eliminated income tax offset benefits for nonresident retirees and modified the cost-of-living adjustment.

The Supreme Court of Oregon held that:

- Tax offsets were not contractual as required for their repeal to violate Contract Clause;
- Cost-of-living adjustment requirement was a term of the Public Employee Retirement System benefit offer;
- Public employers could revoke offer of cost-of-living adjustment to Public Employee Retirement System benefit for future work without violating the state Contract Clause, abrogating *Oregon State Police Officers' Ass'n. v. State. of Oregon*, 323 Or. 356, 918 P.2d 765;
- Legislation reducing cost-of-living adjustment cap and bank and imposing fixed rates on benefits received impaired the contractual obligations of public employers in violation of the Contract Clause;
- Supplemental payments were void in whole; and
- Prohibiting payment of tax offset benefits to non-residents did not violate the Privileges and Immunities Clause.

Tax offsets of 1995, which were calculated by applying a formula intended to negate from Public Employee Retirement System benefits the maximum Oregon personal income tax rate, were not contractual, as required for repeal of the tax offsets to violate state Contract Clause, even if the 1995 Legislative Assembly expected that a future legislature would repeal that provision. The legislature had not, in fact, repealed it, statute expressly stated that it was not contractual, and, thus, legislature clearly intended that the 1995 offset would not be contractual.

Tax offsets of 1991, which provided a benefit to both active and retired members of Public Employee Retirement System based on years of service, were not part of the Public Employee Retirement System contract, as required for repeal of the tax offsets to violate state Contract Clause, although it was intended to compensate Public Employee Retirement System members for the losses that they would incur when the state repealed the income tax exemption, as required by federal law. Statute itself was, neither an offer that members had accepted by rendering services nor initially supported by an exchange of consideration, and instead, legislature enacted offset as a type of pre-emptive damage payment to mitigate a claim for breach of Public Employee Retirement System contract that no court had yet sustained, and, thus, it was not a component of the type of employment compensation benefits otherwise found in the contract.

Cost-of-living adjustment requirement for Public Employee Retirement System benefits was a term of the Public Employee Retirement System benefit offer, as required for its amendment to violate the state Contract Clause, rather than merely a continuation of the discretionary dividend payment benefits system that preceded the requirement. By enacting the cost-of-living adjustment system, the legislature made the Public Employees Retirement Board's function ministerial and the application of the adjustment automatic, and legislature continued to make additional discretionary ad hoc payments during periods of particularly high inflation so that employees could reasonably expect that adjustment statute codified some minimum automatic protection of the purchasing power of their future benefits that was separate from any discretionary and gratuitous ad hoc benefits that the legislature might otherwise have provided.

Public employers could revoke offer of cost-of-living adjustment to Public Employee Retirement System benefit for future work without violating the state Contract Clause. Benefit was not an irrevocable term of Public Employee Retirement System benefits offer such that it could not be changed prospectively; abrogating *Oregon State Police Officers' Ass'n. v. State. of Oregon*, 323 Or. 356, 918 P.2d 765.

Legislation that reduced the cost-of-living adjustment cap for Public Employee Retirement System benefits from plus or minus 2% to plus or minus 1.5% for 2013, and, beginning in 2014, eliminated

the cap and bank and imposed a fixed rate of 1.25% on benefits received by retired members up to $60,000 and a fixed rate of 0.15% on retirement income in excess of $60,000 impaired the contractual obligations of public employers to apply cost-of-living adjustment provisions to Public Employee Retirement System benefits earned before the effective dates of those amendments in violation of the state Contract Clause. Case involved public employers's financial obligations and, thus, did not automatically fall within reserved powers that could not be contracted away, public employers failed to establish that funding was so inadequate as to justify allowing the state to avoid its own financial obligations.

Amendments to cost-of-living adjustments for Public Employee Retirement System benefits were void as violative of the state Contract Clause only to the extent that they applied retrospectively to benefits already earned, and, thus, Public Employee Retirement System members who earned a contractual right to benefits by working for participating employers both before and after the effective dates of the amendments were entitled to receive during retirement a blended cost-of-living adjustment rate that reflected the different cost-of-living adjustment provisions applicable to benefits earned at different times. Prospective application of amendments was consistent with the legislative intent, because amendments provided employers with long-term savings.

Supplemental payments provided for in legislation amending cost-of-living adjustments for Public Employee Retirement System benefits by reducing cap and imposing a fixed rate could not be severed from the unconstitutional retrospective application of legislation to benefits already earned in violation of the state Contract Clause and were, therefore, void in whole, even though the supplemental payment provision itself was not unconstitutional. Impact on the benefits Public Employee Retirement System members would have received was adverse.

Prohibiting payment of tax offset benefits to non-residents of Oregon, who were members of Public Employee Retirement System, to compensate them for limitations to cost-of-living adjustments for retirement benefits did not upset the substantial equity between resident and non-resident members in violation of the federal Privileges and Immunities Clause, where nonresidents were not subjected to the tax that the tax offsets were intended to offset.

Prohibiting payment of tax offset benefits to non-residents of Oregon, who were members of Public Employee Retirement System, to compensate them for limitations to cost-of-living adjustments for retirement benefits did not violate the Equal Protection Clause; objective was to remedy damages resulting from the imposition of Oregon income tax, and it was rational to provide that remedy to only those who suffered the damages by paying Oregon income tax.

LIABILITY - TEXAS

Molina v. Alvarado

Supreme Court of Texas - May 8, 2015 - S.W.3d - 2015 WL 2148055

Motorist brought action against city and city employee for injuries sustained when employee struck motorist while driving city vehicle under the influence of alcohol. The District Court denied employee summary judgment. The Court of Appeals affirmed. Employee's petition for review was granted.

The Supreme Court of Texas held that motorist's filing of suit against city rather than city employee barred future suit against employee pursuant to election-of-remedies provision of the Tort Claim Act.

EMINENT DOMAIN - CALIFORNIA

People ex rel. California Deparment of Transportation v. Hansen's Truck Stop, Inc.

Court of Appeal, First District, Division 4, California - April 24, 2015 - Cal.Rptr.3d - 2015 WL 1877332

Department of Transportation brought eminent domain action. The Superior Court entered judgment on special jury verdict awarding compensation between the statutory offer and demand, and denied litigation expenses based on its finding that landowner's demand was unreasonable. Landowner appealed.

The Court of Appeal held that offers and demands used as basis for award of litigation expenses may be made after first phase of eminent domain trial.

Offers and demands used as the basis for an award of eminent domain litigation expenses must be made 20 days before the trial on the amount of compensation to be awarded, not necessarily before phase one of a bifurcated proceeding in which preliminary issues of the property owner's right to seek damages for impairment of access, loss of goodwill, or other severance damages are adjudicated, since the phrase "trial on issues relating to compensation" found in the statute has a particular meaning in eminent domain practice, and refers to the trial in which the trier of fact determines the amount of compensation, including the amount of damages if any, to be awarded to the property owner.

ANNEXATION - KANSAS

Stueckemann v. City of Basehor

Supreme Court of Kansas - April 24, 2015 - P.3d - 2015 WL 1874513

After city unilaterally annexed platted subdivision adjoining city, affected landowners and association for subdivision sued city, seeking to invalidate annexation. The District Court upheld annexation. Landowners and association appealed. The Court of Appeals affirmed. Landowners and association petitioned for review, which was granted.

The Supreme Court of Kansas held that:

- City's description and depictions of land subject to annexation substantially complied with annexation statutes;
- City's correction of erroneous legal description of land substantially complied with annexation statutes;
- City's service plan substantially complied with annexation statutes;
- Adoption of statute permitting landowner to challenge annexation decision did not codify prior annexation caselaw; and
- City's unilateral annexation decision was reasonable.

City's description and depictions of land subject to annexation substantially complied with annexation statutes, such that city's description of land was adequate, despite contention that no one was able to read annexation plan and determine what city was trying to annex. City included a legal description of land to be annexed with its annexation resolutions, city provided sketches delineating area it proposed to annex to affected landowners, and even though there were errors in

initial identification of land subject to annexation, affected landowners were able to determine what area city sought to annex.

City's correction of erroneous legal description of land to be annexed in annexation resolution before publication of annexation ordinance substantially complied with annexation statutes, despite contention that city's attempt to correct mistaken legal description violated public hearing provisions of statutes. City gave affected landowners renewed opportunity to voice their opposition to annexation after they were publicly informed of the correction of legal description.

City's service plan for police protection and for street and infrastructure maintenance applicable to land subject to annexation substantially complied with annexation statutes, such that city's plan was adequate, since plan was submitted in a good faith effort to honestly extend and implement municipal services. Plan satisfied statutory requirement of supplying sufficient detail to provide reasonable person with full and complete understanding of intentions of the city, and plan addressed factors required by statute detailing requirements of service plan, including estimated cost of providing services, method by which city planned to finance extension of services, and explanation of how city would provide better service than that currently provided.

Adoption of statute permitting landowner to challenge whether city's unilateral annexation decision was reasonable did not codify prior annexation caselaw addressing reasonableness, but rather, statute expanded grounds on which landowner was permitted to challenge annexation decision to include a challenge for substantive reasonableness. Statute's departure from its predecessors was significant and reflected legislative declaration that original law did not embrace statute.

City's unilateral decision to annex platted subdivision adjoining city was reasonable. Residents of property subject to annexation benefited from their property adjoining city, and annexation provided value to residents by providing them with police protection, street infrastructure and maintenance, trash service, and wastewater treatment services.

IMMUNITY - MARYLAND

O'Brien & Gere Engineers, Inc. v. City of Salisbury

Court of Special Appeals of Maryland - April 28, 2015 - A.3d - 2015 WL 1932332

Engineering firm brought action against city, alleging that city violated non-disparagement clause in a settlement agreement resolving claims relating to new wastewater treatment plant that was designed by engineering firm, and whose failure remained the subject of city's ongoing litigation with non-settling parties. The Circuit Court dismissed action. Engineering firm appealed.

The Court of Special Appeals held that city was immune from liability for the words used in arguing its case at trial against non-settling parties.

City that entered into non-disparagement agreement as part of settlement of claims against engineering firm relating to new wastewater treatment plant that was designed by engineering firm, and whose failure remained the subject of city's ongoing litigation with construction manager, was immune from liability, pursuant to the absolute liability privilege, for the words used in arguing its case against construction manager and presenting evidence at trial. Claims against construction manager and engineering firm were facets of same litigation, evidence about flaws in engineering firm's design and cause of plant failure was indispensable to resolution of city's contract claim against construction manager, evidence of flaws in engineering firm's design would necessarily

portray firm in a negative light, city was entitled to use court system to recover losses sustained, and administration of justice would be served by application of privilege.

FINANCE - NEBRASKA

Nebuda v. Dodge County School District 0062

Supreme Court of Nebraska - April 23, 2015 - N.W.2d - 290 Neb. 740

Taxpayers brought action against school district, seeking declaratory and injunctive relief arising out of lease-purchase agreement that district entered into with bank in order to fund school improvements after voters rejected a bond proposal. The District Court entered judgment after a bench trial dismissing taxpayers' claims. Taxpayers appealed.

The Supreme Court of Nebraska held that:

- Taxpayers' claims were moot;
- Public interest exception to the mootness doctrine applied; and
- Lease-purchase agreement did not violate statute barring issuance of bonds to finance such agreements.

Supreme Court could not provide any relief to taxpayers on their claims for declaratory and injunctive relief against school district arising out of a lease-purchase agreement that district entered into with bank in order to fund school improvements after voters rejected a bond proposal, and thus taxpayers' claims were moot. Injunctive relief was not available because construction under the lease-purchase agreement was completed by the time of trial, and taxpayers did not allege that they were entitled to recoup any illegal expenditures.

Public interest exception to the mootness doctrine applied to taxpayers' appeal from the dismissal of their claims for declaratory and injunctive relief against school district arising out of a lease-purchase agreement that district entered into with bank in order to fund school improvements after voters rejected a bond proposal, which was mooted by completion of the construction project and by the fact that taxpayers did not allege entitlement to recoup any illegal expenditures. Meaning of statute allowing school districts to enter into lease-purchase agreements was unquestionably a matter affecting the public interest, and district argued that many school districts were looking for guidance on the issue.

Lease-purchase agreement that school district entered into with bank in order to fund school improvements after voters rejected a bond proposal did not violate statute governing such lease-purchase agreements, which barred a school district from "directly or indirectly" issuing bonds to fund a lease-purchase plan for a capital construction project exceeding $25,000 without voter approval. Plain language of statute did not require voter approval of all lease-purchase agreements exceeding $25,000, interpreting agreement itself as constituting issuance of a bond would be nonsensical, and legislature had acquiesced in prior interpretation of statute as permitting the action district took.

ZONING - NEW JERSEY

Township of Fairfield v. State, Dept. of Transp.

Superior Court of New Jersey, Appellate Division - April 10, 2015 - A.3d - 2014 WL 8514005

Township sought judicial review of final determination of the Director of the Division of Multimodal Services, Department of Transportation (DOT), granting a helistop "special use" license to the applicant.

The Superior Court, Appellate Division, held that:

- Sufficient evidence supported Director's decision to grant helistop special use license, and
- Township was not entitled to a contested case-type hearing concerning the application.

Although helistops were banned in township by zoning ordinance, there was sufficient credible evidence to support Director of Transportation's decision to grant application for a helistop special use license, where the Director had given careful consideration to township's objections to the application and the board of adjustment's resolution denying the use variance application, and contrary to the township's contentions, the Director had conscientiously weighed the local interests, examined carefully whether the proposed aviation facility was compatible with surrounding land uses and consulted the local ordinances and authorities in making his licensing decision.

Director of Transportation did not abuse his discretion by deciding not to conduct a public informational hearing with respect to application for a helistop license, where the Director had explained in his decision that a hearing was not required because there were no material facts in dispute and the issues had been clearly framed by the submissions of the applicant's and the board of adjustment's attorneys.

UTILITIES - NEW YORK

New York v. F.E.R.C.

United States Court of Appeals, Second Circuit - April 22, 2015 - F.3d - 2015 WL 1810416

Federal Energy Regulatory Commission (FERC) (2012 WL 6641001) issued orders adopting standards and procedures for determining which power distribution facilities were subject to FERC's regulatory jurisdiction and which facilities fell within statutory exception for "local distribution of electric energy," and clarified its orders on rehearing (2013 WL 1700286). State of New York and Public Service Commission of State of New York petitioned for judicial review.

The Court of Appeals held that:

- FERC did not act unreasonably in including 100 kV threshold to clarify otherwise ambiguous distinction under Federal Power Act as amended by Electricity Modernization Act between power facilities over which it did and did not have regulatory jurisdiction within larger scheme of standards and procedures for clarifying its statutory jurisdiction;
- Orders did not authorize FERC to regulate any facility in advance of factually supported, explicit determination of jurisdiction; and
- Orders were not arbitrary and capricious.

Federal Energy Regulatory Commission (FERC) did not act unreasonably under FPA as amended by Electricity Modernization Act in including 100 kV threshold to clarify otherwise ambiguous distinction between power distribution facilities over which it did and did not have regulatory jurisdiction within larger scheme of standards and procedures for clarifying its statutory jurisdiction, since there was record support for selection of 100 kV threshold as initial standard and that standard was not determinative but subject to general and individualized adjustments.

Federal Energy Regulatory Commission (FERC) orders adopting standards and procedures for determining which power distribution facilities were subject to agency's regulatory jurisdiction and which facilities fell within statutory exception for "local distribution of electric energy" did not impermissibly authorize FERC to regulate any facility in advance of factually supported, explicit determination of jurisdiction. Orders established procedure for factfinding requisite to exercise of such jurisdiction, threshold finding of 100 kV operation was followed by further factfinding as to five specified inclusions and four exclusions, and factfinding process continued still further if facility not found within local distribution exception after operating voltage and configuration consideration petitioned FERC for individualized review.

Final orders of Federal Energy Regulatory Commission (FERC), adopting standards and procedures for determining which power distribution facilities were subject to FERC's regulatory jurisdiction, and which facilities fell within statutory exception for "local distribution of electric energy," did not require facilities, as precondition for petitioning FERC for individualized determination of jurisdiction, to apply for technical exemption to organization that had been certified by FERC to develop standards, and, thus, challenged orders did not impose unwarranted procedural obligations as preconditions. Filing of jurisdictional petition and filing for technical exemption were independent avenues by which facilities could seek different forms of relief.

Determination by Federal Energy Regulatory Commission (FERC) which had been based on factual record and its industry expertise, that 100 kV threshold, together with detailed predefined inclusions and exclusions, would effectively identify power distribution facilities comprising the bulk system while ensuring that most local distribution facilities were excluded from its regulatory jurisdiction as statutorily prescribed, was not arbitrary or capricious, and thus would be upheld on petition for judicial review, particularly where FERC would employ full notice-and-comment process upon request for individualized determination.

SCHOOLS - NORTH CAROLINA

Union County Bd. of Educ. v. Union County Bd. of Com'rs

Court of Appeals of North Carolina - April 7, 2015 - S.E.2d - 2015 WL 1529502

School board brought action against county commissioners regarding adequacy of funding for public school system. The Superior Court entered judgment on jury verdict for school board. Commissioners appealed.

The Court of Appeals held that:

- Error in allowing board to communicate improper legal standard to determine funding was harmless;
- Court improperly allowed evidence outside scope of board's proposed budget at trial;
- Because much of board's evidence should not have been admitted, Court of Appeals would remand for new trial;
- Jury instruction defining amount legally necessary maintain school system was proper; but
- Jury instruction that suggested that if any student was not performing at grade level, the county was not providing a sound basic education, likely misled the jury.

EMINENT DOMAIN - NORTH CAROLINA

Town of Matthews v. Wright

Court of Appeals of North Carolina - April 21, 2015 - S.E.2d - 2015 WL 1788729

Town filed complaint against homeowners, seeking to condemn homeowners' private right-of-way that had been subject of years of litigation with town, which claimed that the right-of-way was a public street. The Superior Court held town's claim to homeowners' property by eminent domain was null and void. Town appealed.

The Court of Appeals held that:

- Homeowners had burden to show condemnation would serve no public use or benefit, and
- The condemnation would serve no public benefit.

No public benefit would be achieved from town's proposed condemnation of homeowner's land containing private right of way for purposes of opening the easement for access to neighbors, utilities, firefighters, and the community, where there was no evidence that homeowner blocked access to the easement, homeowner's portion of easement was not the sole private portion of an otherwise public street, condemnation of only homeowner's portion of easement would not open access to anything except homeowner's land, and personal conflicts between town and homeowners motivated town officials' decision to condemn.

ZONING - RHODE ISLAND

Hines Road, LLC v. Hall

Supreme Court of Rhode Island - April 28, 2015 - A.3d - 2015 WL 1914658

After town and neighbor had entered into agreement regarding neighbor's retaining wall, abutting property owners filed an appeal with town's zoning board of review challenging the agreement. The board held that it did not have jurisdiction. Owners did not appeal. Subsequently neighbor commenced action to litigate issues relating to the agreement. Owners moved to intervene. Following a bench trial, the Superior Court denied the motion. Owners appealed.

The Supreme Court of Rhode Island held that:

- Status as abutting property owners did not entitle owners to intervene as a matter of right;
- Owners' interest in underlying action was contingent, not direct; and
- Court did not abuse its discretion in considering owners' failure to appeal board's decision in denying motion to intervene.

EMINENT DOMAIN - TEXAS

State v. Clear Channel Outdoor, Inc.

Supreme Court of Texas - April 24, 2015 - S.W.3d - 2015 WL 1870306

State brought action to condemn two parcels of land containing billboards, and billboard owner filed claims for inverse condemnation of billboards. After state settled with billboard owner and landowners for compensation due for leasehold and fee interests, the Civil Court granted partial summary judgment for billboard owner, and, following a jury trial, entered judgment awarding damages for taken billboards. State appealed, and the Court of Appeals affirmed. The Supreme

Court granted the State's petition for review.

The Supreme Court of Texas held that:

- Billboards were "fixtures" such that compensation for their loss was part of compensation for taken property, and
- Measure of compensation for billboards was based on the structures themselves, rather than based on the profits generated by their use in advertising.

Billboards on leased land taken by State were "fixtures" such that compensation for their loss was part of compensation for taken property, where billboards were firmly embedded in the earth and their removal required that the poles be cut and the signs dismantled, and billboards were perfectly suited to the use of the realty, which was outdoor advertising alongside a busy freeway, such that an owner would have intended the structures become part of the real estate.

Compensation due billboard owner for billboards taken when state condemned underlying land was to be based on the structures themselves, rather than based on the profits the structures generated by their use in advertising. State did not take billboard operations or business, but only took the land and the billboards, billboard owner was free to continue to operate its business on new site, and business income potentially was indication of the value of the land, rather than the billboards.

INSURANCE - TEXAS

JAW the Pointe, L.L.C. v. Lexington Insurance Company

Supreme Court of Texas - April 24, 2015 - S.W.3d - 2015 WL 1870054

Owner of apartment complex damaged by hurricane brought action against primary property insurer and others, asserting claims for breach of insurance contract and violations of the Texas Insurance Code and the Texas Deceptive Trade Practices Act.

The Supreme Court of Texas held, as a matter of first impression, that losses incurred in demolishing and rebuilding to comply with city ordinances were excluded under policy's anti-concurren--causation clause.

Hurricane caused both wind damage, covered by all-risk property insurance policy, and flood damage, excluded by the policy, which together combined to cause enforcement of city ordinances that ultimately required owner of insured apartment building to demolish and rebuild, and thus insurance policy's anti-concurrent-causation clause excluded coverage for insured building owner losses in demolishing and rebuilding apartment building in order to comply with city ordinances. While the policy covered the cost of complying with city ordinances, such coverage only applied if the policy covered the property damage that triggered the enforcement of the ordinances, and, pursuant to the anti-concurrent-causation clause, the policy did not cover damage caused by the hurricane, as the policy excluded flood damage, which was a concurrent cause of the damage to the building.

IMMUNITY - TEXAS

Brown & Gay Engineering, Inc. v. Olivares

Supreme Court of Texas - April 24, 2015 - S.W.3d - 2015 WL 1897646

Representative of driver who was killed when his vehicle was struck by a vehicle driven by an intoxicated driver traveling the wrong way on a tollway brought an action against various entities, including private engineering firm that was contracted by county toll road authority to design the tollway.

The District Court granted firm's plea to the jurisdiction based on governmental immunity under the Texas Tort Claims Act. Representative appealed. The Houston Court of Appeals reversed and remanded. Firm petitioned for review.

As matters of apparent first impression, the Supreme Court of Texas held that:

- Extension of sovereign immunity to firm would not further the doctrine's rationale, and
- Firm was not entitled to share in authority's sovereign immunity on the ground that authority was statutorily authorized to engage firm's services and would have been immune had it performed those services itself.

Extension of sovereign immunity to private engineering firm that was contracted by county toll road authority to design a tollway would not further the doctrine's rationale, in a case in which firm was sued by representative of driver who was killed when his vehicle was struck by a vehicle driven by an intoxicated driver traveling the wrong way on the tollway. Sovereign immunity was designed to guard against the unforeseen expenditures associated with the government's defending lawsuits and paying judgments that could hamper government functions by diverting funds from their allocated purposes, and immunizing firm would in no way further that rationale.

Private engineering firm that was contracted by county toll road authority to design a tollway was not entitled to share in authority's sovereign immunity on the ground that authority was statutorily authorized to engage firm's services and would have been immune had it performed those services itself, in a case which firm was sued by representative of driver who was killed when his vehicle was struck by a vehicle driven by an intoxicated driver traveling the wrong way on the tollway. The lawsuit did not threaten allocated government funds and did not seek to hold firm responsible merely for following authority's directions, and firm was responsible for its own alleged negligence as a cost of doing business and could insure against that risk.

EMINENT DOMAIN - CALIFORNIA

Jefferson Street Ventures, LLC v. City of Indio

Court of Appeal, Fourth District, Division 3, California - April 21, 2015 - Not Reported in Cal.Rptr.3d - 2015 WL 1838772

In 2007, the City of Indio conditioned approval of Jefferson Street Ventures, LLC's 2005 application for development of a shopping center upon Jefferson leaving approximately one-third of its property undeveloped to accommodate the reconstruction of a major freeway interchange that was in the planning stages.

Jefferson sued the City contending the development restrictions were invalid because they constituted an uncompensated taking of its property. Following a hearing on the writ petition, the trial court found the development restrictions were permissible and denied the writ. Although the court originally declined to consider whether the facially valid development restrictions nonetheless amounted to an uncompensated taking, it subsequently granted the City's motion for judgment on the pleadings on the inverse condemnation causes of action agreeing the ruling on the writ petition

included a finding there was no compensable taking.

The appeals court reversed, holding that the City's development restrictions constituted an uncompensated de facto taking of the development-restricted portion of Jefferson's property.

BOND VALIDATION - LOUISIANA

Louisiana Local Government Facilities and Community Development Authority v. All Taxpayers

Supreme Court of Louisiana - April 17, 2015 - So.3d - 2015-0417 (La. 4/17/15)

The Louisiana Local Government Environmental Facilities and Community Development Authority (LCDA) filed a motion for judgment pursuant to the Bond Validation Act seeking to validate the issuance of certain municipal bonds.

The District Court denied the motion, expressing concerns over publication of notice. On appeal, the Court of Appeal found the district court erred in finding proper notice was not given. Nonetheless, the majority of the Court of Appeal, over two dissents, affirmed the District Court's judgment on different grounds, finding LCDA did not introduce into the record the resolution authorizing the issuance of the bonds.

The Supreme Court of Louisiana reversed, finding that the LCDA's motion to validate was not defective because it failed to introduce the resolution into the record.

The Court noted that the legislature chose not to specify what evidence a governmental entity must introduce to meet its burden of proof under the Bond Validation Act and that it was not the function of the judicial branch in a civilian legal system to legislate by inserting provisions into statutes where the legislature had chosen not to do so.

ZONING - MARYLAND

Anne Arundel County v. Bell

Court of Appeals of Maryland - April 21, 2015 - A.3d - 2015 WL 1798953

Objectors brought action against county, seeking declaratory relief, challenging comprehensive rezoning ordinance. The Circuit Court dismissed complaint with prejudice. Objectors appealed. The Court of Special Appeals vacated and remanded. County petitioned for certiorari.

The Court of Appeals held that:

- Objectors lacked property owner standing to bring action, and
- Objectors lacked taxpayer standing to bring action.

Objectors lacked property owner standing to bring action for declaratory relief challenging county's adoption of comprehensive rezoning ordinance. Objectors were not specially aggrieved by the ordinance merely because they owned property in the area affected by the ordinance, and expanding the doctrine of property owner standing to a challenge to comprehensive zoning legislative action would be unwarranted and unprudential.

Objectors lacked taxpayer standing to bring action seeking declaratory relief challenging county's adoption of comprehensive rezoning ordinance, since objectors failed to sufficiently allege that their taxes would be increased or that the allegedly illegal action would result in any other form of pecuniary loss. Objectors' alleged frustration with increased traffic, annoyance with increased noise, and violations of a right to participate in zoning changes, even if within the purview of taxpayer standing, were not unique to objectors, as opposed to the general public.

PENSIONS - MICHIGAN

FT Michigan v. State

Supreme Court of Michigan - April 8, 2015 - N.W.2d - 2015 WL 1578785

In 2010, the Michigan Legislature enacted Public Act 75, which modified retirement benefits for current public school employees. The statute supplemented and altered the Public School Employees Retirement Act (Retirement Act), which governs the Michigan Public School Employees' Retirement System (MPSERS). The most controversial provision of 2010 PA 75 required all current public school employees to contribute 3% of their salaries to the MPSERS to assist in funding retiree healthcare benefits for current and future public school retirees.

Labor organizations representing public employees challenged the constitutionality of 2010 PA 75.

The Supreme Court of Michigan held that:

- PA 75 did not constitute an uncompensated taking under either the Michigan or United States Constitutions;
- PA 75 did not impair the obligation of contracts in violation of either the Michigan or United States Constitutions; and
- PA 75 did not violate the guarantee of due process in violation of either the Michigan or United States Constitutions.

IMMUNITY - MISSISSIPPI

City of Magee v. Jones

Supreme Court of Mississippi - April 23, 2015 - So.3d - 2015 WL 1848083

Landowner brought action against city after raw sewage entered her house through a shower drain and flooded several rooms. The Circuit Court denied city's motion for summary judgment. City sought review.

The Supreme Court of Mississippi held that:

- To determine if city's sewage-system operation was discretionary under Tort Claims Act, court must first determine overarching governmental function, and
- Remand was required in light of drastic change to test.

To determine if city's sewage-system construction, operation, and maintenance was discretionary for the purpose of discretionary function exception of Mississippi Tort Claims Act (MTCA), court must first determine whether overarching governmental function at issue is discretionary or ministerial, examine any narrower duty associated with the activity to determine whether a statute, regulation,

or other binding directive renders that particular duty a ministerial one, notwithstanding that it may have been performed within the scope of a broader discretionary function.

For a plaintiff to defeat a claim of discretionary-function immunity for the purpose of discretionary function exception of Mississippi Tort Claims Act, the plaintiff must prove that an act done in furtherance of a broad discretionary function also furthered a more narrow function or duty which is made ministerial by another specific statute, ordinance, or regulation promulgated pursuant to lawful authority.

BONDS - MISSISSIPPI

Radian Asset Assurance Inc. v. Madison County, Miss.

United States District Court, S.D. Mississippi, Northern Division - April 20, 2015 - Slip Copy - 2015 WL 1780190

In 2002, Madison County created the Parkway East Public Improvement District. In 2005, the District issued bonds to finance improvements. The bonds were to be repaid by special assessments on the landowners within the District. Radian insured the bonds.

The County entered into a Contribution Agreement with the District, which provided that: 1) If the County was satisfied with the District's performance, it would step in and pay the District's bonds if the District experienced an assessment shortfall; 2) If the County made such a payment, the County could take the proceeds of tax sales to recoup the money it spent on bond payments; and 3) The District had two years to reimburse the County for the County's bond payments.

The subsequent collapse of the economy caused the District to fail. It was unable to attract the development necessary to make its bond payments. When the District failed, Madison County made the District's bond payments between October 2011 and September 2013. The County then stopped, arguing that the contribution agreement required it to cover bond payments for only two years.

Madison County contended that it was now Radian's duty as insurer to step forward and repay the bonds.
Radian filed suit seeking a declaration that Madison County remained responsible for bond payments.

The District Court held that the two-year limit in the Contribution Agreement does not constitute a two-year time limit on the County's obligation to make bond payments, but refers solely to the amount of time the District has to reimburse the County.

The Court was sympathetic to the County's contention that it could not be forced to make bond payments "ad infinitum," since the Contribution Agreement also recites that the bonds are not backed by the full faith and credit of the County. Radian conceded this, but argued that the County must make bond payments as long as it has "sufficient unrestricted funds in its General Fund." The Court noted that Radian's position may be contradicted by the plain language of the contract and may cut against the very purpose of purchasing bond insurance, but that that question was not at issue in this proceeding.

"Nor are other arguments raised by the parties, ranging from the County's acceptance of the Landspan Property to the adequacy of Radian's underwriting process, ripe for adjudication. It is enough at this juncture simply to say that the contribution agreement does not state how long Madison County agreed to cover the District's bond shortfall. The County agreed to make the

District's bond payments for some period of time, but whether the parties contemplated payments of one year, two years, five years, or something else is not contained within the four corners of the contract and cannot be inferred by the Court. Additional proceedings are necessary to answer that question, whether in the form of a trial (given the fact dispute suggested by the briefing, but not before the Court today) or additional motion practice."

PENSIONS - NEW JERSEY

In re I/M/O Town of Harrison

Superior Court of New Jersey, Appellate Division - April 15, 2015 - A.3d - 2015 WL 1736801

Municipalities and collective bargaining agents for municipal police officers and firefighters brought declaratory judgment action challenging decision by Acting Director of the Division of Pensions and Benefits to refuse to implement final determination of Board of Trustees of the Police and Firemen's Retirement System (PFRS) concerning certain senior officer and longevity pay provisions of collective bargaining agreements.

The Superior Court, Appellate Division, held that Acting Director of the Division of Pensions and Benefits did not have authority to act unilaterally to refuse to implement a final decision reached by the Board of Trustees of the PFRS concerning what constitutes creditable compensation for calculation of policemen and firemen pension benefits.

Under statutory and regulatory scheme established to administer PFRS pension system, the PFRS Board of Trustees was the only administrative body authorized to make a final administrative determination regarding what can be considered creditable compensation.

LIABILITY - NEW YORK

Staten v. City of New York

Supreme Court, Appellate Division, Second Department, New York - April 22, 2015 - N.Y.S.3d - 2015 N.Y. Slip Op. 03347

High school student, by his mother and guardian, brought action against city, city department of education, and camp owner to recover damages for personal injuries sustained at football camp when fellow student broke window near his face. The Supreme Court, Richmond County, denied city's and department's motion for summary judgment, and entered summary judgment in owner's favor. Parties filed cross-appeals.

The Supreme Court, Appellate Division, held that:

- City was not liable for school officials' alleged negligence, and
- Other student's disciplinary history did not place board on notice of dangerous conduct requiring greater level of supervision.

Fact that student was previously involved in altercation, for which he received in-school suspension, did not place city board of education on notice of dangerous conduct requiring greater level of supervision at football camp operated by public high school, and thus board was not liable for personal injuries sustained by camp participant when student broke window near him, where participant's injury was result of spontaneous, unanticipated act that could not have been averted

through exercise of greater supervision.

BONDS - CALIFORNIA

Golden State Water Company v. Casitas Municipal Water District

Court of Appeal, Second District, Division 6, California - April 14, 2015 - Cal.Rptr.3d - 15 Cal. Daily Op. Serv. 3592

City residents, fed up with sky high water bills, voted to oust Golden State Water Company (Golden State), the private utility that monopolized water service to their City, and replace it with the newly-formed Casitas Municipal Water District (Casitas), a community facilities district formed pursuant to the Mello–Roos Community Facilities Act of 1982 (Mello–Roos Act or Act).

Casitas determined that the Mello–Roos Act would be an appropriate means of financing the transaction. Casitas passed resolutions listing the facilities to be acquired, declaring the necessity of raising bond revenue to finance their acquisition, and submitting the matter to voters for their approval in a special election. The ballot measure passed, authorizing Casitas to issue up to $60 million in bonds to finance the acquisition of Golden State's property and property rights in the City.

Golden State was unwilling to sell its business, therefore Casitas planned to acquire the assets by eminent domain.

Golden State filed a reverse validation complaint and petition for writ of mandate seeking to invalidate and set aside Casitas's resolutions. The trial court ruled against Golden State on all issues. Golden State appealed, contending that the Mello–Roos Act cannot be used to finance a taking of property by eminent domain or the acquisition of intangible property and property rights.

The Court of Appeal held that:

- The Mello-Roos Act can be used to finance eminent domain actions, as the Act facilitates the purchase of property regardless of whether the seller consents to the sale or is compelled under force of law;
- Financing the acquisition of intangible property incidental to the real or tangible property being purchased is consistent with the Act's text and purpose;
- The legal costs associated with an eminent domain proceeding are properly classified as an incidental expense that can be financed under Mello–Roos; and
- The compensation to be received by Golden State from Casitas for its water rights and loss of goodwill are properly classified as incidental expenses that can be financed under Mello–Roos.

ZONING - CALIFORNIA

Benetatos v. City of Los Angeles

Court of Appeal, Second District, Division 5, California - April 14, 2015 - Cal.Rptr.3d - 2015 WL 1650766

Owners of 24-hour fast food restaurant petitioned for writ of mandate, seeking to overturn city determination that they operated a nuisance and imposing conditions on further operation. The Superior Court denied the petition, and owners appealed.

The Court of Appeal held that:

- Imposition of operating conditions did not implicate fundamental rights, and thus substantial evidence review was appropriate, and
- Substantial evidence supported determination that restaurant was operated in a manner that constituted a nuisance.

Imposition of operating conditions on fast food restaurant which allegedly operated as a nuisance did not implicate fundamental rights by forcing restaurant to shut down, and thus substantial evidence standard of review applied to superior court's consideration of petition for writ of administrative mandamus challenging the conditions. Although there was some discussion in the record about the cost of a security guard, there was no evidence concerning restaurant's profitability and projected losses, and thus owners suggested only an economic effect from the required operating conditions, rather than showing that the operating conditions would severely impair their ability to function or would drive them out of business.

Substantial evidence supported city's determination that owners of 24-hour fast food restaurant operated restaurant in a manner that constituted a nuisance in violation of city ordinance. There was evidence owners failed to maintain the restaurant or the property the restaurant occupied, as there was trash and debris throughout the property and graffiti covered the building, walls, and menu signs, there was evidence of loitering and gang activity, and that persons were drinking alcohol at the restaurant, there was evidence that, in less than three-year period, police department received 58 calls for service at restaurant for crimes including misdemeanor battery, public drinking, drug offenses, prostitution, pimping, two homicides, and two assaults with deadly weapons, there was evidence that half of those service calls took place during overnight hours, and there was evidence that a second restaurant, located 20 blocks away in an area with similar crime statistics, did not have any problems associated with it, and that nearby restaurants were not the subject of nuisance investigations.

CONTRACTS - CONNECTICUT

Old Colony Const., LLC v. Town of Southington

Supreme Court of Connecticut - April 21, 2015 - A.3d - 2015 WL 1612044

Contractor brought breach of contract action against town, and town counterclaimed for liquidated damages for breach of contract. The Superior Court denied town's motion for summary judgment. Following a bench trial, the Superior Court rendered judgment in favor of contractor on its breach of contract claim and in favor of town on its counterclaim. Contractor appealed.

The Supreme Court of Connecticut held that:

- In an apparent matter of first impression, town's election to terminate the contract for convenience did not preclude it from recovering liquidated damages;
- Liquidated damages clause in construction contract was not unenforceable on the basis certain misinformation by town contributed to some of the delays in completing the project;
- Town was not required to prove that it had suffered damages based on contractor's delay in order to recover under the contract for liquidated damages; and
- Town's approval of change orders did not constitute a modification of public works construction contract that would entitle contractor to equitable adjustment in time or costs due to delays beyond its control.

In the absence of any express limitation on the reservation of rights in termination for convenience clause of public works construction contract, town was not barred from seeking liquidated damages or other default based remedies after exercising its right to terminate the contract under the termination for convenience provision, even if it could be implied that a limitation existed with regard to damages incurred following the termination. Town's claim for liquidated damages would not be impaired because its rights to such damages arose as soon as the substantial completion date passed, and continued to accrue until termination of the contract.

EMINENT DOMAIN - IOWA

Clarke County Reservoir Com'n v. Abbott

Supreme Court of Iowa - April 10, 2015 - N.W.2d - 2015 WL 1586257

Joint public-private county reservoir commission filed a declaratory judgment action seeking a declaration that its proposed project to build a public reservoir for drinking water was a public use that would allow the commission to condemn private land. Landowners challenged the authority of the commission to initiate the condemnation proceeding. Following a bench trial, the District Court concluded that the project qualified as a public use. Landowners appealed.

The Supreme Court of Iowa held that:

- Appeal was not moot, and
- As a matter of first impression, the commission, because it included private members, could not itself exercise the power of eminent domain or serve as an acquiring agency seeking a declaratory judgment of public use.

County reservoir commission, organized under joint governmental activity statute and including private members lacking the power of eminent domain, could not itself exercise the power of eminent domain or serve as an acquiring agency seeking a declaratory judgment of public use. Only the legislature had the authority to delegate the power of eminent domain, and the members of the commission could not grant or delegate their own powers of eminent domain to the commission, but, rather, could only exercise their individual powers jointly.

PENSIONS - MASSACHUSETTS

Galenski v. Town of Erving

Supreme Judicial Court of Massachusetts, Franklin - April 17, 2015 - N.E.3d - 2015 WL 1737396

Retired town school principal brought action against town, seeking injunctive and declaratory relief, alleging that town had violated her right to payment by town of premiums for a portion of group medical health insurance plan governed by local option statute. The Superior Court entered summary judgment in favor of principal, and town appealed.

The Supreme Judicial Court of Massachusetts held that town could not enact retirement policy imposing a ten-year minimum term of service as a prerequisite to premium contributions.

Town that had adopted local option statute providing for group health insurance for town employees could not enact retirement policy imposing a ten-year minimum term of service as a prerequisite to

premium contributions from the town, and thus retired school principal with only six years of service with town was entitled to contributions from town for cost of participating in group health insurance plan. Statute adopted by town mandated that town contribute more than 50% of premiums of "employees retired from the service of the town," and town could not alter terms of statute.

IMMUNITY - OHIO

Wentworth v. Coldwater

Court of Appeals of Ohio, Third District, Mercer County - April 13, 2015 - Slip Copy - 2015 - Ohio- 1424

Injured driver and co-administrators of estate of passenger killed in crash caused by intoxicated driver filed claims against Village and police officer who had conducted earlier traffic stop of intoxicated driver. The Court of Common Pleas found that village and officer were not entitled to political subdivision immunity. Village and officer appealed.

The Court of Appeals held that:

- Village was entitled to immunity against claims, and
- Officer's alleged conduct was not malicious, wanton, or reckless and, thus, officer was entitled to immunity.

Village was entitled to political subdivision immunity from claims of driver who was injured, and co-administrators of estate of passenger who was killed, in crash caused by intoxicated driver, that they were injured by intentional, malicious, reckless, and/or wanton conduct of police officer, who conducted traffic stop of intoxicated driver prior to crash and allegedly failed to properly conduct any field sobriety test. Village was political subdivision, officer was employed by village, police activities were governmental functions, and no statutory exception to immunity applied.

Allegations by driver who was injured, and co-administrators of passenger who was killed, in crash caused by intoxicated driver, that police officer conducted earlier traffic stop of intoxicated driver and released him with a warning for a lane violation despite an odor of alcohol emanating from the vehicle, admission that others in vehicle had been drinking, high rate of speed, erratic driving, that it was 2:37 a.m. on a Saturday night, intoxicated driver's numerous past driving offenses, including alcohol-related offense, and intoxicated driver's admission that he was traveling from a local bar, failed to allege conduct by officer that was malicious, wanton, or reckless conduct, and, thus, officer was entitled to political subdivision immunity against claims.

ZONING - WISCONSIN

NextMedia Outdoor, Inc. v. Village of Howard

Court of Appeals of Wisconsin - April 14, 2015 - Slip Copy - 2015 WL 1637200

NextMedia Outdoor, Inc. (NextMedia) owned a legal, nonconforming billboard sign in the Village of Howard (the Village) that was displaced as the result of a Wisconsin Department of Transportation (DOT) highway project. NextMedia sought to have the sign "realigned"—i.e., moved to a different spot on the same property—pursuant to a newly enacted state law. Accordingly, it filed an application for realignment with the Village, which the Village denied under a local ordinance implementing the new state law. NextMedia appealed to the Zoning Board of Appeals of the Village

of Howard (the Board), which reversed the Village's decision and authorized NextMedia to realign the sign with certain conditions.

The DOT objected to the Board's decision, advising the Village it had acquired, by condemnation, NextMedia's permit rights to the sign months prior to the Board's decision. The Village then filed a motion for reconsideration, and the Board held a second hearing on the matter. The Board reversed its earlier decision, concluding NextMedia's right to apply for realignment ceased when the DOT acquired NextMedia's permit rights. NextMedia sought certiorari review, and the circuit court agreed with NextMedia and entered a judgment concluding the Board lacked reconsideration authority and erred as a matter of law by considering the evidence submitted during the reconsideration proceedings.

The Court of Appeals reversed, holding that the Board had inherent authority, based on long-standing Wisconsin precedent, to reconsider a decision based on mistake, such as occurred here.

The Court further concluded that the evidence submitted on reconsideration was sufficient to establish that the Board's earlier decision was fundamentally rooted in its mistaken beliefs that NextMedia still owned permit rights to the sign and that the DOT had proposed realignment of the sign.

The Court also rejected NextMedia's other arguments, including that the Board erred as a matter of law, that it should be estopped from reconsidering its prior decision, and that the Board's reconsideration decision was unreasonable and contrary to the concepts of due process and fair play.

LIABILITY - RHODE ISLAND

Carlson v. Town of South Kingstown

Supreme Court of Rhode Island - April 8, 2015 - A.3d - 2015 WL 1573367

Baseball game spectator who stepped in hole at park and broke her leg brought negligence action against town. The Superior Court entered summary judgment in favor of town, and spectator appealed.

The Supreme Court of Rhode Island held that:

- The Recreational Use Statute applied to bar spectator's personal injury claims against town;
- There was no evidence that town was aware of the particular hole that spectator stepped in, or that spectator was facing that particular peril, for purposes of the exception to landowner immunity under the Recreational Use Statute for the willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity after discovering the user's peril; and
- Neither spectator's payment of a fee to baseball league on her son's behalf, not her payment of taxes to town which used part of its budget to maintain park constituted an admission fee under the Recreational Use Statute, such that town's statutory immunity from liability for spectator's injuries did not apply.

CONTRACTS - RHODE ISLAND

HK & S Const. Holding Corp. v. Dible

Supreme Court of Rhode Island - April 7, 2015 - A.3d - 2015 WL 1541949

Low bidder on public construction project brought action against town, town officials, town's consultant, and consultant's technical leader arising out of the award of the contract to a contractor that submitted a higher bid, and asserting claims including wrongful denial of a municipal contract award, intentional interference with prospective contractual relations, and violations of procedural and substantive due process and equal protection under both the federal and state constitutions. The action was removed to federal court and, after dismissal of the federal constitutional claims, remanded. After remand, the Superior Court awarded summary judgment to defendants. Low bidder appealed.

The Supreme Court of Rhode Island held that bid submitted by low bidder was non-responsive, and thus town had discretion to award the contract to contractor that submitted higher bid.

Town's request for proposal (RFP) unambiguously required bidders to identify subcontractors and provide a company profile as part of the bid and warned that failure to submit required documents before the bid deadline could render a bid non-responsive, bid instructions did not indicate that any information could be submitted after the bid deadline, and low bidder did not dispute that it failed to provide the subcontractor information and company profile with its original bid.

BANKRUPTCY - NEW YORK

In re 300 Washington Street LLC

United States Bankruptcy Court, E.D. New York - March 31, 2015 - B.R. - 2015 WL 1540795

City of Syracuse sought dismissal of the chapter 11 case of 300 Washington Street LLC (Debtor) or, alternatively, relief from the automatic stay so that the City could foreclose against the Debtor's asset, a vacant building in downtown Syracuse, New York (the "Property"), on account of delinquent real estate tax indebtedness. Also at issue was Debtor's objection to allowance of the City's filed proofs of claim and the ability of the City to make a Bankruptcy Code § 1111(b) election on account of its largest claim.

The Bankruptcy Court held that:

- Found in favor of the Debtor on the issues of dismissal and stay relief;
- Disallowed the City's claim for ad valorem taxes in excess of the City's $595,000 appraised value of the Property;
- Determined that the City could not elect to treat its claim for ad valorem taxes as fully secured pursuant to § 1111(b); and
- Overruled the Debtor's objection as to the City's claims that do not constitute ad valorem real property taxes, without prejudice to the right of the Debtor to seek disallowance or reduction of said claims on other grounds.

LIABILITY - NEW YORK

Turturro v. City of New York

Supreme Court, Appellate Division, Second Department, New York - April 1, 2015 - N.Y.S.3d - 2015 N.Y. Slip Op. 02754

Mother, on behalf of child who was struck by speeding automobile while riding his bicycle on city street, brought personal injury action against driver, owner of automobile, and city. After jury reached verdict on liability, apportioned fault, and awarded damages, the Supreme Court, Kings County, denied defendants' motions to set aside the verdict on issue of liability, and mother stipulated to reductions in award of future medical expenses and pain and suffering, in order to avoid a new trial. Driver, owner, and city appealed.

The Supreme Court, Appellate Division, held that:

- City's duty to keep its roads and highways in a reasonably safe condition was proprietary in nature, and thus mother did not need to prove existence of special duty owed to child by city;
- City did not conduct adequate studies of speeding that allegedly existed on city street, and thus was not entitled to immunity based on its highway planning decisions;
- Weight of evidence supported jury's conclusion that city was a proximate cause of accident and jury's apportionment of fault between city and driver;
- Interrogatories submitted to the jury did not create substantial confusion for the jury, warranting a new trial;
- Damages of $6,000,000 for past pain and suffering and $15,000,000 for future pain and suffering deviated materially from what would be reasonable under the circumstances;
- There was no proof of loss of services, as required to award mother damages for loss of services; and
- Expert testimony supported an award of damages of $11,500,000 for future medical expenses and $3,000,000 for future lost earnings.

LIABILITY - MARYLAND

Espina v. Jackson

Court of Appeals of Maryland - March 30, 2015 - A.3d - 2015 WL 1412658

Estate and family of shooting victim filed survival and wrongful death actions against police officer and county, stemming from incident in which victim was fatally shot by officer, and claim on behalf of victim's son for a violation of his constitutional rights arising out of his treatment and arrest following shooting.

Following jury trial, the Circuit Court entered judgment in favor of family and estate after reducing verdict against county from $11,505,000 to $405,000, but leaving verdict against officer in place. All parties appealed. The Court of Special Appeals affirmed judgment in part and reduced award entered against county to $400,000. Estate and family filed petition for certiorari, which was granted.

The Court of Appeals held that:

- Alleged constitutional violations constituted torts under Local Government Tort Claims Act (LGTCA);
- As a matter of first impression, LGTCA damages cap did not violate constitutional provision governing relief for injury to person or property;
- Wrongful death claims were derivative of survivorship claims, such that claims were properly aggregated; and
- Claim asserted by son was not derivative of wrongful death and survivorship claims.

Alleged constitutional violations of due process clause asserted by estate and family of shooting

victim constituted torts under Local Government Tort Claims Act (LGTCA), such that damages cap under LGTCA was applicable to survivorship and wrongful death action filed by estate and family against police officer and county, stemming from incident in which victim was fatally shot by officer. There was no exception in LGTCA for any category of torts, and including estate's claims within scope of LGTCA damages cap was consistent with legislature's goal of limiting civil liability of local governments.

Damages cap under Local Government Tort Claims Act (LGTCA) was reasonable, and therefore application of cap to constitutional tort claims filed by shooting victim's estate and family in survivorship and wrongful death action against police officer and county, arising from incident in which officer fatally shot victim, did not violate constitutional provision protecting rights to a remedy for injury to one's person or property and to access to the courts. Neither estate's cause of action nor right to bring case in the courts was affected by LGTCA, and cap was not so unduly low so as to equate with cutting off all remedy.

ELECTIONS - MARYLAND

Montgomery County v. Fraternal Order of Police

Court of Special Appeals of Maryland - April 3, 2015 - A.3d - 2015 WL 1508677

Fraternal order of police officers brought declaratory judgment action against county and individual county employees, alleging county improperly used county funds to campaign for passage of local ballot question. The Circuit Court entered judgment in favor of association. County appealed.

The Court of Special Appeals held that:

- County's political activity in support of ballot referendum was non-partisan, permissible government speech;
- A charter county's traditional authority to budget and appropriate money necessarily includes the authority to spend that money to advance a non-partisan governmental purpose;
- State campaign finance laws requiring that campaign finance activity, including activity regarding a ballot issue, be conducted through a duly-registered political committee, do not apply to campaign finance activity of local governments; and
- County executive and director of county's office of public information did not become a political committee, as would be required to adhere to campaign finance and reporting laws, by using county funds to support a county campaign in support of ballot referendum.

LIABILITY - FLORIDA

Limones v. School Dist. of Lee County

Supreme Court of Florida - April 2, 2015 - So.3d - 2015 WL 1472236

Parents of high school student brought action against county school board for negligence, alleging that it breached a common law and statutory duty when it failed to apply an automated external defibrillator (AED) on student after his collapse while playing soccer. The Circuit Court entered summary judgment in favor of school board. Parents appealed. The District Court of Appeal affirmed. Parents sought further review, which was granted.

The Supreme Court of Florida held that:

- District Court of Appeals' decision directly conflicted with Supreme Court decision and thus conflict jurisdiction existed;
- School board owed student a duty to act with reasonable care to take appropriate post-injury efforts to avoid or mitigate further aggravation of injury;
- Jury rather than court was required to determine whether actions of school board's employees breached duty; and
- School board was not immune from suit under the Cardiac Arrest Survival Act.

PENSIONS - CALIFORNIA

Barboza v. California Ass'n of Professional Firefighters

United States Court of Appeals, Ninth Circuit - April 7, 2015 - Fed.Appx. - 2015 WL 1530411

Appeals Court holds that District Court did not err when it granted summary judgment to long-term disability plan administrators on firefighter's claim that they breached their fiduciary duties by failing to file Internal Revenue Service (IRS) Form 990. The court found that firefighter had not provided any evidence that the Plan administrators violated the "prudent man standard of care," when they did not file Form 990 on the advice of their legal counsel and accountant.

The Appeals Court also held that the District Court erred when it failed to consider firefighter's argument that the Plan administrators breached their fiduciary duties by failing to maintain adequate reserves to maintain the Plan's solvency. The issue was remanded to the District Court to determine whether there was a triable issue of fact as to whether the Plan administrator's discharged their fiduciary duties by relying on the advice of their actuary when they structured the Plan's reserves.

BONDS - CALIFORNIA

Eminence Investors, L.L.L.P. v. Bank of New York Mellon

United States Court of Appeals, Ninth Circuit - April 2, 2015 - F.3d - 2015 WL 1475055

Holder of bonds issued by public financing authority brought putative class action against successor to indenture trustee in state court, asserting claims for breach of fiduciary duties, negligence, unjust enrichment, and violation of California's unfair business practices statutes. After removal, the United States District Court remanded. Defendant appealed.

The Court of Appeals held that action fell within scope of Class Action Fairness Act's (CAFA) securities exception, and thus was not removable to federal court, where all of bondholder's claims were based on alleged duties that arose from bonds and indenture, and bondholder was clearly asserting its rights as holder of bonds rather than as purchaser of bonds.

PENSIONS - CALIFORNIA

Protect Our Benefits v. City and County of San Francisco

Court of Appeal, First District, Division 5, California - March 27, 2015 - Cal.Rptr.3d - 2015 WL 1404952

Since 1996, retired employees of the City and County of San Francisco (the City) have been eligible to receive a supplemental cost of living allowance (supplemental COLA) as part of their pension benefits when the retirement fund's earnings from the previous year exceeded projected earnings.

On November 8, 2011, City voters passed Proposition C, an initiative measure that, among other things, amended the Charter of the City and County of San Francisco to condition the payment of the supplemental COLA on the retirement fund being "fully funded" based on the market value of the assets for the previous year.

Protect Our Benefits (POB), a political action committee representing the interests of retired City employees, appealel from a superior court order denying its petition for writ of mandate seeking to invalidate this amendment as an impairment of a vested contractual pension right under the contract clauses of the federal and state Constitutions.

The Court of Appeal held that:

- City charter amendment could not be constitutionally applied to employees who retired after effective date of initiative establishing supplemental COLA;
- City charter amendment could be constitutionally applied to employees who retired before effective date of initiative establishing supplemental COLA; and
- City obtained adequate actuarial reports supporting the amendment.

Under the contract clauses of the federal and state constitutions, city charter amendment conditioning retired city employees' supplemental cost of living allowance (COLA) on the retirement fund being "fully funded," based on the market value of the assets for the previous year, could not be constitutionally applied to employees who retired after effective date of the initiative establishing the supplemental COLA, where no comparable advantage was offered to pensioners or employees in return.

City charter amendment conditioning retired city employees' supplemental cost of living allowance (COLA) on the retirement fund being "fully funded," based on the market value of the assets for the previous year, did not violate the contract clauses of the federal and state constitutions as applied to employees who retired before effective date of the initiative establishing the supplemental COLA, even though no comparable advantage was offered to pensioners or employees in return, since employees who retired earlier did not have the same vested rights as employees who retired after the COLA was in effect.

ZONING - GEORGIA

Southern States-Bartow County, Inc. v. Riverwood Farm Property Owners Ass'n, Inc.

Court of Appeals of Georgia - March 25, 2015 - S.E.2d - 2015 WL 1315545

Property owners near site of proposed landfill brought action against landfill developer and county for declaratory and injunctive relief and later amended complaint to allege anticipatory nuisance and racketeering. The Superior Court entered partial summary judgment in favor of owners and denied motion to dismiss anticipatory nuisance claim, but dismissed racketeering and punitive damages claims. Developer appealed, and the Supreme Court transferred matter.

The Court of Appeals held that:

- Developer’s vested right to operate landfill lapsed;
- Partial summary judgment had to be vacated for decision on developer’s constitutional challenge to ordinance; and
- Factual issue precluded summary judgment on whether developer applied for new permit and waived vested rights.

Landfill developer did not commence non-conforming use by obtaining zoning compliance letter from county, and, thus, its vested right to operate landfill lapsed pursuant to ordinance prohibiting non-conforming use for which a vested right was acquired unless the use was commenced within one year of adoption of ordinance; commencing the non-conforming use required start of operating an actual landfill on the property and involved something more than submitting paperwork.

ZONING - GEORGIA

Golden Isles Outdoor, LLC v. Lamar Co., LLC

Court of Appeals of Georgia - March 24, 2015 - S.E.2d - 2015 WL 1296635

Applicant sought permit to convert poster billboard to digital billboard, after applicant’s business competitor sought to obtain last two available permits for digital billboards. Zoning administrator approved applicant’s request, and granted only one of competitor’s applications. Competitor appealed. City’s zoning board of appeals (ZBA) rescinded applicant’s permit after concluding that governing ordinance prohibited digital billboards on collector streets such as one where applicant’s billboard was located. Applicant appealed. The Superior Court, in action in which competitor intervened, reversed ZBA’s decision. Competitor sought discretionary review.

The Court of Appeals held that “arterial roadway,” as used in municipal ordinance which permitted digital billboards only along four lane or more arterial roadways, did not encompass collector streets.

“Arterial roadway,” as used in municipal ordinance which permitted digital billboards only along four lane or more arterial roadways, did not encompass collector streets, despite ordinance’s general cross-reference to section of ordinance regulating separate use signs, of which digital billboards were a type, and indicating that separate use signs were permitted only on sites which abutted a street classified as a collector or arterial roadway. Restriction’s cross reference could more reasonably be read to clarify that placement of digital billboards on arterial roadways, as defined in street classification map, had to comply with terms and conditions of separate use signs generally.

BENEFITS - ILLINOIS

Vaughn v. City of Carbondale

Appellate Court of Illinois, Fifth District - March 25, 2015 - N.E.3d - 2015 IL App (5th) 140122

Police officer, whose line-of-duty disability pension benefits had been terminated by city, sought permanent injunction to prevent city from terminating employer-provided health insurance coverage for police officer and his wife. The Circuit Court denied police officer’s complaint. Police officer appealed.

The Appellate Court held that:

- Police officer, who struck top of his head on door frame of squad car, suffered catastrophic injury, and
- Officer's work-related injury occurred as a result of his response to what he reasonably believed was an emergency.

City police officer's work-related injury, which arose from striking top of his head on door frame of squad car while responding to dispatch over police radio, occurred as a result of his response to what he reasonably believed was an emergency, and thus officer was entitled under Public Safety Employee Benefits Act to continued health insurance coverage, even though circumstances surrounding injury fell within anticipated daily events, where officer had duty to respond to dispatch calls in timely manner, and he could not have known whether call was an emergency until he responded.

CONTRACTS - INDIANA

Peoples State Bank v. Benton Tp. of Monroe County

Court of Appeals of Indiana - March 25, 2015 - N.E.3d - 2015 WL 1361228

In 2011, Benton Township Trustee Heather Cohee secured a loan from Peoples State Bank to purchase a fire truck. She acted without a prior appropriation of funds by Benton Township or compliance with statutory procedures allowing taxpayers an opportunity to remonstrate.

Benton Township did not pay the promissory note installments as they came due. Cohee resigned amidst allegations of financial improprieties unrelated to the fire truck acquisition. On January 28, 2012, the Indiana State Board of Accounts issued its Independent Accountant's Report based upon a review of Benton Township records. The report contained the conclusion that the fire truck purchase was made "with proceeds of a loan that was not properly approved by the Township Board." (App.307.) The report further indicated that neither the Trustee nor the Township Board had signed the promissory note.

The Bank seized Benton Township checking account funds and applied those funds in setoff to sums due under the promissory note. On December 21, 2012, the Bank and Benton Township entered into a Partial Settlement & Dispute Resolution Agreement. Pursuant to the terms of the agreement, Benton Township surrendered the fire truck, and the Bank sold it for $212,866.00 and applied the funds to the outstanding loan. The Bank restored the funds it had previously taken as an offset, except for $30,000, which was by agreement applied to the loan. Benton Township also made a $37,529.48 payment .

After the sale proceeds and payments were applied, the Bank sought $102,273.90 in principal and interest, plus attorney's fees and costs of $45,757.65. On May 8, 2013, the Bank filed a complaint against Benton Township. Benton Township answered the complaint, denying that the Bank was entitled to any additional recovery.

The Court of Appeals held that the promissory note at issue was not a proper basis for a grant of equitable relief.

First, the matter involved the unauthorized expenditure of taxpayer funds. Second, the circumstances were such that the Bank was obliged to seek out information of public record and failed to do so. Indeed, the Bank prepared a promissory note for execution by a part-time township

employee rather than the Benton Township Trustee. Finally, Benton Township did not retain property for which it refused to pay, and the parties essentially addressed the equities surrounding the surrender by entering into a partial settlement. Although the loan was invalid, the township nevertheless mitigated the Bank's damages by surrendering the fire truck and paying cash of $67,529.48. This was not a situation involving "extreme unfairness" such that equity should step in against a governmental entity. Therefore, equitable remedies are not available to permit the Bank's collection in full upon its faulty promissory note.

SPECIAL PURPOSE DISTRICTS - MINNESOTA

110 Wyman, LLC v. City of Minneapolis

Court of Appeals of Minnesota - March 30, 2015 - N.W.2d - 2015 WL 1401612

Property owners in city's downtown special services district challenged service charges for special services provided by the city. The District Court granted city's motion for summary judgment. Property owners appealed.

The Court of Appeals held that special-benefit standard did not apply to service charges imposed on property owners under special services districts statute.

Statutorily-imposed "reasonably related" special services standard, rather than common law special-benefit standard, applied to landowners' challenge to charges imposed on property owners in special service district in city's downtown, for special services provided. Services provided, including security, marketing and promotion, graffiti removal, landscaping, and administrative services, were too difficult to measure in terms of benefit to the properties served, as required by special-benefit standard.

Under "reasonably related" standard in statute authorizing city's governing body to create a special service district by ordinance, propriety of service charges imposed was to be measured by charges' proportion to city's cost of providing such services, rather than by special-benefit standard, which required that the amount of charges could not exceed the benefit to the property assessed.

LIABILITY - NEBRASKA

Maclovi-Sierra v. City of Omaha

Supreme Court of Nebraska - March 27, 2015 - N.W.2d - 290 Neb. 443

Pedestrian filed suit against city for injuries received when he was struck by suspect driving stolen pickup truck allegedly being pursued by city law enforcement officers. The District Court dismissed complaint, and pedestrian appealed.

The Supreme Court of Nebraska held that:

- Police officer was not in "vehicular pursuit" of suspect at time suspect lost control of truck while exiting interstate and struck pedestrian, within meaning of Political Subdivisions Tort Claims Act;
- Although second police officer and sergeant might have initiated vehicular pursuit when suspect entered interstate, pursuit was terminated at time that suspect exited interstate and struck pedestrian; and
- Actions of suspect after any arguable vehicular pursuit was terminated were sole proximate cause

of pedestrian's injuries.

IMMUNITY - NEW JERSEY

Parsons v. Mullica Tp. Bd. of Educ.

Superior Court of New Jersey, Appellate Division - March 30, 2015 - A.3d - 2015 WL 1400996

Student, by her parents, brought negligence action against township board of education and nurse, who was employed by board and who conducted a screening test for visual acuity on student, arising out of delay in notification to student's parents of student's failure in vision testing, alleging that delay proximately caused the loss of sight in student's right eye. Board and nurse moved for summary judgment. The Superior Court denied motion. Defendants appealed.

The Superior Court, Appellate Division, held that:

- Health screening of student for visual acuity by school nurse was a "physical examination," as could support finding that nurse and board of education were immune from student's negligence action under the Tort Claims Act;
- Provision of the Tort Claims Act immunizing the failure of a public entity or public employee to make an adequate physical examination includes the failure to provide adequate notification of the examination results; and
- Such provision immunizes ministerial as well as discretionary acts.

ANNEXATION - OKLAHOMA

In re Detachment of Municipal Territory from City of Ada, Oklahoma

Supreme Court of Oklahoma - March 31, 2015 - P.3d - 2015 OK 18

Property owners brought declaratory judgment action seeking to set aside city's annexation of property near their property. The District Court denied property owners' request for relief. Property owners appealed.

On an issue of first impression, the Supreme Court of Oklahoma held that strict compliance, rather than substantial compliance, with notice and consent provisions of annexation statute was required.

Strict compliance, rather than substantial compliance, with notice and consent provisions of annexation statute was required. Notice provision used term "shall," legislative intent to protect property owners who were affected by annexation without actually being within annexed territory was demonstrated by certified mailing requirement, and strict compliance was warranted when a person's property was at stake.

ACCOUNTING - PENNSYLVANIA

In re Appeal of 2012 Financial Audit for Greene Tp.

Commonwealth Court of Pennsylvania - April 1, 2015 - A.3d - 2015 WL 1443097

Appellant served as the Township's treasurer during the 2012 fiscal year; she left this position on

January 14, 2013. The records maintained by Appellant as treasurer during 2012 were audited, and the Annual Audit and Financial Report of Greene Township for the 2012 fiscal year was filed on August 29, 2013.

On October 8, 2013, Appellant filed a statutory appeal from the audit pursuant to section 909 of the Second Class Township Code (Code). In her appeal, Appellant asserted that: (1) the Township did not provide all records to the auditors; (2) certain amounts were incorrectly reported by the auditors; and (3) certain items were paid in error, causing a loss to the Township, and should be surcharged to the responsible Township supervisors.

The Township and auditor William Owens & Co. (together, the Township) filed a motion to quash Appellant's appeal, asserting that Appellant lacked standing to appeal the sums reported and paid. The trial court granted the motion and Appellant appealed.

The appeals course reversed, holding that Appellate had standing.

The court noted that, upon his or her appointment, a township treasurer is required to post a bond; receive all money payable to the township; keep accounts that are open to inspection; "annually state the accounts" and make them available to the auditors for inspection; and may be subject to penalties, financial and otherwise, for failing to perform his or her duties.

The dates by which the treasurer and the board of auditors must fulfill their duties are not aligned by the Code. The board of auditors is required to complete its audit before the first day of March each year and to file a report not later than ninety days after the close of the fiscal year. Because a treasurer serves at the pleasure of the board of supervisors, the terms of some, but not all, township treasurers will expire before the deadline by which the board of auditors must complete its audit and/or file a report.

In light of the larger statutory scheme, the court concluded that the interpretation urged by the Township, that those township treasurers lose standing to challenge an audit of the records created during their term of office, is patently unreasonable. Thus, the court concluded that, regardless of when a treasurer's term expires, the officer whose performance and records are reviewed by the auditors has a vested interest in the outcome of that audit and standing under section 909 of the Code.

EMINENT DOMAIN - CALIFORNIA

Brost v. City of Santa Barbara

Court of Appeal, Second District, Division 6, California - March 25, 2015 - Not Reported in Cal.Rptr.3d - 2015 WL 1361196

Plaintiffs own three parcels of land in an active landslide area known as Slide Mass C of the Conejo Slide. An ordinance adopted by the City of Santa Barbara in 1997 prohibits new construction on properties entirely within that slide mass. Plaintiffs resided on the properties until their homes were destroyed by a wildfire in November 2008.

When plaintiffs inquired about rebuilding their homes, the City maintained it had no discretion to permit reconstruction and declined to amend the ordinance to provide an exemption. The trial court determined the ordinance, as applied to plaintiffs, constituted an unlawful regulatory taking of their properties. To avoid having to compensate plaintiffs for a permanent taking, the City amended the ordinance in April 2012 to allow reconstruction. The court awarded plaintiffs damages for a

temporary taking plus attorney fees and costs. City appealed.

The Court of Appeal held that:

- City was not entitled to claim that plaintiffs' takings claim were not ripe for consideration because they failed to file formal applications to rebuild their homes, as the filing of development applications would have been futile because the City lacked discretion to permit any development on plaintiffs' properties; and
- The moratorium on new construction was not justified under principles of state nuisance law as, at best, uncertainty existed regarding the stability of the geology within Slide Mass C.

EMINENT DOMAIN - GEORGIA

Evans v. Department of Transp.

Court of Appeals of Georgia - March 19, 2015 - S.E.2d - 2015 WL 1244058

Department of Transportation (DOT) filed petition for condemnation of property for road construction project. The trial court entered judgment on jury verdict, valuing the condemned property at $50,000. Condemnees appealed.

The Court of Appeals held that:

- Evidence regarding city's zoning ordinance prohibiting mining on the property at issue was relevant to jury's valuation of property;
- Expert real estate appraisers' testimony regarding likelihood of a zoning change was not wholly speculative; and
- Jury instructions on mineral deposits and zoning considerations were not improperly conflicting.

Evidence regarding the city's zoning ordinance prohibiting mining on agricultural property, and the reasonable probability that a special exception for kaolin mining would be granted by the city in the future, was relevant to the jury's valuation of the condemned agricultural property in condemnation case initiated by Department of Transportation (DOT).

Opinion testimony of expert real estate appraisers regarding the likelihood of a change in zoning was not wholly speculative, and thus was admissible in condemnation proceedings involving property containing mineral deposits whose extraction was not permitted under property's present agricultural zoning classification. Experts testified regarding the information they relied upon in forming their opinions on property value, experts concluded that highest and best use of condemned property was its current agricultural use as timberland, experts distinguished a neighboring mine on the ground that it had started operation prior to zoning ordinance and had thus had been grandfathered in, and experts concluded that the grant of a special exception would be unlikely.

In condemnation proceedings involving property containing mineral deposits whose extraction was not permitted under property's present agricultural zoning classification, instructions charging jurors to consider existence of the kaolin deposit on the property in determining its value did not improperly conflict with instructions that jury should consider uses of property that were lawful under the zoning ordinance presently in effect, or uses for which there was a possibility or probability would become lawful under the zoning ordinance in the immediate future sufficient to have an effect on the value of the property; mineral deposits had intrinsic value as part of the land that were to be considered in valuing the property, and consideration of the intrinsic value of mineral deposits did not rule out the jury's also considering the uses to which the property could

lawfully be put.

CONTRACTS - GEORGIA

City of College Park v. Sekisui SPR Americas, LLC

Court of Appeals of Georgia - March 20, 2015 - S.E.2d - 2015 WL 1260157

Subcontractor that worked on city sewer project brought action against city when general contractor failed to pay subcontractor for work performed, alleging that city was liable because it had failed to ensure that general contractor obtained payment bond, and also asserting claims of quantum meruit, unjust enrichment, and implied obligation to pay. The trial court granted subcontractor's motion for summary judgment. City appealed.

The Court of Appeals held that:

- Subcontractor was not required to give ante litem notice to city prior to bringing action, disapproving *Jacks v. City of Atlanta*, 284 Ga. App. 200, 644 SE2d 150;
- Sewer project was necessitated by emergency, such that city was not required to obtain payment bond for project; and
- Subcontractor could not recover against city under implied contract theories of unjust enrichment, quantum meruit, or implied obligation to pay, absent direct contractual relationship between city and subcontractor.

IMMUNITY - GEORGIA

Tift County School Dist. v. Martinez

Court of Appeals of Georgia - March 20, 2015 - S.E.2d - 2015 WL 1260071

Mother of student filed negligence suit against county school district, school bus driver, and motorist who fatally struck student when he was attempting to board bus. The trial court denied district and bus driver's motion for summary judgment filed on sovereign immunity grounds. District and bus driver appealed.

The Court of Appeals held that:

- District waived immunity under statute, and
- Potential liability was limited to amount and scope of motor vehicle insurance coverage.

County school district was "any other political subdivision" of the State, and thus, its immunity was waived under statute providing for waiver of sovereign immunity for a municipal corporation, a county, or any other political subdivision of State for accidents arising from operation of its motor vehicles to the extent of coverage of motor vehicle insurance purchased, even though school districts were excluded from waiver of immunity under other circumstances. If General Assembly had intended to exclude school districts from statutory wavier of immunity, it could have used explicit language it had already employed, but it instead retained the different, more inclusive language.

County school district's potential liability to mother arising from death of son, who was hit by automobile while attempting to board school bus, was limited to amount and scope of district's

motor vehicle coverage in effect, rather than to every case of negligence, under statute waiving immunity for injuries sustained in accidents arising from operation of district's motor vehicles only while insurance was in force and only to extent of limits or coverage of insurance policy.

LIABILITY - MASSACHUSETTS

Saldivar v. Pridgen

United States District Court, D. Massachusetts - March 17, 2015 - F.Supp.3d - 2015 WL 1227818

Alleged victim brought action in state court against former police officer who allegedly assaulted and raped her, chief of police, and city, under various causes of action, including violation of § 1983 and Massachusetts Civil Rights Act. Chief and city removed the case to federal court and moved to dismiss the complaint.

The District Court held that:

- Chief did not have actual or constructive knowledge of the likelihood or possibility that officer would assault and rape a woman while on duty as required for § 1983 claim for supervisory liability;
- City did not have notice that police officer might assault and rape a woman while on duty as required to demonstrate that city had a policy amounting to deliberate indifference to the rights of victim under § 1983; and
- City did not have notice that police officer might assault and rape a women while on duty as required to demonstrate city's negligence in disciplining or properly supervising officer.

ZONING - MICHIGAN

Muslim Community Ass'n of Ann Arbor v. Pittsfield Charter Tp.

United States District Court, E.D. Michigan, Southern Division - March 20, 2015 - Slip Copy - 2015 WL 1286813

Pittsfield Charter Township, through its Planning Commission and Board of Trustees, denied a rezoning application submitted by the Muslim Community Association of Ann Arbor, doing business as Michigan Islamic Academy ("MIA"). According to MIA, the denial of the rezoning application meant that it could not build a new Islamic school on property within Pittsfield Township that it wished to utilize for that purpose. MIA claimed that the Township's decision to deny the rezoning application was based on hostility toward Islam, and asserted claims under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), the United States Constitution, and the Michigan Constitution.

The District Court granted the Township's motion for Summary Judgment (with leave to amend) on the grounds that MIA had not offered any evidence showing that it had, or had ever had, a legally cognizable interest in the property.

EMINENT DOMAIN - MISSISSIPPI

Coleman v. Mississippi Transp. Com'n

Supreme Court of Mississippi - March 19, 2015 - So.3d - 2015 WL 1249572

The Mississippi Transportation Commission (MTC) brought eminent domain action against property owner. Following a bench trial, the Special Court of Eminent Domain entered a directed verdict in favor of the MTC, and property owner appealed.

The Supreme Court of Mississippi, en banc, held that:

- The Special Court of Eminent Domain's exclusion of the MTC's initial appraisal and cross-examination of the appraiser thereon, constituted reversible error;
- MTC's appraiser's initial appraisal did not constitute an "offer" for purposes of evidentiary admission in eminent domain proceeding;
- The Special Court of Eminent Domain erred by excluding the MTC's quick-take deposit and initial offer of compromise and settlement; and
- Issue of whether or not greater compensation was due property owner than offered by the MTC in its statement of value, and why MTC's appraiser changed his appraisal from $380,300 before the MTC brought its eminent domain action to $289,400 after the action was brought, was for the jury.

The initial appraisal by the Mississippi Transportation Commission's (MTC) appraiser was relevant and admissible for the purpose of determining the amount of just compensation due property owner following condemnation under the quick-take statutes, and thus, the trial court's exclusion of the initial appraisal and cross-examination of the appraiser thereon, constituted "reversible error."

The Mississippi Transportation Commission's (MTC) appraiser's initial appraisal of property owner's land did not constitute an "offer" for purposes of evidentiary admission in eminent domain proceeding, even if it was used to prepare an offer of settlement. To initiate condemnation of property owner's property, the MTC was required to both conduct an initial appraisal and make the landowner a fair-market-value offer, and an offer of compromise could not occur in an eminent domain proceeding prior to the filing of the complaint.

Trial court erred by excluding the Mississippi Transportation Commission's (MTC) quick-take deposit and initial offer of compromise and settlement which had been sent to landowner prior to MTC's filing of its eminent domain action, as neither the offer nor the deposit constituted the type of offer of compromise covered by the rule of evidence governing compromise offers and negotiations.

Issue of whether or not greater compensation was due property owner than offered by the Mississippi Transportation Commission (MTC) in its statement of value, and why MTC's appraiser changed his appraisal from $380,300 before the MTC brought its eminent domain action to $289,400 after the action was brought, was for the jury.

WATER DISTRICT - MISSISSIPPI

Pat Harrison Waterway Dist. v. County of Lamar

Supreme Court of Mississippi - March 19, 2015 - So.3d - 2015 WL 1249679

After independent auditor was appointed to determine amount county was responsible for paying following its withdrawal from waterway district, district filed objections to auditor's report. Following trial, the Chancery Court adopted auditor's schedule of liabilities. District appealed.

The Supreme Court of Mississippi held that:

- District's future operations and maintenance costs were not outstanding contractual obligations county was responsible for paying;
- District's lease agreement was not contractual obligation county was responsible for paying;
- Auditor's exclusion of operations and maintenance costs from contractual obligations did not constitute impermissible legal opinion; and
- Substantial evidence supported trial court's finding regarding amount county owed following withdrawal.

Waterway district's duties to operate and maintain its water parks and other improvements under its federal contracts were not outstanding contractual obligations that county was responsible for paying when it withdrew from district. While it was possible that district's duties to operate and maintain improvements would become outstanding in the future, district's future operations and maintenance costs were not presently due and owing when county withdrew from district, duty to share in future maintenance and operational costs rested on counties that remained in district, and county's withdrawal did not threaten district's purposes, but merely shifted burden of paying to achieve those purposes to other counties or to the state.

EMINENT DOMAIN - NEW JERSEY

62-64 Main Street, L.L.C. v. Mayor and Council of City of Hackensack

Supreme Court of New Jersey - March 23, 2015 - A.3d - 2015 WL 1280829

Property owners filed action in lieu of prerogative writs, challenging city's classification of their lots as blighted within meaning of the Local Redevelopment and Housing Law. The Superior Court affirmed. Property owners appealed. The Superior Court, Appellate Division, reversed. City sought review.

The Supreme Court of New Jersey held that:

- Definitions of blight in Local Redevelopment and Housing Law comply with standards set by the state constitutional Blighted Areas Clause, and
- Substantial evidence supported city's blight determinations.

The state constitutional Blighted Areas Clause, granting municipal and public entities the authority to redevelop decaying neighborhoods, must coexist with individual rights enshrined in the state constitution, such as rights protected by the Eminent Domain Clause, which ensures that property will not be taken without just compensation. Redevelopment may not occur at the expense of individual rights of landowners.

Substantial evidence supported municipal planning board's blight determination under Local Redevelopment and Housing Law, with respect to lot that had been part of a former automobile repair business and had been converted into a parking lot. Although owners sought to redevelop the property and the lot, standing alone, might not have met the definition of blight, expert testified that the lot could only be redeveloped in conjunction with neighboring lots containing vacant and dilapidated buildings, parking lot had no markings and no landscaping, and pavement was in disrepair and encroached onto sidewalk, creating a public-safety hazard.

EMINENT DOMAIN - NORTH DAKOTA

Irwin v. City of Minot

Supreme Court of North Dakota - March 24, 2015 - N.W.2d - 2015 ND 60

Landowners brought action against City for inverse condemnation in connection with City's removal of clay and topsoil from their property to construct emergency dikes to combat river flood. The District Court entered summary judgment in favor of City. Landowners appealed.

The Supreme Court of North Dakota held that genuine issues of material fact existed as to whether imminent danger facing City gave rise to an actual necessity for City to take landowners' property and thus precluded summary judgment.

UTILITIES - TEXAS

Southwestern Bell Telephone, L.P. v. Emmett

Supreme Court of Texas - March 20, 2015 - S.W.3d - 2015 WL 1285326

Telecommunications utility brought action against city, city director of public works and engineering, and county commissioners, seeking injunctive and declaratory relief, alleging that county flood control district was required to be responsible for cost of relocating utility's facilities located on city-owned bridge, in connection with flood control plan requiring demolition and reconstruction of bridge. The District Court granted commissioners' plea to the jurisdiction and entered summary judgment in favor of city and director. Utility appealed. The Houston Court of Appeals affirmed. Utility petitioned for review.

The Supreme Court of Texas held that:

- Statute required district to pay costs of relocation;
- Commissioners acted ultra vires in refusing to comply with statute; but
- Director did not act ultra vires in directing utility to relocate its facilities.

Statute, requiring flood control district to be solely responsible for expense of relocation of telephone properties or facilities when the district has "made necessary" the relocation, applied to require county flood control district to pay costs of relocation of telecommunications utility's facilities located on city-owned bridge, in connection with demolition and reconstruction of bridge as part of flood control project. Project was governed by contract between district and city, requiring city to name district as project manager and giving district power to require city to issue relocation notices to utilities.

PENSIONS - TEXAS

Klumb v. Houston Municipal Employees Pension System

Supreme Court of Texas - March 20, 2015 - S.W.3d - 2015 WL 1276557

City employees who had been transferred to a local government corporation brought action against municipal pension board, asserting constitutional violations and breach of contract and seeking declaratory and injunctive relief in connection with system's determination that plaintiffs remained municipal employees and were therefore not entitled to begin receiving retirement benefits or to defer their retirement status. City intervened. The District Court granted defendants' plea to the jurisdiction. Plaintiffs and city appealed. The Houston Court of Appeals affirmed. Plaintiffs and city

petitioned for review.

The Supreme Court of Texas held that:

- Pension board did not act ultra vires;
- Pension board did not violate employees' equal protection rights; and
- Pension board did not violate employees' state constitutional due process rights.

Municipal pension board did not act ultra vires, as an exception to unavailability of judicial review of the action under statute governing pension boards in cities of 1,500,000 or more, by interpreting term "employee" to include city employees who had been transferred to a third-party local government corporation. Definition of "employee" was composed of essential terms that were undefined in statute, board had authority to supplement the statute, and the supplemental language the board adopted neither inherently nor patently conflicted with the terms of the statute.

Municipal pension board did not act ultra vires, as an exception to unavailability of judicial review of the action under statute governing pension boards in cities of 1,500,000 or more, by delegating authority to a committee to determine whether city employees who had been transferred to a third-party local government corporation remained municipal employees, even if the delegation of authority violated a meet-and-confer agreement between board and city. Any claim that board violated meet-and-confer agreement was a breach-of-contract claim that could not be maintained absent a waiver of sovereign immunity.

Municipal pension board did not violate the equal protection rights of city employees who had been transferred to a third-party local government corporation by determining that the employees remained municipal employees required to pay into pension fund, even if board treated them differently than other former city employees who had been transferred separate legal entities due to municipal outsourcing, since action was rationally related to board's legitimate interests in preserving sources of pension funding and in lessening the risk of overpaying pensioners or allowing them to "double dip."

Municipal pension board did not violate the state constitutional due process rights of city employees who had been transferred to a third-party local government corporation by determining that the employees remained municipal employees required to pay into pension fund, since the action did not deprive employees of vested property rights. Employees had no vested property right to the pension plan contributions or future retirement benefits.

UTILITIES - CALIFORNIA

City of San Buenaventura v. United Water Conservation District

Court of Appeal, Second District, Division 6, California - March 17, 2015 - Cal.Rptr.3d - 2015 WL 1212205

City filed writ of mandate, administrative mandate, reverse validation action, and for declaratory relief against water conservation district and its board of directors, which managed county groundwater resources, seeking to overturn district's decision to increase city's rate to pump water from district's territory to sell to residential customers. City's lawsuits were consolidated and district filed cross-complaint, seeking declaratory relief upholding its rate determinations. The Superior Court issued writ of mandate in favor of city requiring district to issue refund to city and denied city declaratory relief. District appealed and city cross-appealed.

The Court of Appeal held that:

- Rate charged by district was not property-related;
- Even if rate was property-related, rate did not conflict with constitutional provisions governing property-related fees imposed by local governments;
- Fees charged by district conferred specific benefit on city as payor; and
- Fees charged by district did not exceed district's reasonable costs.

Fee charged by water conservation district to city to pump groundwater from district territory to sell to city's residential customers was not property-related, such that constitutional provision prohibiting property-related fees and charges imposed by local government agencies from exceeding proportional costs of service attributable to parcel of land from which water was pumped did not apply. Fees served regulatory purpose of conserving water resources, and pump fee was better characterized as a charge on activity of pumping, rather than charge imposed by reason of property ownership.

Even if water conservation district's groundwater extraction charges were property-related fees subject to constitutional provision prohibiting such fees from exceeding proportional costs of service attributable to parcel of land from which water was pumped, rate city was charged to pump groundwater to sell to its residential consumers did not conflict with provision. Even though city was charged three times more than pumpers who extracted water from district for agricultural purposes, statute governing rate charged to city did not discriminate between persons or parcels, but rather it discriminated between types of use, that city's desired use for water it pumped was subject to higher fee than agricultural use was policy decision made by legislature, not district, and constitutional provision governed only property-related fees imposed by local government agencies.

Fees charged by water conservation district to city to pump groundwater to sell to city's residential consumers conferred specific benefit on city as payor, as required for fees to fall under payor-specific benefits exception to constitutional presumption that any levy, charge, or exaction imposed by local government was a tax subject to majority voter approval. City, as a pumper of groundwater, received benefit of extracting groundwater from managed basin.

Fees charged by water conservation district to city to pump groundwater to sell to city's residential consumers, which conferred benefit on city as payor, did not exceed district's reasonable costs, as required for fees to fall under payor-specific benefits exception to constitutional presumption that any levy, charge, or exaction imposed by local government was a tax subject to majority voter approval. By imposing fees based on volume of water extracted, district largely charged individual pumpers in proportion to benefit they received from district's conservation activities, and district's costs associated with acquisition, treatment, transport, and delivery of state and surface water were related to district's groundwater management goals.

OPEN MEETINGS LAW - CONNECTICUT

Planning and Zoning Com'n of Town of Monroe v. Freedom of Information Com'n

Supreme Court of Connecticut - March 24, 2015 - A.3d - 2015 WL 1186306

After town zoning commission convened executive session to discuss enforcement procedures, permit holder filed a complaint with the Freedom of Information Commission (FOIC) claiming that the session violated the state's Freedom of Information Act. The Commission determined that the

zoning commission had violated the Act's open meetings requirement. Zoning commission appealed. The Superior Court reversed. Commission and permit holder appealed and case was transferred.

The Supreme Court of Connecticut held that:

- Zoning commission was not justified in convening an executive session under pending claims or pending litigation exception to Act's open meetings requirement, and
- Prior Superior Court case regarding zoning commission's denial of permit extension was "finally adjudicated" within meaning of the pending litigation exception.

Town zoning commission was not justified in convening an executive session, under pending claims or pending litigation exception to Freedom of Information Act open meetings requirement, to discuss its zoning enforcement options with respect to permit holder's original permit. At the time, there was no pending litigation regarding the permit to which the zoning commission was a party, and there was no pending or prospective litigation regarding permit holder's alleged permit violations.

Prior Superior Court case regarding town zoning commission's denial of permit extension was "finally adjudicated" before the commission's executive session, within meaning of statutory exception to Freedom of Information Act open meetings requirement for meetings to discuss strategy and negotiations with respect to pending litigation that has not been finally adjudicated, and thus zoning commission was not justified under the exception in conducting executive session to discuss how to respond to the prior court decision. Executive session occurred approximately eight months after court's decision, and 20-day period during which the zoning commission had the right to appeal the court's decision already had expired.

EMINENT DOMAIN - FLORIDA

Ryan v. City of Boynton Beach

District Court of Appeal of Florida, Fourth District - February 4, 2015 - So.3d - 40 Fla. L. Weekly D345

Several years after entry of consent judgment in city's condemnation action against property owner, property owner moved to withdraw proceeds for property from court registry, and city filed its own motion to withdraw the proceeds to satisfy code enforcement liens. The Circuit Court denied city's motion. City appealed. The District Court of Appeal reversed and remanded. On remand, the Circuit Court denied property owner's motion for trial level and appellate attorney fees, and he appealed.

The District Court of Appeal held that:

- Property owner's entitlement to appellate fees became the law of the case, and thus, on remand, the District Court was precluded from revisiting the issue, and could not properly deny property owner's motion for appellate fees on the basis his appeal over how to obtain such funds was not directly related to the underlying condemnation proceedings;
- Property owner was entitled to appellate attorney fees pursuant to statute that governed appeals in an eminent domain action; and
- Property owner was entitled to trial level attorney fees incurred in connection with his motions for disbursement of $99,000 held in the court's registry, and his challenge to city's resort to eminent domain proceedings to enforce its code enforcement lien.

BONDS - GEORGIA

Cottrell v. Atlanta Development Authority

Supreme Court of Georgia - March 16, 2015 - S.E.2d - 2015 WL 1135669

State filed a petition for bond validation to authorize issuance of new stadium project bonds. Following a bond hearing, the Superior Court, Fulton County, validated the bonds. Taxpayers appealed.

The Supreme Court of Georgia held that:

- Statute permitting tax districts to impose hotel/motel tax did not violate uniformity clause of Georgia Constitution;
- Stadium funding agreement was authorized by intergovernmental contracts clause of Georgia Constitution; and
- City development authority was not required to own the new stadium project in order for it to issue revenue bonds to fund the project.

Amended statute subsection, allowing for an extended period in which to collect a hotel/motel tax as long as a certain percentage of the proceeds collected during the extended period were expended to fund a successor sports stadium, did not violate uniformity clause of Georgia Constitution, where the statute applied uniformly on all taxing authorities which came within the scope of its provisions, and the classification made by the statute was not arbitrary or unreasonable.

City development authority was not required to own new stadium project in order for it to issue revenue bonds to fund the project or for tax proceeds paid to the authority to be considered as part of the "revenue" to pay for the bonds. Pursuant to state revenue bond law, "revenue" consisted of "all revenues, income, and earnings arising out of or in connection with the operation or ownership of the undertaking," and the hotel/motel tax proceeds were being collected in connection with state development authority's operation or ownership of the new stadium project.

City development authority was not required to actually construct new stadium project in order to properly issue revenue bonds for the purpose of financing the project. Pursuant to developmental authorities law, the authority had the power to issue revenue bonds and to use the proceeds thereof for the purpose of paying all or part of the cost of any project, not only those projects "constructed" or "developed" by the authority issuing the bonds.

BOND VALIDATION - GEORGIA

Greene County Development Authority v. State

Supreme Court of Georgia - March 16, 2015 - S.E.2d - 2015 WL 1135409

State filed petition to validate revenue bonds to be issued to finance construction of facility for use as charter school in county. County residents intervened to object to validation. The trial court denied validation. County, County Development Authority, and charter school operator appealed.

The Supreme Court of Georgia held that record supported finding that bond proposal was not sound, feasible, and reasonable.

Record supported finding that county development authority's proposal to issue revenue bonds to

finance construction of charter school was not sound, feasible, and reasonable and, thus, validation of bonds was not warranted. Evidence of economic benefit of proposal was not overwhelming, and trial court appeared to have concerns about several aspects of proposal, noting that board of education had limited involvement, that county was obligated to fund repayment of the indebtedness, and that, as soon as debt was retired, charter school operator—a private, nonprofit corporation—would be entitled to purchase the facility for only $1.

INVERSE CONDEMNATION - GEORGIA

DeKalb County v. Heath

Court of Appeals of Georgia - March 16, 2015 - S.E.2d - 2015 WL 1134044

Property owner brought inverse condemnation claim against county. Following a bench trial, the trial court found in favor of property owner, awarding him $28,830 in damages. County appealed.

The Court of Appeals held that:

- Res judicata did not bar property owner's present inverse condemnation claim against county for failing to maintain repairs to its storm water drainage system, and
- The trial court did not err by allowing property owner a double recovery.

Property owner's present inverse condemnation action involved a fresh nuisance for which a fresh action would lie, and thus, res judicata did not bar his claim against county for failing to maintain repairs to its storm water drainage system, even though he had prevailed in a prior inverse condemnation case with regard to county's failure to maintain the same drainage system. The two lawsuits were not identical, although based on some of the same facts, the first lawsuit concerned the diminished value of property owner's property due to flooding and erosion, while the second lawsuit dealt with ongoing and increasing damage, including a deteriorating retaining wall which had not failed at the time the first lawsuit was filed.

With regard to property owner's current inverse condemnation action against county for failing to maintain repairs to its storm water drainage system, the trial court did not err by allowing property owner a double recovery, even though he had been awarded damages in a prior action against the county for the depreciation in the value of his property. In the current action, property owner was awarded the costs of repairing a failing retaining wall that the county had constructed, and which constituted a fresh nuisance.

ZONING - ILLINOIS

Scott v. City of Chicago

Appellate Court of Illinois, First District, Fifth Division - March 13, 2015 - N.E.3d - 2015 IL App (1st) 140570

Residents, owners of residential property, brought an action against City of Chicago to challenge the city council's decision to rezone property on 53rd Street from retail zoning to a planned development pursuant to the Chicago Zoning Ordinance.

The Municipal Code requires plaintiffs to provide pre-suit notice of their intent to file a declaratory judgment action seeking to have the new zoning classification declared invalid. That notice must be

provided to owners of all properties located within 250 feet in each direction of the location for which the variation or special use is requested.

Here, the plaintiffs mailed approximately 125 pre-filing notices, but did not attempt to send notice to at least 26 other property owners whose land was within 250 feet of the rezoned property.

The trial court granted Lake Park's motion to dismiss for failure to give pre-suit notice and the appeals court affirmed, finding that strict compliance with the pre-suit notice provision is required and that this was not an instance when substantial compliance was adequate.

ZONING - MAINE

Fitanides v. City of Saco

Supreme Judicial Court of Maine - March 17, 2015 - A.3d - 2015 ME 32

Abutting property owner sought judicial review of zoning board of appeals' (ZBA) decision that denied his appeals of planning board decisions approving permits related to the construction of a disc-golf course. The Superior Court affirmed the decisions of the ZBA, and abutting property owner appealed.

The Supreme Judicial Court of Maine held that:

- City planning board's issuance of a conditional use permit for the construction of a disc-golf course with a condition that allowed the city planner to approve minor changes to the project plans was not in violation of city zoning ordinance;
- Constitutional concerns regarding the delegation of legislative authority were not implicated by city planning board's issuance of a conditional use permit for the construction of a disc-golf course with a condition that allowed the city planner to approve minor changes to the project plans;
- The requirements of mobile home parks overlay zone ordinance did not apply to proposed site for disc-golf course;
- Zoning board of appeals did not violate adjacent property owner's due process rights by considering a copy of an e-mail sent by applicant requesting a waiver of certain application requirements for a footbridge conditional use permit; and
- City planner's inappropriate actions in sending an e-mail to the ZBA did not constitute a violation of adjacent property owner's due process rights.

PENSIONS - MICHIGAN

Board of Trustees of City of Pontiac Police and Fire Retiree Prefunded Group Health & Ins. Trust v. City of Pontiac

Court of Appeals of Michigan - March 17, 2015 - N.W.2d - 2015 WL 1214687

Board of Trustees of the City of Pontiac Police and Fire Retiree Prefunded Group Health and Insurance Plan filed complaint to require the city to pay its required annual contribution to the trust for the fiscal year ending June 30, 2012. The trust was established in 1996 as a tax exempt voluntary employees' beneficiary association (VEBA), 26 USC 501(c)(9), to hold the contributions of police and firefighter employees and those of the city pursuant to collective bargaining agreements (CBAs) between the city and the various unions of the city's police officers and firefighters.

At issue was the efficacy of Executive Order 225 issued on August 1, 2012, pursuant to § 19(1)(k) of 2011 PA 4, MCL 141.1519(1)(k), by the city's emergency manager (EM), which purported to amend the trust to remove the City's annual obligation to contribute to the trust agreement "as determined by the Trustees through actuarial evaluations."

The trial court accepted the City's argument that the City's EM properly modified the City's obligation to contribute to the trust for the fiscal year ending June 30, 2012, by modifying the existing CBAs between the city and police and firefighter unions.

The Court of Appeals held that the EM had the authority under the terms of the trust agreement to retroactively eliminate the city's actuarial required contribution to the trust for the fiscal year July 1, 2011 through June 30, 2012.

But the question remained whether Executive Order 225 did, in fact, eliminate the City's actuarial required contribution to the trust for the fiscal year July 1, 2011 through June 30, 2012.

The Court of Appeals concluded that it did not.

"The plain language of Executive Order 225 provides that the trust was 'amended to remove Article III obligations of the City *to continue to make* contributions to the Trust.' (Emphasis added.) The term 'continue' means to 'go on or keep on without interruption, as in some course or action.' Plainly, the term
'continue' relates to present and future action. Further, Executive Order 225 provided it 'shall have immediate effect.' Because Executive Order 225 was adopted August 1, 2012, given immediate effect and applied to the present of present or future obligations under art III, § 1, by its own terms, it did not apply to the to the city's already accrued actuarial required contribution to the trust for the already ended fiscal year July 1, 2011 through June 30, 2012."

ZONING - MINNESOTA

RDNT, LLC v. City of Bloomington

Supreme Court of Minnesota - March 18, 2015 - N.W.2d - 2015 WL 1215573

Nursing home submitted application to city for a conditional use permit, seeking to expand its existing assisted living services by adding a third building to its campus, which the city denied. Nursing home appealed. The District Court granted summary judgment to nursing home. City appealed. The Court of Appeals reversed. Nursing home appealed.

The Supreme Court of Minnesota held that:

- City acted within its discretion in denying the application, and
- City's determination that proposed mitigation conditions were insufficient was not unreasonable, arbitrary, or capricious.

IMMUNITY - NEW JERSEY

Caicedo v. Caicedo

Superior Court of New Jersey, Appellate Division - March 17, 2015 - A.3d - 2015 WL 1179830

Bicyclist brought action under state Tort Claims Act (TCA) against police officer, city, and city police department to recover for injuries sustained when he was struck by police cruiser operated by officer while on duty. The Superior Court, Law Division, Essex County, awarded damages to bicyclist. Defendants appealed.

The Superior Court, Appellate Division held that:

- Officer was not acting in "execution or enforcement of any law" at time of accident and, thus, was not entitled to good-faith immunity;
- Jury verdict apportioning negligence at 80 percent to officer and 20 percent to bicyclist was not against weight of the evidence; and
- Jury's damages award to bicyclist in amount of $2,400,000 was not excessive.

BANKRUPTCY - PUERTO RICO

Franklin California Tax-Free Trust v. Puerto Rico

United States District Court, D. Puerto Rico - February 6, 2015 - F.Supp.3d - 2015 WL 522183

Holders of bonds issued by Puerto Rico Electric Power Authority (PREPA) brought action against Puerto Rico, PREPA, and certain Puerto Rican officials, seeking declaration that Puerto Rico Public Corporation Debt Enforcement and Recovery Act, which provided procedure for PREPA to restructure its debt, was unconstitutional. Defendants moved to dismiss for lack of subject matter jurisdiction and for failure to state claim, and bondholders cross-moved for summary judgment.

The District Court held that:

- Declaratory relief sought by bondholders was conclusive in character;
- Declaratory relief sought by bondholders did not depend on facts that had not been sufficiently developed;
- Impact of Act upon bondholders was sufficiently direct and immediate as to render issue appropriate for judicial review;
- Allegation that Act unconstitutionally authorized suspension of federal court proceeding was not fit for judicial decision;
- Act's elimination of bondholders' security rights was not traceable to action by PREPA;
- Act was expressly preempted by Federal Bankruptcy Code;
- Act substantially impaired a contractual relationship; and
- Bondholders alleged that Act's impairments on contractual relationship between PREPA and bondholders were not reasonable and necessary to serve important government purpose.

REFERENDUM - ILLINOIS

Zurek v. Village of Franklin Park

Appellate Court of Illinois, First District, Fifth Division - March 13, 2015 - Not Reported in N.E.3d - 2015 IL App (1st) 141286-U

Village Board of Trustees for the Village of Franklin Park, Illinois passed a resolution placing a referendum question on the primary election ballot for the primary general election to establish a 1% non-home rule municipal retailers' occupation tax and a non-home rule municipal service

occupation tax to be used for the repair and reconstruction of public streets.

Taxpayer challenged the referendum question as submitted to the voters, alleging that it did not substantially comply with the mandated statutory language, rendering the election void.

The Village Trustees submit the following referendum question to the voters of the Village:

"Shall the corporate authorities of the Village of Franklin Park, Illinois be authorized to levy a Non–Home Rule Municipal Retailers' Occupation Tax and a Non–Home Rule Municipal Service Occupation Tax (commonly referred to as a 'sales tax'), each at a rate of 1%, pursuant to 65 ILCS 5/8–11–1.3 and 65 ILCS 5/8–11–1.4, for expenditures on the repair and reconstruction of public streets?"

Plaintiff claimed that because the proceeds of the "sales tax" may be used for municipal operations, David Orr, the Cook County Clerk, was statutorily required to submit the question of whether to impose the proposed taxes in "substantially the following form," pursuant to section 8–11–1.1(b) of the Code (65 ILCS 5/8–11–1.1(b) (West 2012)):

"Shall the corporate authorities of the municipality be authorized to levy a tax at a rate of (rate)% for expenditures on municipal operations, expenditures on public infrastructure, or property tax relief?"

The court agreed with the village that, because the proposed taxes at issue were to be used for expenditures on public infrastructure, specifically the "repair and reconstruction of public streets," and not municipal operations, they were not required to substantially follow the mandated statutory form.

"The plain language of the statute only requires the corporate authorities of the municipality to submit the referendum question in the mandated statutory form "if the proceeds of the tax may be used for municipal operations." Here, the proceeds of the tax are being used for expenditures on public infrastructure, specifically the repair and reconstruction of public streets. Accordingly, we conclude that the referendum question was not required to substantially comply with the form mandated by section 8–11–1.1(b)."

MEETINGS - CALIFORNIA

CPR for Skid Row v. City of Los Angeles

United States Court of Appeals, Ninth Circuit - March 10, 2015 - F.3d - 2015 WL 1020059

Advocacy organization and two of its members brought action against city, alleging California statute making it a misdemeanor to disrupt meetings was unconstitutional, both on its face and as applied, under the First and Fourteenth Amendments. The United States District Court granted city's motion. Plaintiffs appealed.

The Court of Appeals held that:

- Statute governing disruption of meetings did not apply to disruptive conduct during public meetings of electors regarding public questions;
- Statute making it a misdemeanor to disrupt meetings was not a content-based restriction on speech; and
- Statute making it a misdemeanor to disrupt meetings was narrowly tailored to substantial state interest.

EMINENT DOMAIN - FLORIDA

Florida Dept. of Transp. v. Mallards Cove, LLP

District Court of Appeal of Florida, Second District - March 6, 2015 - So.3d - 2015 WL 968710

Mallards Cove was a defendant in a 2007 quick-take eminent domain proceeding initiated by the Florida DOT to take a tract of land owned by Mallards Cove.

The circuit court entered an order of taking on August 15, 2007, pursuant to stipulation of the parties. The DOT was required to deposit a good faith estimate of value in the amount of $2,004,320 into the registry of the court. The funds were deposited on August 30, 2007, and released to Mallards Cove, net of property taxes, on September 13, 2007.

While the funds were on deposit in the court registry, the Clerk elected to invest the funds. The Clerk earned investment interest on the deposit in the amount of $4,396.49, and subsequently transferred ninety percent of that sum to the Department and retained ten percent, as provided by section 74.051(4).

In 2009, Mallards Cove sought a declaration that section 74.051(4) of the quick-take eminent domain statute is unconstitutional in that it directs clerks to pay ninety percent of interest earned on the quick-take deposit funds to the condemning authority and asserting a claim of inverse condemnation against the Clerk and the DOT, resulting from the disbursement of ninety percent of the accumulated interest to the DOT rather than to Mallards Cove.

The circuit court ruled that, as a matter of law, Mallards Cove owned the deposit funds from the moment the DOT deposited the funds into the registry. The circuit court further ruled that Mallards Cove owned the interest that was earned when the Clerk invested the deposit funds and that this investment interest "was property entitled to constitutional protection entirely separate and apart from the real property that was taken by the [DOT] in the underlying quick taking procedure." The circuit court extensively analyzed the requirements of class certification under Florida Rule of Civil Procedure 1.220 and ultimately granted class certification.

The District Court of Appeal reversed. As the condemnee in a quick-take proceeding, Mallards Cove was entitled to be paid full compensation for the real property taken by the DOT. No further taking occurred. Full compensation was determined pursuant to a stipulated final judgment from which no appeal was taken, and an interest award on the monies used to make Mallards Cove whole would be a "double dip." Mallards Cove had failed to establish that a justiciable case or controversy existed between it and the DOT or the Clerk.

MUNICIPAL ORDINANCE - ILLINOIS

Foxxxy Ladyz Adult World, Inc. v. Village of Dix, Ill.

United States Court of Appeals, Seventh Circuit - March 10, 2015 - F.3d - 2015 WL 1020631

Owners of adult entertainment establishment brought action against village, challenging local ordinances that banned public nudity, open containers of alcohol in public, and possession of liquor in public accommodations. The United States District Court for the Southern District of Illinois granted village's motion to dismiss for failure to state claim. Owners appealed.

The Court of Appeals held that:

- Village was required to provide some evidence demonstrating causal relationship between its ban on public nudity and its proffered interests;
- Alcohol regulations did not violate Illinois Liquor Control Act (ILCA);
- Prohibition on possession of alcohol in public accommodations was authorized by Illinois Municipal Code;
- Ban on open containers of alcohol was authorized by Illinois Municipal Code;
- Alcohol regulations did not, on their face, target establishments where protected expressive conduct was likely to occur; and
- Village's asserted interests in enacting alcohol regulations were legitimate and reasonably related to regulations.

Village was required to provide some evidence demonstrating causal relationship between its ban on public nudity and its proffered interests, i.e., public health, safety, and welfare, in order for such interests to be considered important or substantial, as required for ban to be constitutional under First Amendment.

BONDS - KANSAS

City of Topeka v. Imming

Court of Appeals of Kansas - March 11, 2015 - P.3d - 2015 WL 1042377

Citizen sought a court order compelling the City of Topeka to either repeal Ordinance No. 19915 – an ordinance calling for the City to buy property for the purpose of establishing a STAR bond-financed redevelopment district – or to hold a municipal election and let the voters decide the issue.

The Court of Appeals held that, because the law creating STAR bonds – the method chosen by the City to finance its purchase – permits a referendum election only in cases where a protest petition is filed and citizen's petition was not a protest petition, citizen was not entitled to a writ of mandamus compelling an election or repeal of the ordinance.

ZONING - MISSISSIPPI

Check Into Cash of Mississippi Inc. v. City of Jackson

Court of Appeals of Mississippi - March 10, 2015 - So.3d - 2015 WL 1015746

Check Into Cash of Mississippi Inc. (CICM) appealed the City of Jackson's decision to deny a use permit. The use permit would allow CICM to engage in the title-pledge business at its current payday-loan location.

The Court of Appeals reversed, finding that the City's decision to deny the permit was not supported by substantial evidence, and thus the decision was arbitrary and capricious.

The Court agreed with CICM that its application for a use permit presented the evidence necessary to comply with the requirements for a use permit in section 1701.02–A of the Zoning Ordinance and that the City Council did not make any findings of fact to support of its conclusion that the grant of the use permit "will adversely affect the surrounding properties, or otherwise be detrimental to the public welfare."

ZONING - NEW JERSEY

In re Adoption of N.J.A.C. 5:96

Supreme Court of New Jersey - March 10, 2015 - A.3d - 2015 WL 1015065

Builders' association and affordable housing advocacy organizations, among others, appealed from Council on Affordable Housing's (COAH) adoption of third-round substantive rules for calculation of affordable housing needs and criteria for satisfaction of needs, for purposes of municipalities' duty under *Mount Laurel* doctrine to provide for a realistic opportunity for fair share of region's needs for affordable housing.

The Superior Court, Appellate Division, affirmed in part, reversed in part, and remanded. Parties petitioned and cross-petitioned for review. The Supreme Court of New Jersey affirmed as modified. Subsequently, advocacy organization filed motion in aid of litigants' rights.

The Supreme Court of New Jersey held that Court would dissolve exhaustion-of-administrati-e-remedies requirement of Fair Housing Act of 1985 (FHA), as relief for failure of Council on Affordable Housing (COAH) to adopt third-round substantive rules for calculation of affordable housing needs and criteria for satisfaction of needs.

Grant of motion in aid of litigants' rights was warranted, as remedy from failure of Council on Affordable Housing (COAH) to adopt third-round substantive rules for calculation of affordable housing needs and criteria for satisfaction of needs, in action by builders' association and affordable housing advocacy organizations challenging validity of rules. 15 years had passed since statutory deadline for adoption of rules, 18 months had passed since Supreme Court had affirmed Appellate Division's invalidation of rules and ordered COAH to adopt valid rules, and COAH had taken no action to adopt new rules for five months since deadlocked vote on new rules.

ZONING - NEW YORK

Citizens for St. Patrick's v. City of Watervliet City Council

Supreme Court, Appellate Division, Third Department, New York - March 12, 2015 - N.Y.S.3d - 2015 N.Y. Slip Op. 02034

PCP Watervliet, LLC, a subsidiary of defendant Nigro Companies, purchased a parcel of property in the City of Watervliet from the Roman Catholic Diocese of Albany County. The parcel contained a church, school and rectory that were no longer in use and, as part of its plan to demolish the buildings and replace them with a 40,000 square-foot grocery store and two additional retail commercial buildings, Nigro petitioned the City of Watervliet City Council to rezone the parcel from residential to commercial. After a series of public meetings and an environmental review pursuant to the State Environmental Quality Review Act (SEQRA), the City issued a negative declaration and amended its zoning map as requested.

The individual plaintiffs, who reside in the City, and plaintiff Citizens for St. Patrick's, an unincorporated advocacy group opposed to the demolition of the church buildings, commenced an action challenging the negative declaration and rezoning of the property by alleging that the City failed to comply with SEQRA requirements, engaged in illegal spot zoning and violated the Open Meetings Law.

The trial court denied plaintiffs' motion for a preliminary injunction in and thereafter granted

motions by the City and Nigro for summary judgment dismissing the action on the ground that none of the plaintiffs had standing. Plaintiffs appealed.

The appeals court affirmed, holding that plaintiffs' challenges to the SEQRA and rezoning determinations were moot because they did not seek any injunctive relief from the appeals court during the pendency of the appeal. The church buildings had been demolished and the grocery store was fully constructed and operational.

CONTRACTS - NORTH CAROLINA

Khan Bros., Inc. v. City of Charlotte

Superior Court of North Carolina, Mecklenburg County - March 5, 2015 - Not Reported in S.E.2d - 2015 NCBC 23

After City declined to award Khan Bros. a new Taxicab Operating Agreement and granted exclusive Airport Taxicab Operating Agreements to other companies, Khan Bros. sued, alleging that a member of the City Council had accepted bribes from the other taxi companies in exchange for awarding them the exclusive agreements.

The court held that Khan Bros. lacked standing due to the fact that the decision by the Charlotte City Council to award the Taxicab Operating Agreements to the other taxi companies and to decline to award Khan a new Agreement was the result of the independent action of the Charlotte City Council, consistent with its legal authority, and acting within its reasonable discretion, to approve or deny the Agreements.

The alleged injury about which Khan Bros. complained —i.e., the economic losses flowing from the City Council's decision not to award Plaintiff a new Taxicab Operating Agreement — was caused by the independent, legal and valid action of the Charlotte City Council and not by the improper actions of any Defendant.

See also, *Universal Cab Co., Inc. v. City of Charlotte*, Mecklenburg County, Business Court – March 5, 2015 – Not Reported in S.E.2d – 2015 NCBC 22

ZONING - OHIO

State ex rel. Sunset Estate Properties, L.L.C. v. Lodi

Supreme Court of Ohio - March 10, 2015 - N.E.3d - 2015 -Ohio- 790

Mobile home park owners brought action against village, seeking declaratory and injunctive relief and damages, challenging constitutionality of ordinance governing discontinuance or abandonment of a nonconforming use of property. The Court of Common Pleas entered summary judgment in favor of village, and owners appealed. The Court of Appeals reversed and remanded. Village appealed.

The Supreme Court of Ohio held that provision of village zoning ordinance providing that the absence or removal of nonconforming mobile homes from property for a period of six months of more shall constitute discontinuance from the time of absence or removal was unconstitutional.

PENSIONS - RHODE ISLAND

Retirement Bd. of Employees' Retirement System of City of Providence v. Corrente

Supreme Court of Rhode Island - March 9, 2015 - A.3d - 2015 WL 1012257

City retirement board voted to reduce former employee's pension benefits pursuant to Honest Service Ordinance, and then filed a civil action in Superior Court to confirm its decision. City mayor filed a motion to intervene, arguing that the interests of the mayor and the city were not adequately represented in the action, which was granted. The Superior Court granted summary judgment to the board. Intervenors and board cross-appealed.

The Supreme Court of Rhode Island held that:

- Board's action did not properly invoke either equity or declaratory judgment jurisdiction of the Superior Court, but
- Because Superior Court had been vested with subject matter jurisdiction under newly enacted Public Employee Pension Revocation and Reduction Act, Supreme Court would remand the case for further determinations.

City retirement's board's miscellaneous petition, requesting Superior Court to enter an order confirming board's decision to reduce former employee's pension pursuant to Honest Service Ordinance, did not properly invoke either the equity or declaratory-judgment jurisdiction of the Superior Court. The board, which was not an aggrieved party in the matter, had not sought an injunction or any other variety of known equitable relief but, rather, the petition was brought pursuant to the Honest Service Ordinance in order to obtain the specific relief required by the language of that ordinance.

Statute granting Superior Court jurisdiction to review decisions pursuant to any municipal ordinance providing for the revocation or reduction of pension for dishonorable service did not apply retroactively and, thus, did not remedy Superior Court's lack of subject matter jurisdiction when it adjudicated and issued final judgment on subject miscellaneous motion by city retirement board, requesting Superior Court to enter an order confirming board's decision to reduce former employee's pension pursuant to Honest Service Ordinance, before statute became effective, and Superior Court's final judgment was, therefore, void. However, statute nevertheless encompassed subject case and conferred jurisdiction on Superior Court to act on remand, where case was pending on appeal to Supreme Court at time of statute's passage, and public law enacting statute stated that statute was to take effect upon passage and to apply to all pending proceedings.

Because Superior Court, under newly enacted Public Employee Pension Revocation and Reduction Act, had been vested with subject matter jurisdiction over city retirement board's request for Superior Court to enter an order confirming the board's decision to reduce former employee's pension pursuant to Honest Service Ordinance, Supreme Court would remand the matter, and, upon remand, the Superior Court could conduct further proceedings based upon the record before it, or, in its discretion, it could simply re-enter its previous judgment.

IMMUNITY - TEXAS

Western Oilfields Supply Company v. City of Anahuac

Court of Appeals of Texas, Houston (1st Dist.) - March 10, 2015 - Not Reported in S.W.3d - 2015 WL 1061130

Western Oilfields Supply Company d/b/a Rain for Rent appealed from the trial court's granting of a plea to the jurisdiction based on governmental immunity. Rain for Rent argued that the City of Anahuac waived its immunity from a suit for breach of contract under their agreement to provide water filtration equipment and services.

The appeals court affirmed, holding that the written contract was not yet prepared when the Anahuac City Council approved going forward with Rain for Rent's proposal due to the missing portion—the rental/sale estimate—containing the pricing terms for installation of the equipment as well as for its operation.

The court noted that the absence of pricing details rendered this an estimate, rather than a final agreement.

UTILITIES - TENNESSEE

City of Memphis v. Shelby County

Court of Appeals of Tennessee, at Jackson - February 20, 2015 - Slip Copy - 2015 WL 739849

The ultimate issue in this lawsuit was how much of the electric and gas tax equivalent payments made by the Memphis Light, Gas and Water Division (MLGW) to the City of Memphis must be shared with Shelby County. The City claimed that it overpaid Shelby County in electric tax equivalents in recent years, while Shelby County claimed that it was underpaid in gas tax equivalents. The trial court found that the City paid the correct amount of electric tax equivalent payments for the years in question and rejected the City′s claim for damages for alleged overpayment.

The trial court found that Shelby County was not entitled to a share of the gas tax equivalent payments for the years in dispute and rejected its claim for alleged underpayment. Accordingly, the trial court denied both parties′ claims for monetary damages. The trial court resolved the parties′ requests for declaratory and injunctive relief by declaring the manner and method of payment of the tax equivalents in the future. Both parties raise issues on appeal.

The Court of Appeals held that:

- The City was not entitled to subtract the dividend based payment required by subsection 693(6) of the City Charter from the total tax equivalent payment made by MLGW prior to calculating Shelby County′s share;
- Subsection 693(4) of the City Charter calculated tax equivalents on a basis inconsistent with what is dictated under the Electric Law and was therefore repealed by the Electric Law to the extent that the Charter provision applies to the calculation of electric tax equivalent payments;
- The 0.225 multiplier shall be applied to the total tax equivalent payment calculated under Tennessee Code Annotated § 7–52–304 when determining the electric PILOTs due to Shelby County under Tennessee Code Annotated § 7–52–307; and
- Payments due to Shelby County under both the electric and gas tax equivalency laws shall be paid directly to Shelby County by MLGW in accordance with the state statutes."

MUNICIPALITIES - ALABAMA

Bynum v. City of Oneonta

Supreme Court of Alabama - February 27, 2015 - So.3d - 2015 WL 836700

City residents brought action against city, seeking declaratory and injunctive relief, challenging city's right to hold referendum election on whether to allow sale of alcohol in city. The Circuit Court entered order granting declaratory relief in favor of city and denying residents' request for injunctive relief. Residents appealed.

The Supreme Court of Alabama held that:

- Statute allowing municipalities of over 1,000 to hold referendum elections on sale of alcohol, but not allowing municipalities in three specific counties to hold such elections, violated equal protection, and
- Unconstitutional portion of statute was not severable.

Statute allowing municipalities with populations of 1,000 or more to hold referendum elections on whether to allow sale of alcohol, but not allowing municipalities in three specific counties to hold such elections, violated equal protection, since there was no rational basis to distinguish between the three excluded counties and the other 64 counties in the state.

Unconstitutional portion of statute governing whether municipalities with populations of 1,000 or more could hold referendum elections on whether to allow sale of alcohol, violating equal protection by excluding municipalities in three specific counties from holding such elections, could not be severed from portion of the statute allowing such elections for municipalities in remaining 64 counties. Statute did not contain a severability clause, legislature excluded the three counties for no rational reason, and severing language excluding the three counties would be to undermine the clear intent of the legislature.

TAX INCREMENT FINANCING - ALABAMA

Pate Flagship, LLC v. Cypress Equities Southeast, LLC

United States District Court, N.D. Alabama, Western Division - February 26, 2015 - F.Supp.3d - 2015 WL 816547

Pate Flagship, LLC entered into a Purchase Agreement with Cypress Equities Southeast, LLC for 35 acres of real property in Tuscaloosa, Alabama.

The Purchase Agreement included the following provision:

(e) Enhancement Interest. As additional part of the purchase price[,][Cypress Equities] agrees to pay [Pate Flagship] a sum equivalent to one-half of the Enhancement Interest created on the Property as and when received by [Cypress Equities]. For all purposes of this Agreement, "Enhancement Interest" shall be all TIFF money or any other funds received by [Cypress Equities] from any governmental entity or agency for, or TIFF money or any other funds spent by any governmental entity or agency (in lieu of the receipt by [Cypress Equities] of TIFF money or any such other funds from any governmental entity or agency), directly or indirectly on, the proposed development, or the construction of any infrastructure, landscaping or improvements of any kind whatsoever, during the proposed development of the Property.

Pate sued Cypress for anticipatory breach of contract after Cypress took the position that the interest savings from the authorization of GO Zone Bonds, as well as certain cash payments or services in kind from the City of Tuscaloosa, were not Enhancement Interests as defined by the Purchase Agreement.

The District Court held that:

- Any interest savings from GO Zone Bonds were not Enhancement Interests under the terms of the Purchase Agreement; and
- Pate's mere conclusory allegations that certain benefits received from the City were Enhancement Interests were not sufficient to state a claim of for breach of contract regarding the same.

EMPLOYMENT - ARKANSAS

Nassar v. Jackson

United States Court of Appeals, Eighth Circuit - March 3, 2015 - F.3d - 2015 WL 871766

Caucasian public school district employees brought action against public school district employer and school board members, alleging that they were discharged on account of their race, asserting violation of their due process rights, and asserting a state-law defamation claim. The District Court entered judgment, upon a jury verdict, in favor of employees, denied defendants' motion for judgment as a matter of law, and awarded attorney fees. Defendants appealed.

The Court of Appeals held that:

- Defendants waived argument on appeal that evidence was insufficient to support race discrimination claim;
- Damages award of $340,000 for due process violation was excessive;
- Defendants did not waive argument on appeal that damages award was excessive;
- Proper hourly attorney fees rate for employee's lead counsel was $375; and
- Fees award would not be reduced because some of the attorney's time entries were block-billed.

District Court did not improperly award school district employee's lead counsel $375 per hour, rather than his usual rate of $250 per hour, solely because counsel worked on contingency, after employee prevailed in his due process claim against school district; Court explained that it awarded enhanced rate because of lead counsel's experience and his superior legal and advocacy skills.

LIABILITY - CALIFORNIA

State ex rel. Dept. of California Highway Patrol v. Superior Court of Orange County

Supreme Court of California - February 26, 2015 - P.3d - 15 Cal. Daily Op. Serv. 1932 - 2015 Daily Journal D.A.R. 2241

Motorist brought personal injury action against California Highway Patrol (CHP) after a collision with a tow truck in CHP's Freeway Service Patrol (FSP) program. The Superior Court denied summary judgment for CHP. CHP petitioned for writ of mandate. The Court of Appeal granted petition.

The Supreme Court of California held that:

- FSP program did not give rise to a special employment relationship between CHP and tow truck driver, but
- FSP statutes do not prohibit CHP from acting as special employer of tow truck drivers.

California Highway Patrol's (CHP) Freeway Service Patrol (FSP) program did not give rise to a special employment relationship between CHP and tow truck driver sufficient to make driver an "employee" of CHP under the vicarious liability provisions of the Government Claims Act, since CHP was not an "employer" of the driver under the FSP statutes, even though the FSP service provider's contract with county transportation authority provided that CHP officers could direct tow truck drivers when an officer was present while roadside assistance was provided, even though FSP tow trucks were required to bear a CHP logo, where CHP did not select drivers or even service providers to participate in an FSP program, and tow truck driver was employed by the service provider.

LABOR - FLORIDA

Dade County Police Benev. Ass'n v. Miami-Dade County Bd. of County Com'rs

District Court of Appeal of Florida, First District - February 26, 2015 - So.3d - 2015 WL 798849

In June 2011, the Dade County Police Benevolent Association (Union) and the Mayor of Miami-Dade County began negotiations for successor collective bargaining agreements (CBAs) for the rank-an--file and supervisory police officers employed by the County. By November 2011, the parties reached agreement on all issues except one: whether the bargaining unit employees would be required to contribute an additional percentage of their base wages towards the cost of health insurance. The parties reached an impasse on this issue because the Mayor wanted an additional 5% contribution and the Union opposed any additional contribution. The parties agreed to submit the impasse directly to the County Commission for "final resolution," waiving their right to a special magistrate proceeding.

On January 5, 2012, the County Commission conducted a public hearing on the impasse and adopted Resolution No. R–02–12, which "ratifie[d] and settle[d] the collective bargaining impasse by determining that there shall be no additional contribution to the County's cost of health care." The Resolution directed the Mayor and the Union to reduce this now-resolved impasse issue to writing along with the other previously agreed-upon issues so the CBAs could be submitted to the Union for ratification. The Resolution also stated that it would "become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by [the County Commission]."

On January 11, 2012, the Mayor vetoed the Resolution pursuant to the authority provided to him by the Home Rule Amendment and Charter for Miami–Dade County (Charter). The Charter states that the Mayor "shall have veto authority over any legislative [or] quasi-judicial … decision of the Commission," and it authorizes the County Commission to override the Mayor's veto at its next regular meeting by a 2/3 vote. See Charter, § 2.02.E.

The Public Employees Relations Commission (PERC) concluded that the County did not commit an unfair labor practice when the Mayor vetoed the County Commission's resolution of an impasse under section 447.403, Florida Statutes (2011). The Union appealed.

The District Court of Appeal ruled in favor of the Union, holding that section 447.403 did not permit a local executive branch official to veto the legislative body's resolution of an impasse.

BOARD MEMBERSHIP - GEORGIA

Kanitra v. City of Greensboro

Supreme Court of Georgia - March 2, 2015 - S.E.2d - 2015 WL 854196

Holdover member of city planning and zoning board brought action against city, alleging city lacked to the authority to replace him with a successor without regard to cause. The trial court ruled that once member became a holdover member of the board, the city council could appoint a new member at any time without specific cause. Member appealed.

The Supreme Court of Georgia held that:

- City council was permitted to replace holdover member at any time by the appointment of a successor, and the protection of the removal-for-cause provision of city charter was not available to holdover member when the city did so, and
- Holdover member did not have a legitimate claim of entitlement to his position on the board once he became a holdover official, and thus, was not entitled to due process protections before the board appointed his successor.

OPEN MEETINGS - IDAHO

Arnold v. City of Stanley

Supreme Court of Idaho, Boise, February 2015 Term - February 26, 2015 - P.3d - 2015 WL 797971

Citizens filed a complaint seeking to have action taken by city at city council meeting declared null and void, arguing that the meeting violated Idaho's open meeting law. The District Court granted summary judgment to the city. Citizens appealed.

The Supreme Court of Idaho held that:

- As a matter of first impression, citizens were not adversely affected by the alleged violation of the open meeting law and, therefore, did not have standing to bring the challenge, and
- City was entitled to attorney fees.

Citizens were not affected, as required by statute, by violation of open meeting law, and, therefore, they did not have standing to challenge action taken by city at a city council meeting that the citizens claimed adversely affected their property rights, where citizens had made no attempt to attend the meeting, and had their comments read into the record at the meeting, and the only alleged violation was an early start to the meeting and failure to amend the meeting notice to account for that change.

CONTRACTS - MASSACHUSETTS

Celco Const. Corp. v. Town Of Avon

Appeals Court of Massachusetts, Norfolk - March 2, 2015 - N.E.3d - 2014 WL 7928217

Successful bidder for work on a town water main extension project brought action against town after it refused bidder's request for an equitable adjustment to the contract price to recover its increased costs for rock removal after the amount of rock turned out to exceed the estimate by more than 1,500 cubic yards. The Superior Court Department entered summary judgment in favor of town. Bidder appealed.

The Appeals Court held that bidder was not entitled to an equitable adjustment.

Bid documents expressly disclaimed the accuracy of the stated amount of rock and stated that the amount of rock was indeterminate, and the nature of the rock itself, and the means and cost to remove it, did not differ in any way from what was anticipated in the contract documents.

ELECTIONS - NEW JERSEY

In re December 09, 2014 Special School Election

Superior Court of New Jersey, Appellate Division - March 4, 2015 - A.3d - 2015 WL 893080

County filed declaratory judgment action, requesting determination as to whether municipality or limited purpose regional school district was responsible to bear cost of special school election. The Superior Court concluded that district should bear cost and directed it to make payment to county. District appealed.

The appeals court held, as an issue of first impression, that district, rather than municipality, was required to bear cost of special school election.

Limited purpose regional school district, rather than municipality that initiated request to withdraw from district, was required to bear cost of special school election to determine municipality's proposed withdrawal. Although statute governing withdrawal from limited purpose regional school districts was silent as to who should bear cost, that statute, when read together with statutes governing costs of school elections and definitions of "school election" and "special election," obligated district to bear cost, and legislative history supported that conclusion.

EMPLOYMENT - VIRGINIA

Roop v. Whitt

Supreme Court of Virginia - February 26, 2015 - S.E.2d - 2015 WL 798792

Sheriff's deputy filed a complaint alleging that his termination was impermissible retaliation in violation of state law. The Circuit Court dismissed action, and deputy appealed.

The Supreme Court of Virginia held that sheriff's deputy, who is an employee of the sheriff, is not a "local employee" for purposes of statute providing that nothing shall be construed to prohibit or otherwise restrict the right of any local employee to express opinions on matters of public concern.

Constitutional officers, including sheriffs, are creations of the Constitution itself, and their offices exist, abeyant and unfilled, by virtue of constitutional origination from the moment their county or

city is created by the legislature. Their offices and powers exist independent from the local government and they do not derive their existence or their power from it, and their compensation and duties are subject to legislative control, but only by state statute and not local ordinance.

Constitutional officers are elected by the voters for prescribed terms, and they are neither hired nor fired by the locality, and therefore, they are not "local employees" within meaning of statute providing that nothing shall be construed to prohibit or otherwise restrict the right of any local employee to express opinions to state or local elected officials on matters of public concern, nor shall a local employee be subject to acts of retaliation because the employee has expressed such opinions.

PUBLIC UTILITIES - CALIFORNIA

Wilson v. Southern California Edison Company

Court of Appeal, Second District, Division 4, California - February 9, 2015 - Cal.Rptr.3d - 15 Cal. Daily Op. Serv. 1425

Homeowner brought action against electrical utility for nuisance, negligence, and intentional infliction of emotional distress, alleging that utility failed to properly supervise, secure, operate, maintain, or control electrical substation next door to her home, which allowed uncontrolled stray electrical currents to enter the home. The Superior Court entered judgment on jury verdict for homeowner which awarded compensatory ($1 mil.) and punitive damages ($3 mil.), and utility appealed.

The Court of Appeal held that:

- Issue of whether statute governing judicial review of Public Utilities Commission (PUC) applied was an issue of subject matter jurisdiction that could not be waived;
- PUC did not have exclusive authority over homeowner's tort claims;
- Evidence was insufficient to show that stray voltage caused homeowner's physical injuries;
- Utility's conduct was not extreme and outrageous;
- Utility did not breach any duty of care to homeowner in connection with stray voltage;
- Jury's improper consideration of homeowner's physical injuries required remand of nuisance claim for retrial; and
- Conduct allegedly ratified by utility's managing agents was not despicable.

Issue of whether statute governing judicial review of PUC applied in homeowner's tort action against electrical utility regarding stray voltage from substation was an issue of subject matter jurisdiction that could not be waived by electrical utility's failure to raise the issue as an affirmative defense in its answer. The statute divested trial courts of jurisdiction to entertain lawsuits that would interfere with the PUC's regulation of utilities.

PUC did not have exclusive authority over homeowner's tort claims against electrical utility regarding stray voltage from neighboring substation, although PUC had issued regulations requiring grounding of substations. It was possible that utility could comply with grounding regulations and still mitigate the stray voltage resulting from grounding, it was unclear whether litigation would hinder or interfere with PUC's regulatory policy, and there was no indication that PUC had investigated or regulated the issue of stray voltage, or that stray voltage could not be mitigated without violating the grounding regulation.

Jury's improper consideration of homeowner's physical injuries, which were not proven to be caused by stray voltage from nearby electrical substation, required remand of nuisance claim against electrical utility for retrial. While absence of evidence of physical injuries would not preclude recovery, under homeowner's theory of the case, her physical injuries were an integral part of the harm she purportedly suffered.

LAND USE - CALIFORNIA

Saltonstall v. City of Sacramento

Court of Appeal, Third District, California - February 18, 2015 - Cal.Rptr.3d - 15 Cal. Daily Op. Serv. 1680

Objector filed challenge under California Environmental Quality Act (CEQA) to city's certification of environmental impact report (EIR) and approval of project to build new downtown entertainment and sports arena. The Superior Court denied objector's challenge and objector's motion to augment administrative record. Objector appealed.

The Court of Appeal held that:

- City did not violate CEQA by committing to project prior to completing its EIR;
- City was not required to study remodeling of existing arena as project alternative;
- City's EIR analysis of traffic congestion was not deficient;
- Alleged failure to address potential impacts to crowd safety did not render EIR analysis deficient; and
- Objector forfeited argument for review that administrative record should have been augmented.

City did not violate California Environmental Quality Act (CEQA) by committing to project to build new downtown entertainment and sports arena prior to completing its environmental impact report (EIR), even though city took steps toward planning arena prior to completing its EIR. Under CEQA, city was allowed to engage in land acquisition for its preferred site before finishing its EIR, statute intended to facilitate expedited CEQA review specifically for arena project expressly allowed city to exercise eminent domain power to acquire site of arena before finishing environmental review, and preliminary nonbinding term sheet between city and investment group formed to build arena constituted agreement to negotiate regarding project and did not foreclose environmental review.

CONTRACTS - CONNECTICUT

Bellsite Development, LLC v. Town of Monroe

Appellate Court of Connecticut - January 27, 2015 - A.3d - 155 Conn.App. 131

Developer brought action against town and its first selectman for breach of contract, promissory estoppel, and negligent misrepresentation. Following jury verdict in favor of developer on claims for breach of contract and negligent misrepresentation, the Superior Court denied defendants' motion to set aside the verdict. Defendants appealed.

The Appellate Court held that:

- Evidence was insufficient to support finding that first selectman had actual authority to bind town to contract with developer;

- Doctrine of apparent authority was inapplicable in context of municipal contract;
- Town council did not ratify contract by accepting benefits of contract; and
- First selectman did not know or have reason to know that her statement concerning town's intentions during discussions with developer was false at the time she made it.

E&O INSURANCE - CONNECTICUT

Town of Monroe v. Discover Property & Cas. Ins. Co.

Superior Court of Connecticut, Judicial District of Fairfield - February 6, 2015 - Not Reported in A.3d - 2015 WL 776970

The Town of Monroe sued its insurer for breach of contract after insurer declined to defend Town in a breach of contract suit due to the exclusion of contract claims in the Town's E&O policy. The Town retained its own counsel and incurred costs of defense. Following a trial, the jury returned a verdict of $700,000 against the Town (later overturned in the *Bellsite* decision contained herein).

The Town maintained that the insurer's refusal to provide coverage under the E&O policy was a breach of contract which had resulted in damages to it and sought a declaratory judgment that the insurer was obligated to defend it and breached its obligation. The Town argued that, although the policy excluded contract claims, the inclusion of a negligent representation claim in the underlying suit obligated the insurer to defend.

The court disagreed, finding that the negligent representation claim arose out of the same facts and circumstances as the express contract claim and thus, under the terms of the policy exclusion, the insurer was not obligated to defend or indemnify the Town.

"The plaintiff Bellsite's claim alleged in count two arises out of the same facts and circumstances as does the express contract claim of count one. Specifically, Bellsite incorporated all of the paragraphs of count one into count two without alleging any specific representations or statements that were made by the plaintiff outside of the very acts that Bellsite claims constituted the creation of an agreement and which formed the basis for its claim of contractual breach. Because of the way Bellsite presented its complaint, the factual basis for the second count is tied inextricably to the factual basis for the first count. Bellsite relied on the same facts and made the same claims in both counts of its complaint. In the first count, it alleges that the town breached its contractual obligation to compensate it for services related to the development of the cell tower. In the second count, Bellsite alleges that it relied on the contractual representations of the town that it would reimburse Bellsite for expenses incurred for the development of the cell tower. Based on review of Bellsite's complaint, the court concludes that Bellsite made a claim for breach of an express and or implied contract in count one. In order to overcome any defense by the town that it could not be held liable in the absence of approval by the town council under the town charter, Bellsite restated the same facts and asserted a claim for negligent misrepresentation."

EDUCATION - IDAHO

Nampa Educ. Ass'n v. Nampa School Dist. No. 131

Supreme Court of Idaho, Boise, February 2015 Term - February 26, 2015 - P.3d - 2015 WL 797968

Teachers' union association brought action against school district seeking a declaratory judgment

that addenda to the standard teachers' contract, which provided that teachers would voluntarily reduce their annual compensation by donating from one to four days of compensation to the district, were unlawful and unenforceable. The District Court entered summary judgment in favor of association. District appealed.

The Supreme Court of Idaho held that:

- Association had standing to bring action;
- Issue of whether addenda were unlawful and unenforceable was not moot; and
- Addenda that were not approved by the state superintendent of public instruction were illegal and unenforceable.

Teachers' union association had standing to bring declaratory judgment action against school district alleging that addenda to the standard teachers' contract, which provided that teachers would voluntarily reduce their annual compensation by donating from one to four days of compensation to the district, were unlawful and unenforceable. Association was chosen as the exclusive organization to represent all certificated educators in district, excluding administrators, association alleged addenda violated education code governing professional personnel, and association had interest in ensuring that contracts between teachers and local board complied with statutory requirements.

Issue of whether addenda to the standard teachers' contract, which provided that teachers would voluntarily reduce their annual compensation by donating from one to four furlough days of compensation to the district, were unlawful and unenforceable was not moot, in teachers' union association's declaratory judgment action against district, even though action was filed about two months before last furlough day in addenda. Furlough day had passed by the time trial court heard matter, and district admitted issue would come up again.

Addenda to standard teachers' contract, which were not approved by the state superintendent of public instruction and which provided that teachers would voluntarily reduce their annual compensation by donating from one to four days of compensation to the district, were illegal and unenforceable. Statute granting district the power to employ teachers on written contract in form approved by superintendent applied to all employment contracts, including amendments to initial contracts, and addenda became part of contracts of teachers who signed them.

MUNICIPAL ORDINANCE - IOWA

City of Sioux City v. Jacobsma

Supreme Court of Iowa - February 20, 2015 - N.W.2d - 2015 WL 711071

Owner of vehicle appealed magistrate's order finding him liable for municipal infraction citation for speeding as detected by automatic traffic enforcement equipment. The District Court affirmed. Owner appealed.

The Supreme Court of Iowa held that:

- Ordinance, consistent with concepts of due process, can rationally impose liability on a vehicle owner who concedes being the owner and that the vehicle was speeding;
- Stipulation provided a sufficient basis to impose liability on owner;
- Ordinance was not so arbitrary and unreasonable as to offend Inalienable Rights Clause of Iowa Constitution; and

- Ordinance was not preempted by State laws.

BOND VALIDATION - LOUISIANA

Louisiana Local Government Environmental Facilities and Community Development Authority v. All Taxpayers

Court of Appeal of Louisiana, First Circuit - February 12, 2015 - So.3d - 2015-0162 (La.App. 1 Cir. 2/12/15)

The Louisiana Local Government Environmental Facilities and Community Development Authority (the LCDA) brought a Motion for Judgment, pursuant to the state's Bond Validation Act to establish the validity, and legality of a proposed issuance of Property Assessed Clean Energy Special Assessment Revenue Bonds (PACE bonds) and related contracts, prior to the marketing of the PACE bonds.

Pursuant to the requirements of the Bond Validation Act, the LCDA named as defendants all taxpayers, property owners, citizens of the State of Louisiana, and nonresidents owning property or subject to taxation therein; and, in accordance with the requirements of La. R.S. 13:5124, sought an order directing the publication of the Motion for Judgment and of the time and place fixed for the hearing on the Motion, in The Advocate, a daily newspaper published in the City of Baton Rouge, Louisiana, being the official journal of the LCDA. Additionally, as required by La. R.S. 13:5124(B), a certified copy of the Motion for Judgment was sent by certified mail to the State Bond Commission and the Louisiana Attorney General. No objections to the Motion for Judgment were filed.

At the hearing, the court expressed concerns regarding a lack of due process resulting from the method of notice to all defendants, a class which included all property owners of the State of Louisiana, by publication in The Advocate. Accordingly, the district court denied the Motion for Judgment to validate the PACE bonds pursuant to the statutory framework of the Bond Validation Act on the basis that the Bond Validation Act did not provide for proper notice to all property owners in the State of Louisiana, as defendants to this action

The LCDA appealed, contending that the district court erred in: (1) denying the LCDA's Motion for Judgment seeking to validate municipal bonds and related agreements, documents and proceedings pursuant to the Bond Validation Act, when no challenge or opposition had been asserted; (2) denying the LCDA's Motion for Judgment based on its belief that the service by publication provision of the Bond Validation Act was unconstitutional when no challenge to the manner of notice or the constitutionality of the statute had been asserted; (3) ignoring controlling Louisiana Supreme Court precedent holding that the right to challenge the validity of municipal bonds is not a right to life, liberty or property protected by the Due Process Clause of the United States Constitution; and (4) ignoring controlling Louisiana Supreme Court precedent affirming the constitutionality of the service by publication provision of La. R.S. 13:5124.

The Court of Appeal held that:

- The named defendants, i.e., the taxpayers and property owners of the State of Louisiana and all other persons interested in the issuance of the PACE bonds, did not have a protected property interest in challenging the validity of a resolution authorizing the issuance of bonds by a political subdivision, thus, service of the Motion for Judgment, seeking validation of such bonds by publication in The Advocate did not raise any constitutional due process concerns;
- Because no answer was filed by any person following the publication of the LCDA's Motion for

Judgment, the courts were required to "consider and pass upon" the merits of the action and decide whether, in light of the evidence submitted by the LCDA, it carried its burden of establishing its entitlement to the requested Motion for Judgment;
- As the LCDA had not introduced into evidence the bond resolution allegedly authorizing the issuance of the PACE bonds or any evidence to show its proper passage, the court could not render a judicial determination of the validity of all proceedings taken in connection with the authorization of the PACE bonds, and thus could not confirm the validity of the PACE bonds; and
- Amended the district court's judgment to dismiss the LCDA's Motion for Judgment without prejudice, thereby allowing the LCDA to seek further relief in the future, upon proper proof, pursuant to the Bond Validation Act, with regard to its proposed issuance of the PACE bonds.

ZONING - MASSACHUSETTS

Andersen v. Town of Falmouth

Appeals Court of Massachusetts, Barnstable - February 26, 2015 - N.E.3d - 2015 WL 790013

Town residents sought an enforcement action by the town's building commissioner asserting that the town was in violation of a local zoning by-law by operating a wind turbine without a special permit. The building commissioner denied their request and residents appealed to the ZBA, which affirmed the building commissioner. The Superior Court affirmed the decision of the ZBA and the residents appealed.

At trial, the residents argued that the building commissioner and the ZBA incorrectly interpreted the Town zoning by-law to allow the issuance of a building permit for a wind turbine without a special permit. The judge, however, deferred to the opinion of the building commissioner, affirmed by the ZBA, that the by-law did not apply in the limited circumstance where the Town itself desired to construct and operate a windmill for municipal purposes in a district where all such purposes are permitted as of right.

The Appeals Court reversed, holding that the Town was not exempt from the by-law and was thus obligated to obtain a special permit.

IMMUNITY - NEW YORK

Westchester Community College v. Westchester Community College Federation of Teachers Local 2431

United States Court of Appeals, Second Circuit - February 25, 2015 - F.3d - 2015 WL 774615

Adjunct professor brought action against community college, college officials, and union alleging that college violated her constitutional rights by firing her for comments she made in class and that union breached its duty of fair representation. The District Court granted in part and denied in part college's motion to dismiss, and it filed interlocutory appeal.

The Court of Appeals held that community college in State University of New York (SUNY) system was not entitled to Eleventh Amendment immunity; abrogating *Davis v. Stratton*, 575 F.Supp.2d 410, *Staskowski v. Cnty. of Nassau*, 2006 WL 3370699, *Kohlhausen v. SUNY Rockland Cmty. Coll.*, 2011 WL 1404934.

Community college in State University of New York (SUNY) system was not entitled to Eleventh Amendment immunity in former adjunct professor's wrongful termination suit against it, even though college received one-third of its budget from state, governor appointed four of its ten board members, college's officers, curriculum, and budget are subject to board approval, and SUNY provided standards and regulations governing its organization and operation, where local sponsors were required to levy taxes if college's budget exceeded maximum costs allowed by state, there was no indication that state had control over its day-to-day operations, and college was statutorily distinct from SUNY.

EMINENT DOMAIN - NEW YORK

National R.R. Passenger Corp. v. McDonald

United States Court of Appeals, Second Circuit - February 24, 2015 - F.3d - 2015 WL 755839

National Railroad Passenger Corporation (Amtrak) commenced action against New York State Department of Transportation to challenge authority of New York State to condemn property that it owned. The United States District Court entered summary judgment in state's favor, and Amtrak appealed.

The Court of Appeals held that limitations period for suit accrued no later than when Amtrak had actual knowledge of public hearing related to planned taking.

Under New York law, limitations period for Amtrak's claim that state's taking of its property was preempted by federal law accrued no later than when Amtrak had actual knowledge of public hearing related to planned taking, rather than when title to property actually vested in state, even though state failed to give Amtrak formal notice strictly according to state statutory procedures and did not serve Amtrak at statutory address where it was to receive service of process, where state official had sent email informing Amtrak that state agency would hold public hearing on subject of condemning Amtrak's land, and agency published determinations and findings necessary for condemnation of land.

ZONING - OREGON

Oakleigh-McClure Neighbors v. City of Eugene

Court of Appeals of Oregon - February 19, 2015 - P.3d - 2015 WL 720336

Opponents of development sought judicial review of final order of Land Use Board of Appeals (LUBA) affirming city's decision to approve a multi-unit development after LUBA did not permit neighbor who had submitted written testimony for city hearing on application to intervene.

The Court of Appeals held that opponents' notice of intent to appeal city's approval was effectively filed as to neighbor when opponents served notice on neighbor, and thus neighbor's motion to intervene was timely.

Notice of intent to appeal city's approval of multi-unit development to Land Use Board of Appeals (LUBA), filed by opponents of the development, was effectively filed as to neighbor, who submitted written testimony opposing development to city for hearing and sought to intervene in appeal, when opponents served notice of intent to appeal on neighbor, not when party filed its original notice, and

thus neighbor's motion to intervene was timely under statute requiring a motion to intervene to be filed within 21 days of filing of notice of intent to appeal, even though neighbor's motion was filed more than 21 days after opponents filed their original notice. Opponents failed to serve notice of intent to appeal on neighbor when they filed their original notice, and neighbor's motion to intervene was filed within 21 days of being served with notice.

LIABILITY - WASHINGTON

Binschus v. State, Dept. of Corrections

Court of Appeals of Washington, Division 1 - February 23, 2015 - P.3d - 2015 WL 754230

After former inmate, who had been released from county jail following incarceration for committing nonviolent crimes, killed six people and injured several others while experiencing a psychotic episode, estates of five people inmate killed and four people he injured brought lawsuit against counties in which defendant had been incarcerated for negligence. The Superior Court granted counties summary judgment. Estates and injured persons appealed.

The Court of Appeals held that:

- Fact issue existed as to whether county in which inmate was initially incarcerated knew or should have known of inmate's violent propensities;
- There was no evidence as to whether county to which inmate was transferred was aware of inmate's violent disposition;
- Fact issue existed as to whether injuries to victims were reasonably foreseeable;
- Alleged improper mental health evaluation and treatment of inmate did not create duty to protect victims; and
- Fact issue precluded summary judgment on claim that counties proximately caused victims' injuries.

BANKRUPTCY - CALIFORNIA

In re City of Stockton, California

United States Bankruptcy Court, E.D. California - February 4, 2015 - B.R. - 60 Bankr.Ct.Dec. 164

The City of Stockton sought the Bankruptcy Court's confirmation of its chapter 9 plan of adjustment of debts.

The City of Stockton plan achieved significant net reductions in total compensation (including lower pensions for new employees and elimination of up to $550 million in unfunded health benefits) that employees accepted in exchange for preserving existing pensions.

All capital markets creditors, except Franklin Templeton – which had issued $36 million in bonds – accepted a package of restructured bond debt in impairments reflecting their relative rights in collateral. Franklin did not fare as well because it took collateral worth only about $4 million to support its loan.

Franklin objected to confirmation, contending that the City's failure to modify pensions meant that the plan was not proposed in good faith.

The California Public Employees' Retirement System (CalPERS), which by contract administered the City-sponsored pensions, attempted to interject itself into the case, arguing that California law insulated its contract from rejection and that the pensions themselves could not be adjusted.

So the fundamental issue in this case was whether, as matters of law and fact, the City's chapter 9 plan should be confirmed even though the plan did not directly impair the City-sponsored pensions.

The Bankruptcy Court confirmed the City's plan, holding that:

- As a matter of law, pension contracts entered into by the City, including the pension administration contract with CalPERS, may be rejected pursuant to Bankruptcy Code § 365. 11 U.S.C. § 365;
- The California statute forbidding rejection of a contract with CalPERS in a chapter 9 case is constitutionally infirm in the face of the exclusive power of Congress to enact uniform laws on the subject of bankruptcy;
- The $1.6 billion lien granted to CalPERS by state statute in the event of termination of a pension administration contract is vulnerable to avoidance in bankruptcy as a statutory lien;
- The Contracts Clauses of the Federal and State Constitutions, as implemented by California's judge-made "Vested Rights Doctrine," did not preclude contract rejection or modification in bankruptcy; and
- Considerations of sovereignty and sovereign immunity did not dictate a different result.

The Court also noted that the authority of CalPERS to interject itself into the potential modification of a municipal pension in California under the Federal Bankruptcy Code is doubtful. As CalPERS does not guaranty payment of municipal pensions and has a connection with a municipality only if that municipality elects to contract with CalPERS to service its pensions, its standing to object to a municipal pension modification through chapter 9 appears to be lacking.

MUNICIPAL CONTRACTS - CALIFORNIA

Torres v. City of Montebello

Court of Appeal, Second District, Division 3, California - February 13, 2015 - Cal.Rptr.3d - 2015 WL 632149

In 2008, a candidate for the Montebello City Council approached the City's exclusive residential waste hauling franchisee about becoming the City's exclusive commercial waste hauling franchisee as well. The candidate won election to the Montebello City Council and, with his vote, the City Council approved a contract granting disposal company an exclusive residential and commercial waste hauling franchise.

In the weeks that followed, the Mayor of Montebello, who had voted against the exclusive franchise, refused to sign the contract. The City Attorney advised the Mayor that he had a ministerial duty to execute contracts passed by the City Council under Government Code section 40602. If the Mayor refused to do so, the City Attorney warned, he would be deemed "absent" under Government Code section 40601 and the Mayor Pro Tempore would be directed to execute the contract in his stead. More weeks passed without the Mayor signing the contract, until, at the apparent direction of the City Attorney, the Mayor Pro Tempore signed it.

Plaintiff filed a complaint against the City seeking a writ of mandate to invalidate the contract. The trial court entered judgment for plaintiff and issued the requested writ, ruling the contract void *ab initio* because it had not been executed by the Mayor as required by Government Code section

40602.

On appeal from the judgment as a real party in interest, disposal company principally contended that the Mayor was appropriately deemed “absent” based on his refusal to carry out his ministerial duty, and the Mayor Pro Tem was therefore authorized to execute the contract under Government Code section 40601.1

The Court of Appeal held that neither the City Attorney nor the Mayor Pro Tem had the authority to deem the Mayor “absent” under the Government Code, as the definition of “absent” was restricted to physical absence and did not include the refusal to perform a ministerial duty. Accordingly, the Mayor Pro Tem’s signature was ineffective to enter the contract on the City’s behalf, affirming the trial court’s judgment on that basis.

IMMUNITY - GEORGIA

Primas v. City of Milledgeville

Supreme Court of Georgia - February 16, 2015 - S.E.2d - 2015 WL 659598

Corrections officer who allegedly was injured in accident after brake line on city transport bus that he was driving ruptured sued city for negligence. The Superior Court denied city’s motion for summary judgment on ground of sovereign immunity. City sought interlocutory appeal, which was granted.

On a petition for a writ of certiorari, the Supreme Court held that remand to the Court of Appeals was required for that court to address the issue of whether city was immune from liability for corrections officer’s injuries based on sovereign immunity, rather than official immunity.

In addressing the immunity issue before them as one involving official immunity, the Court of Appeals applied inapplicable legal principles, definitions, and precedent and failed to make any determination regarding whether the alleged negligence arose out of the performance, or non-performance of a governmental function.

IMMUNITY - GEORGIA

City of Atlanta v. Mitcham

Supreme Court of Georgia - February 16, 2015 - S.E.2d - 2015 WL 659597

Diabetic inmate in city’s custody brought negligence action against city and city’s police chief, alleging that defendants’ negligent failure to monitor and regulate inmate’s insulin levels resulted in permanent injuries. Defendants filed motion to dismiss on grounds of governmental immunity. The State Court denied motion. Defendants appealed.

The Supreme Court of Georgia held that city and police chief were entitled to governmental immunity.

Provision of medical services by city and city’s police chief to inmates confined in city’s custody was “governmental,” rather than “ministerial,” function, such that city and police chief were entitled to governmental immunity in negligence action by diabetic inmate alleging that defendants’ failure to properly monitor and regulate his insulin levels resulted in permanent injuries. City’s duty to furnish

inmates necessary medical care and to bear the costs of such care was imposed by statute, and such provision of medical care was to be performed for the benefit of the general public, for which the city derived no special benefit.

BOND VALIDATION - GEORGIA

In re Woodham

Supreme Court of Georgia - February 16, 2015 - S.E.2d - 2015 WL 662294

This disciplinary matter arose from bond validation proceedings in which attorney intervened on behalf of himself and Citizens for Ethics in Government, LLC, filed objections to the validation of the bonds, and later offered to withdraw the objections if developers concerned in the bonds paid a substantial amount of money.

State Bar filed formal complaint against attorney after attorney's petition for voluntary discipline was rejected. Following a hearing, Special Master, found attorney violated rules of professional conduct and recommended that attorney be suspended for three months and receive a public reprimand. Attorney and State Bar sought further review, and the Review Panel found only violation of one rule of professional conduct, but recommended six-month suspension and reprimand. Attorney appealed.

The Supreme Court of Georgia held that:

- Attorney did not violate rule of professional conduct prohibiting unauthorized contact with represented party, and
- Attorney's filing of intervention complaint did not violate rule prohibiting him from engaging in conduct involving misrepresentation.

Attorney's conduct in contacting developers without consent of their bond counsel to discuss settlement of intervention complaints in bond validation proceedings did not violate rule of professional conduct prohibiting attorney from contacting a represented party unless authorized to do so. Attorney first attempted to make contact with developers' in-house counsel, attorney discontinued communications when he learned that developers had no such counsel, attorney declined to discuss anything of substance with chief executive officer (CEO) without presence of lawyer for developers, and developers' litigation counsel represented CEO in further discussions, even though she did not enter an appearance in the underlying bond matter.

Attorney's conduct in asking developers to pay him 1% of the bond amount to dismiss complaints in intervention in bond validation proceedings did not violate rule of professional conduct forbidding an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Attorney's standing to intervene in bond validation proceedings did not depend on his reasons for intervention, and attorney may have acted badly, may have attempted to misuse a legal process, and may have attempted to get money to which he had no legal claim, but there was no evidence that he misled or attempted to mislead developers about the filing of the complaints in intervention or the legal remedies to which the intervenors might be entitled in the bond validation proceeding.

EMINENT DOMAIN - IDAHO

State, Dept. of Transp. v. Grathol

Supreme Court of Idaho, Boise, November 2014 Term - February 11, 2015 - P.3d - 2015 WL 543197

Transportation Department brought eminent domain action against landowner. The District Court awarded landowner $675,000 in just compensation, and awarded Department costs as the prevailing party. Landowner appealed and Department cross-appealed.

The Supreme Court of Idaho held that:

- Evidence supported district court's holding that all 56.8 acres of owner's land had unity of use, rather than just the western 30 acres;
- Landowner suffered no severance damages;
- Expert's testimony regarding whether proposed frontage road would have impacted his opinion was irrelevant;
- Remand was required for district court to determine whether eminent domain case was extreme and unlikely so as to permit award of attorney fees;
- Costs may properly be awarded to condemnor in eminent domain proceeding, even if it is not an extreme and unlikely situation, overruling *Ada Cty. Highway Dist. v. Acarrequi*, 673 P.2d 1067;
- Trial court did not abuse its discretion in awarding costs for Transportation Department's expert; and
- Department was entitled to award of attorney fees on appeal.

PENSIONS - LOUISIANA

New Orleans Fire Fighters Pension and Relief Fund v. City of New Orleans

Supreme Court of Louisiana - February 13, 2015 - So.3d - 2014-2224 (La. 2/13/15)

Trustees of the New Orleans Firefighters' Pension and Relief Fund brought mandamus action to compel city to make certain statutory contributions owed to the fund. City filed reconventional demand, alleging mismanagement of the Fund by trustees. The District Court granted fund's exceptions of no right of action and no cause of action to the reconventional demand. City appealed. The Court of Appeal affirmed. City petitioned for writ of mandamus.

The Supreme Court of Louisiana held that city financial officer and director had right and cause of action against Fund to cure co-fiduciary's breach of duty.

Chief financial officer and director of finance was statutorily-named member of the Board and had statutory duty, as fiduciary of Fund, to remedy any known breach of co-fiduciary's duty.

BANKRUPTCY - DETROIT

In re City of Detroit

United States Bankruptcy Court, E.D. Michigan, Southern Division - February 12, 2015 - Slip Copy2015 WL 603888

In this Amended Opinion and Order Regarding the Reasonableness of Fees Under 11 U.S.C. § 943(b)(3), the Bankruptcy Court found that the fees were reasonable. This finding was based primarily on the number and complexity of the issues in the case, the City's extreme financial

challenges, the results obtained, the substantial reductions to which many professionals have agreed, and the lack of objections or negative comments regarding fees filed with this Court.

The Order concluded with the following:

“In its oral opinion confirming the plan on November 7, 2014, the Court stated:

‘Profound thanks to the attorneys and other professionals in the case. You conducted yourselves with the highest degree of civility, respect, and professionalism, both to each other and to the Court. At the same time, you demonstrated zealous advocacy as well as loyalty to your oaths and to your clients. Your work in this case is a model of the public service role that lawyers and the legal profession perform in our society. It has made me proud to be a part of the judicial process and of the legal profession and each of you should share in that pride.’

In its eligibility opinion near the beginning of the case, the Court made detailed and, frankly, depressing findings about the City’s fiscal and service delivery insolvency. Those findings reflected the awesome challenges that the professionals in the case faced, embraced, met and overcame. They understood from the beginning the profound personal stake that each of the 700,000 residents of the City of Detroit had in the outcome of their work.

It is perhaps too easy now to fast-forward through the play-back that is necessary to comprehend the magnitude of the accomplishments of the professionals in this case. But now is the time to appreciate and credit that accomplishment and all of the effort and skill of those professionals in achieving it. The City is now on a path to success precisely because of the expertise, skill, commitment, endurance, personal sacrifice, civility and proficiency of all of the professionals in the case, including most certainly those whose fees are subject to review in this opinion.

In utter contrast to the community sense when the case was filed, the residents of the City as well as its community and political leaders now justly feel and express a strong and genuine sense of enthusiasm, optimism and confidence about the City’s future. They should also feel and express a strong and genuine sense of appreciation for these professionals and their service.

The Court, and for that matter the City itself, must acknowledge that the City’s own professionals bore the burden of the many challenges in this case. It is therefore proper now to recognize in particular the contribution of the City’s advisors, Ernst & Young, Conway MacKenzie, and Miller Buckfire. It is also proper now to specially recognize the singular and extraordinary contribution of the City’s attorneys, Jones Day.”

BANKRUPTCY - DETROIT

In re City of Detroit

United States Bankruptcy Court, E.D. Michigan, Southern Division - December 31, 2014 - 524 B.R. 14760 Bankr.Ct.Dec. 124

Chapter 9 debtor-city sought confirmation of eighth amended plan of adjustment, and approval of settlements with creditors.

The Bankruptcy Court held that:

- Proposed settlement was fair and equitable, warranting its approval;
- Plan was in the best interests of creditors, as required for confirmation;

- Plan was feasible, as required for confirmation;
- Plan was proposed in good faith, as required for confirmation;
- Plan did not discriminate unfairly in favor of pension classes, as required for confirmation;
- Impairing and discharging § 1983 claims against city would not violate Fourteenth Amendment; and
- Takings Clause claims against city would be excepted from discharge.

MUNICIPAL ORDINANCE - NEW YORK

People v. Diack

Court of Appeals of New York - February 17, 2015 - N.E.3d - 2015 N.Y. Slip Op. 01376

Defendant charged with violating local law prohibiting registered sex offenders from residing within 1,000 feet of a school moved to dismiss the information. The Nassau County District Court granted the motion. The People appealed. The Supreme Court, Appellate Term, reversed and remitted. Defendant appealed.

The Court of Appeals of New York held that:

- Design and purpose of state's enactment of series of laws regulating registered sex offenders was to preempt subject of sex offender residency restriction legislation, and
- County was preempted by state regulatory framework from enacting law prohibiting registered sex offenders from residing within 1,000 feet of a school.

EMPLOYMENT - NEW YORK

Margerum v. City of Buffalo

Court of Appeals of New York - February 17, 2015 - N.E.3d - 2015 N.Y. Slip Op. 01378

Firefighters brought discrimination claims against city, alleging that city allowed promotional eligibility lists created pursuant to Civil Service Law to expire solely on ground that plaintiffs, who were next in line for promotion, were Caucasian. The Supreme Court, Erie County, granted partial summary judgment to firefighters as to liability. City appealed. The Supreme Court, Appellate Division, affirmed as modified, concluding that trial court erred in granting partial summary judgment. Thereafter, the Supreme Court granted partial summary judgment to firefighters as to liability. City appealed. The Supreme Court, Appellate Division, affirmed. After nonjury trial, the Supreme Court awarded a total of $2,510,170 in economic damages and $255,000 in emotional distress damages to remaining plaintiffs. The Supreme Court, Appellate Division, reduced economic damages, yielding final judgment of $1,621,007. Leave to appeal was granted.

The Court of Appeals held that:

- Claims under the Human Rights Law are not subject to the General Municipal Law provisions requiring service of a notice of claim prior to the filing of certain types of claims against a municipality, but
- Issue of whether city had strong basis in evidence to believe it would be subject to disparate-impact liability at the time it allowed promotional eligibility lists for firefighters to expire raised issues of fact that could not be determined on motions for summary judgment.

MUNICIPAL ORDINANCE - OHIO

State ex rel. Morrison v. Beck Energy Corp.

Supreme Court of Ohio - February 17, 2015 - N.E.3d - 2015 -Ohio- 485

City filed complaint seeking injunctive relief against energy company, which had obtained permit from Department of Natural Resources (DNR) to drill oil and gas well within city, alleging that company violated multiple city ordinances. The Court of Common Pleas granted injunctive relief prohibiting company from drilling until it complied with all local ordinances. Company appealed. The Court of Appeals reversed and remanded. City appealed, and the Supreme Court accepted jurisdiction.

The Supreme Court of Ohio held that:

- Ordinances violated Home Rule Amendment;
- Ordinances were an exercise of police power;
- Statewide oil and gas drilling statute was general law; and
- Ordinances conflicted with statute.

INVERSE CONDEMNATION - TEXAS

City of Highland Haven, Texas v. Taylor

Court of Appeals of Texas, Austin - February 12, 2015 - Not Reported in S.W.3d - 2015 WL 655278

Homeowners filed cause of action against City and County, arguing that the sedimentation allegedly resulting from their construction of a bridge constituted inverse condemnation of their waterfront properties because they were no longer able to use the water in the channel as access to and from their property to adjoining lake.

In response, City and County filed pleas to the jurisdiction, arguing that Homeowners' claims were barred by governmental immunity because their pleading did not support a claim for inverse condemnation. The District Court denied the pleas. City and County appealed.

The Court of Appeals reversed the District Court's denial of the pleas to the jurisdiction and rendered judgment dismissing Homeowners' claims, finding that the Homeowners' had no property interest sufficient to support a takings claims and, thus, that the District Court lacked jurisdiction over those claims due to the fact that properties located on a man-made waterway cannot be vested with common-law riparian rights.

ZONING - IDAHO

917 Lusk, LLC v. City of Boise

Supreme Court of Idaho, Boise - June 2014 Term - February 10, 2015 - P.3d - 2015 WL 527852

Commercial building owner petitioned for judicial review of city council's decision granting a conditional use permit (CUP) for developer to build an apartment complex. The District Court affirmed. Building owner appealed.

The Supreme Court of Idaho held that:

- City's refusal to consider adverse effects on property in vicinity of the project was an abuse of discretion, and
- Building owner demonstrated prejudice to substantial rights.

City zoning and planning commission's failure, in granting conditional use permit (CUP) for developer to build an apartment complex taller than applicable zoning height limitation, to recognize that Idaho law and city building code provided it with discretion to require the project to provide on-site automobile parking beyond the minimum required by parking chapter of the code, and thereby refusing to consider adverse effects on property in the vicinity, as evinced by testimony before it, was an abuse of discretion.

City planning and zoning commission's decision to grant conditional use permit (CUP) for developer to build an apartment complex taller than applicable zoning height limitation, prejudiced substantial rights of owner of commercial building located adjacent to proposed building site. Project called for 622 bedrooms to house students at state university and parking chapter of city code required only 280 parking spaces for the project, therefore, there would be significant numbers of residents looking for parking in the vicinity, which could potentially put owner in jeopardy of economic harm.

EMINENT DOMAIN - ILLINOIS

City of Chicago v. Eychaner

Appellate Court of Illinois, First District, Third Division - January 21, 2015 - N.E.3d - 2015 IL App (1st) 131833

The City of Chicago exercised its power of eminent domain to take Fred Eychaner's property and transfer it to the Blommer Chocolate Company. Eychaner filed a traverse and motion to dismiss, challenging the taking as unconstitutional, which the trial court denied. After a trial on just compensation, a jury valued Eychaner's land at $2.5 million.

Eychaner appealed, arguing: (i) the City may not use eminent domain to take property in a conservation area in the name of economic redevelopment; (ii) the trial court should have granted Eychaner's motion in limine to bar reference to the property's planned manufacturing district (PMD) zoning; (iii) the trial court erred in excluding evidence of how and why the City included Eychaner's land in the PMD because it was relevant to the issue of whether there was a reasonable probability of rezoning; (iv) the City should not have been allowed to add new appraisers that Eychaner had originally retained; (v) the trial court should have allowed appraiser Michael MaRous to testify regarding his opinion that there was a reasonable probability of rezoning; (vi) the trial court should have stricken MaRous's testimony for violating the court's in limine order when he identified Eychaner as his original employer; and (vii) the jury's $2.5 million verdict was the result of a mistaken belief that there was no reasonable probability of rezoning.

The Appellate Court held that:

- Under long-standing precedent, the City may use eminent domain to take property in a conservation area to prevent future blight;
- The trial court erred in refusing to exclude reference to the land's PMD zoning (thus the Appellate Court declined to address the relevancy of how and why the PMD zoning came about);
- Eychaner was not prejudiced when the City chose to call witnesses he had formerly retained but

had chosen not to call at trial;
- The trial court erred in limiting MaRous's testimony; and
- Because of the trial court's curative instruction, no prejudice arose from MaRous's identifying Eychaner as his original employer.

Accordingly, the court reversed and remanded for a new trial on just compensation.

ANNEXATION - KENTUCKY

Southeast Bullitt Fire Protection District v. City of Shepherdsville

Court of Appeals of Kentucky - February 6, 2015 - Not Reported in S.W.3d - 2015 WL 510935

Fire protection district filed a petition for declaratory judgment asking the court to invalidate fifteen separate annexation ordinances based on City's failure to comply with various statutes governing municipal annexations. The trial court granted summary judgment in favor of City and District appealed.

The Court of Appeals held that:

- Fire protection districts have standing to challenge the annexation of property from within their districts;
- Written waivers of the property owners in each annexation had not cured any proposed defects in the notice requirements of KRS 81A.412, as the waivers were executed after the annexations; and
- The trial court improperly granted summary judgment in favor of City, as District was entitled to conduct discovery regarding its allegations of boundary and filing defects in the annexations.

ZONING - MAINE

Day v. Town of Phippsburg

Supreme Judicial Court of Maine - February 10, 2015 - A.3d - 2015 ME 13

Owner of property abutting beachfront lot filed a complaint against owner of lot and town, seeking a declaratory judgment that lot was not a grandfathered nonconforming lot, created by the merger of two nonconforming lots, within town zoning ordinance. The Superior Court entered judgment in favor of owner of lot and the town. Property owner appealed.

The Supreme Judicial Court of Maine held that grandfathered development status of merged nonconforming lot was permanently lost when that merged lot was unlawfully divided.

ANNEXATION - NEBRASKA

Sanitary and Improvement District No. 196 of Douglas County v. City of Valley

Supreme Court of Nebraska - February 6, 2015 - N.W.2d - 290 Neb. 1

Sanitary and improvement district brought declaratory judgment action against city, challenging city's annexation of land, which included district. The District Court granted summary judgment to city. District appealed.

The Supreme Court of Nebraska held that:

- Parcels of land adjacent to city had rational relation to legitimate purposes of annexation and thus could be annexed by city;
- Parcels of land used for mining gravel and sand were not agricultural land and thus could be annexed by city; and
- Particular parcel was contiguous with or adjacent to city, as would allow annexation.

Parcels of land adjacent to second-class city had rational relation to legitimate purposes of annexation and thus could be annexed by city, even if land was not already zoned and developed into a nonagricultural use, where landowner had made a request for proposals to several developers in the region to explore development opportunities on the land, and landowner financed part of the regional pumping station in order to reserve capacity for over 200 residential lots on site.

Parcels of land used for mining gravel and sand were not agricultural land and thus could be annexed by adjacent second-class city. Mining operations were not traditionally considered an agricultural use of land, there was no indication that instant mining operations were used to further an agricultural purpose, such as creation of pond to irrigate crops, and mining operations in no way involved the production of any plant or animal product.

Parcel of land was contiguous with or adjacent to second-class city, as would allow annexation of land by city, even if parcel itself did not share a common border with city, where annexed area in which parcel was situated had, as a whole, a significant shared border with existing corporate boundary of city.

Evidence that second-class city compared the relative financial health of different sanitary and improvement districts in determining what territory to annex was insufficient to establish that city's subsequent annexation of one of those districts was motivated solely by purpose of increasing tax revenue, as could make annexation unlawful. It would have been fiscally irresponsible for city to not at least take into consideration the debt load of the areas it was annexing, and debt level of district had no relation to increase in tax revenue that city stood to gain from an annexation.

EMINENT DOMAIN - NEW JERSEY

Columbia Gas Transmission, LLC v. 1.092 Acres of Land in Tp. of Woolwich, Gloucester County, N.J.

United States District Court, D. New Jersey - January 28, 2015 - Slip Copy - 2015 WL 389402

Plaintiff brought condemnation actions seeks to acquire a right-of-way (permanent easement), along with a temporary construction easement, for the construction of an interstate natural gas pipeline across Defendants' property.

Plaintiff moved for injunctive relief under the eminent domain authority of the Natural Gas Act, seeking orders establishing Plaintiff's right to condemn the easements across the Defendants' properties, and allowing Plaintiff to take immediate possession of such easements, prior to a final decision concerning the amount and payment of compensation to the Defendants as condemnees.

The District Court held that Plaintiff's FERC certificate gave it a substantive right to condemn Defendants' properties and granted Plaintiff equitable, intermediate relief in the form of immediate

possession of Defendants' properties.

MUNICIPAL ORDINANCE - NEW YORK

D'Alessandro, ex rel. Vallemaio Properties, LLC v. Kirkmire

Supreme Court, Appellate Division, Fourth Department, New York - February 6, 2015 - N.Y.S.2d - 2015 N.Y. Slip Op. 01018

Petitioners commenced a hybrid CPLR article 78 proceeding and declaratory judgment action seeking to declare section 90–21 of the Municipal Code of the City of Rochester (Code) unconstitutional. That section of the Code permits the City to collect a "case management fee" (CMF) of $100 in any case in which a property owner has failed, for over one year, to comply with a notice and order notifying that owner of Code violations related to the property.

The Supreme Court, Monroe County, declared that the CMFs were valid, constitutional and legally imposed. Petitioners appealed.

The appeals court reversed, holding that section 90–21 of the Municipal Code of the City of Rochester was unconstitutional under the United States and New York Constitutions, because the CMFs were, in actuality, a fine that was imposed upon property owners without due process.

IMPROVEMENT DISTRICTS - NORTH DAKOTA

Nandan, LLP v. City of Fargo

Supreme Court of North Dakota - February 12, 2015 - N.W.2d - 2015 ND 37

Property owner brought action against city, challenging creation of improvement district. The District Court granted city's motion to dismiss. Property owner appealed.

The Supreme Court of North Dakota held that:

- Statute authorizing municipalities to enter into agreements with other government entities for certain improvements did not require city to adopt a resolution of necessity for drainage project, but
- Property owner stated claim under statute requiring a resolution of necessity except where the improvement constitutes a water or sewer improvement.

City that entered into agreement with water district was not required to adopt a resolution of necessity for drainage project, and property owner had no right of protest, under statute authorizing a municipality to enter into an agreement with another government entity for certain improvements, where city bid out the project itself and entered into construction contract.

Property owner seeking to challenge creation of municipal improvement district without a resolution of necessity stated valid claim against city under statute requiring a resolution of necessity except where the improvement constitutes a water or sewer improvement. Complaint alleged that improvement district included street repairs, utilities and other items not specifically included in the description of a water or sewer improvement, and it was unknown whether such other repairs were merely incidental to the water and sewer repairs.

UTILITIES - NORTH CAROLINA

Fehrenbacher v. City of Durham

Court of Appeals of North Carolina - February 3, 2015 - S.E.2d - 2015 WL 426058

Property owners petitioned for certiorari review of city-county board of adjustment's decision upholding city planning director's interpretation of a concealed wireless communications facility to include a 120-foot tall cellular tower disguised as a pine tree, located on church property. The Superior Court affirmed the board's decision. Property owners appealed.

The Court of Appeals held that:

- Record provided to trial court was adequate even though a substantial portion of the testimony before the board was not recorded due to equipment malfunction;
- Statute governing appeals of municipal body decisions allows trial court to direct that matters other than those submitted to the decision-making board be included in the record on appeal;
- Proposed cellular tower would not have been readily identifiable as a cellular tower; and
- Proposed cellular tower's secondary function as a tree would have been aesthetically compatible with church property's existing use.

Cellular company's proposed tower, designed to look like a 120-foot tall pine tree, was not readily identifiable as a cellular tower, as required to qualify as a concealed wireless communications facility under city ordinance governing approval of such facilities, even though it was substantially taller and five times wider at its base than average nearby trees. Tower had authentic looking bark and branches, national planning association recommended it as nearly indistinguishable from real trees, from many vantage points tower was not visible while from others it had appearance of an unusually tall tree, proposed height of tower was within maximum height limitation set by local ordinance, base of tower was concealed from sight by actual trees, and there was no evidence in record that a reasonable person's reaction to sight of an unusually tall tree would have been to conclude that it was a cellular tower.

The test for determining whether a wireless communications facility is readily identifiable as such, under city ordinance governing approval of concealed facilities, is not whether or how quickly a longtime resident or passing motorist would notice its true nature; rather, the test is whether the design serves a secondary function that helps camouflage the tower's function as a wireless communications facility.

Cellular company's proposed tower's secondary function as a tree, to be located on church property, was aesthetically compatible with the church property's existing use, as required to be considered a concealed wireless communications facility under city ordinance governing approval of such facilities, where church was located in a developing rural residential neighborhood, surrounded by houses and trees.

PUBLIC RECORDS - PENNSYLVANIA

Paint Tp. v. Clark

Commonwealth Court of Pennsylvania - February 5, 2015 - A.3d - 2015 WL 469434

Township appealed from decision of the Office of Open Records (OOR) in favor of requester, who made request under Right-to-Know Law (RTKL) for records contained on publicly funded cell phone

of chairman of township's board of supervisors. After issuing order requiring township to disclose records, the Court of Common Pleas denied requester's petition for contempt, but ordered township to comply with its previous order, which required township to retrieve and provide any remaining data on publicly funded phone and to provide records of chairman's private phone. Township appealed.

The Commonwealth Court held that:

- Evidence demonstrated that records contained on phone provided by township to chairman no longer existed, such that township could not be ordered to retrieve that data, and
- Records contained on chairman's private phone constituted public records subject to disclosure.

Records contained on cell phone purchased directly by chairman of township's board of supervisors constituted public records, and thus township was required to provide the records in response to request made under Right-to-Know Law (RTKL), even though the phone was chairman's personal phone. That the phone was personal did not change the public nature of the records it contained, and township provided chairman partial reimbursement every month for the phone.

ZONING - PENNSYLVANIA

Riverfront Development Group, LLC v. City of Harrisburg Zoning Hearing Bd.

Commonwealth Court of Pennsylvania - January 30, 2015 - A.3d - 2015 WL 400542

Landowner sought review of city's decision to deny variance and special exception application. The Court of Common Pleas. Landowner appealed.

The Commonwealth Court held that:

- City zoning code provision permitting "one or two-family detached dwellings," without limiting how many detached dwellings were permitted on each lot, was ambiguous, and was to be construed in favor of landowner, and
- Landowner was not entitled to a deemed approval of special exception request.

BANKRUPTCY - PUERTO RICO

Franklin California Tax-Free Trust v. Puerto Rico

United States District Court, D. Puerto Rico - February 6, 2015 - F.Supp.3d - 2015 WL 522183

Holders of nearly two billion dollars of bonds issued by the Puerto Rico Electric Power Authority ("PREPA")
sought a declaratory judgment that the Puerto Rico Public Corporation Debt Enforcement and Recovery Act was unconstitutional.

The bondholders alleged that the Recovery Act eliminated the contractual rights guaranteed them under the PREPA Authority Act (which authorized PREPA to issue bonds) and the Trust Agreement (pursuant to which PREPA issued bonds to plaintiffs) by giving PREPA the right to participate in a new legal regime to restructure its debts.

The District Court held that the Recovery Act was preempted by the federal Bankruptcy Code and

was therefore void pursuant to the Supremacy Clause of the United States Constitution. The Commonwealth was permanently enjoined from enforcing the Recovery Act.

For a more detailed explication of the ruling, see this Cadwalader memo.

MUNICIPAL ORDINANCE - WASHINGTON

U.S. Mission Corp. v. City of Mercer Island

United States District Court, W.D. Washington, at Seattle - February 10, 2015 - Slip Copy - 2015 WL 540182

Religious organization sought a preliminary injunction to prohibit City from enforcing its newly-enacted solicitation ordinance, which prohibited door-to-door solicitation after 7:00 pm. The City had not been enforcing the prior version of the ordinance because of fears that it contained unconstitutional restraints on free speech.

The District Court granted the motion, finding that the 7:00 curfew was not the least restrictive means for the City to meet its interests.

PENSIONS - WISCONSIN

Schwegel v. Milwaukee County

Supreme Court of Wisconsin - February 12, 2015 - N.W.2d - 2015 WI 12

County employees' union brought action against county, claiming a vested benefit contract required county to reimburse employees' Medicare Part B premiums when they retired, even though they were not yet retired when the county eliminated that benefit. The Circuit Court granted summary judgment in favor of union. County appealed. The Court of Appeals reversed and remanded. Union petitioned for review, which was granted.

The Supreme Court of Wisconsin held that county employees who had not retired did not have vested contract right in reimbursement, and therefore county ordinance that prospectively eliminated Medicare Part B premium reimbursement upon retirement for county employees who did not retire before retirement dates established by county did not impermissibly abrogate a vested contract right.

Statute granting county specific home rule authority over county employee retirement system made no mention of health insurance benefits, health insurance benefits were not governed by same statutes and ordinances as county retirement system, memorandum summarizing proposed ordinance stated that only previously-retired employees had vested right in reimbursement, county payment for health insurance premiums was not defined in fixed way such that county payment was tied to specified benefit that always would follow, and county health insurance payments were not earned in increments as employees continued their employment.