
ANNEXATION - MISSISSIPPI

In re City of Oxford

Supreme Court of Mississippi - July 17, 2014 - So.3d - 2014 WL 3513037

Property owner petitioned for the inclusion of real property scheduled to become multi-million dollar medical facility into the contiguous municipal limits. In the Petition, owner alleged that she was the sole qualified elector residing in the proposed inclusion area (PIA), and therefore she fulfilled the two-thirds-elector requirement of Mississippi Code Section 21–1–45. The Chancery Court approved the petition, and objectors appealed.

At issue in the appeal was whether the qualified-elector requirement of Section 21–1–45 is met at the time of filing the petition or the time of trial.

The Supreme Court of Mississippi held that the requirement that two thirds of qualified electors residing in territory sign petition for annexation must be determined by ascertainment of number of persons living in area to be annexed who, on date of filing of petition, were registered voters in area.

ZONING - MONTANA

Phillips v. City of Whitefish

Supreme Court of Montana - July 14, 2014 - P.3d - 2014 MT 186

Residents of city and county brought action challenging the validity of referendum by city voters to rescind city council resolution authorizing city to enter into amended interlocal agreement with county concerning planning and zoning authority over extraterritorial area (ETA), a two-mile area surrounding city. City filed third-party complaint against county, alleging that county breached original and amended agreement. County counterclaimed against city, alleging that city breached amended agreement. Referendum proponents intervened. On cross-motions for summary judgment, the District Court granted summary judgment in favor of residents and county. Referendum proponents and city appealed.

The Supreme Court of Montana held that:

- As a matter of first impression, it would review for correctness trial court's conclusions of law regarding the validity of referendum;
- Action was not untimely under statute providing 14-day deadline to challenge a proposed action in a referendum;
- Filing of action four days after results of referendum were certified did not warrant dismissal based upon laches; and
- Resolution was not subject to referendum by voters to rescind it.

PUBLIC PENSIONS - NEBRASKA

J.M. v. Hobbs

Supreme Court of Nebraska - July 18, 2014 - N.W.2d - 288 Neb. 546

Before 2012, under Neb.Rev.Stat. § 81–2032, a Nebraska State Patrol officer's retirement assets had absolute protection from "garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law." Such provisions are called anti-attachment statutes.

In 2012, the Legislature amended § 81–2032(2) and other anti-attachment statutes to allow a civil judgment to attach to the distributed retirement assets of State Patrol officers and other public employees who have committed six specified crimes—if the public employee was convicted of the crime in a criminal prosecution. The amendment applied retroactively to past civil judgments predicated on such crimes.

Billy L. Hobbs, is a retired State Patrol officer who was convicted of one of the specified crimes—first degree sexual assault of a child. J.M., the victim's guardian and conservator, obtained a civil judgment against Hobbs and has twice sought an order in aid of execution. In response to J.M.'s second attempt, after the statute was amended to apply retroactively, Hobbs challenged the constitutionality of the amendment on multiple grounds. The District Court determined that the amendment was unconstitutional as special legislation and dismissed J.M.'s motion.

The Supreme Court of Nebraska agreed with the District Court that L.B. 916 arbitrarily benefits the select crime victims of its specified crimes. Simultaneously, L.B. 916 arbitrarily benefits those public employees and officers whose retirement assets are not subject to attachment because (1) the act does not apply to their retirement plans or (2) they pleaded no contest or were convicted of a serious crime that is not included in the act.

The Court concluded that, under the act's stated purpose of providing compensation to the victims of serious crimes, no substantial difference exists between the favored groups of victims and employees and those victims and employees who do not receive the act's benefits. Because the class members are not substantially different, the act is special legislation.

EMINENT DOMAIN - NEW YORK

Kurtz v. Verizon New York, Inc.

United States Court of Appeals, Second Circuit - July 16, 2014 - F.3d - 2014 WL 3443956

Building owners brought § 1983 putative class action against telephone company, alleging that installation of telephone terminal boxes on their properties violated their right to procedural due process under the Fourteenth Amendment and right to be free from a taking without just compensation under the Fifth Amendment. The District Court dismissed action for lack of subject matter jurisdiction. Owners appealed.

The Court of Appeals held that:

- *Williamson County Regional Planning Com'n v. Hamilton Bank of Johnson City* applies to regulatory and physical takings alike;
- Claim alleging physical taking was not ripe for review;
- Ripeness requirement of finality and exhaustion as stated in *Williamson County* applies to

procedural and substantive due process claims arising from the same circumstances as a taking claim; and
- Procedural due process claim was not ripe for review.

Court of Appeals holds that building owners' claim alleging physical taking against telephone company through installation of telephone terminal boxes on their properties was not ripe for review in federal court due to their failure to seek compensation at state level first. Although finality requirement had been satisfied by installation, inverse condemnation proceeding under New York's Eminent Domain Procedure Law provided facially reasonable, certain, and adequate procedure for obtaining compensation.

LIABILITY - NORTH CAROLINA

Frankenmuth Ins. v. City of Hickory

Court of Appeals of North Carolina - July 15, 2014 - S.E.2d - 2014 WL 3409689

Insurer, as subrogee of insured country club, brought professional negligence action against city, alleging that city's failure to properly regulate water pressure caused water pipe leading to club's sprinkler system to burst, causing damage to clubhouse. The Superior Court granted city's motion for summary judgment. Insurer appealed.

The Court of Appeals held that:

- Insurer was required to produce expert testimony to establish a proper standard of care, and
- Insurer failed to establish a proper standard of care.

Country club's insurer was required to produce expert testimony to establish a proper standard of care in professional negligence action brought against city after a pipe leading to club's sprinkler system burst. Insurer claimed that city failed to ensure that water pressure did not exceed reasonable levels, failed to install a "loop" system in its water distribution system, and failed to install or recommend that the club install a pressure-relieving device, and such claims could not be properly evaluated with the common knowledge and experience of the jury.

PUBLIC UTILITIES - OHIO

In re Application of E. Ohio Gas Co.

Supreme Court of Ohio - July 16, 2014 - N.E.3d - 2014 -Ohio- 3073

Gas utility appealed order of Public Utilities Commission (PUC) reducing its proposed customer charge to recover costs associated with automated meter reading program.

The Supreme Court of Ohio held that it was substantively unreasonable for PUC to reduce utility's recovery of installation costs for meter reading program.

Nothing in the PUC's order clearly put gas utility on notice that it was required to complete installations of automated meter reading program by the end of 2011 or fully reroute all service by deadline, and thus, it was substantively unreasonable for PUC to reduce utility's recovery of costs for installations on basis that work was not complete by alleged deadlines.

MUNICIPAL ORDINANCE - OHIO

Gibbs v. Speedway, L.L.C.

Court of Appeals of Ohio, Second District, Montgomery County - July 11, 2014 - N.E.3d - 2014 -Ohio- 3055

Convenience store patron filed suit against store for injuries sustained in trip-and-fall in parking lot under theories of negligence and negligence per se. The Court of Common Pleas entered summary judgment for store, and patron appealed.

The Court of Appeals held that:

- Patron's inability to identify what caused him to fall other than natural accumulation of "rutted" ice, or to present any evidence of same, precluded his recovery;
- Store owed no duty to warn store patron about open and obvious condition of "pitch dark" parking lot;
- Patron was own guilty of his own contributory negligence when he intentionally walked into "pitch black" area of icy parking lot;
- Store's alleged violation of city ordinance requiring sufficient "artificial lighting to permit the safe occupancy of the space and utilization of the appliances, equipment and fixtures" was not negligence per se.

SCHOOLS - SOUTH CAROLINA

Board of Trustees for Fairfield County School Dist. v. State

Supreme Court of South Carolina - July 16, 2014 - S.E.2d - 2014 WL 3461847

County school district brought declaratory judgment action alleging statutory provision that required county treasurer to pay another county for cost of educating first county's public school students was unconstitutional. The Circuit Court granted summary judgment in favor of second county and state as to the constitutionality of statute, and plaintiff school district appealed.

The Supreme Court of South Carolina held that there was no evidence that the General Assembly failed to set forth any logical basis or sound reason for enacting statute that required county treasurer in first county to pay second county for the cost of educating African-American public school students who resided in first county but elected to attend schools in second county, as required to show that statute violated the constitutional proscription against the enactment of a special law where a general law could be made applicable.

LIABILITY - WYOMING

Harmon v. Star Valley Medical Center

Supreme Court of Wyoming - July 16, 2014 - P.3d - 2014 WY 90

Personal representative of estate of patient brought negligence action against governmental health care provider and its employees, alleging that their negligence caused patient's death. The District Court granted summary judgment in favor of health care provider and employees. Personal representative appealed.

The Supreme Court of Wyoming held that:

- Claim failed to satisfy execution under oath requirement of WGCA and state constitution;
- Execution under oath requirement of WGCA and state constitution was nonjurisdictional requirement that could be waived, overruling *Beaulieu v. Florquist*, 86 P.3d 863, *Bell v. Schell*, 101 P.3d 465, and *Wooster v. Carbon County School Dist. No. 1*, 109 P.3d 893; and
- Health care provider waived defense that claim failed to comply with execution under oath requirement of WGCA and state constitution.

ZONING - CALIFORNIA

Citizens for a Sustainable Treasure Island v. City and County of San Francisco

Court of Appeal, First District, Division 4, California - July 7, 2014 - Cal.Rptr.3d - 14 Cal. Daily Op. Serv. 7668

Citizens' group (CSTI) brought suit contending that City, County of San Francisco and Development Authority (TIDA) failed to certify a legally adequate environmental impact report (EIR) for the Treasure Island/Yerba Buena Island Project (the Project), and therefore violated the California Environmental Quality Act (CEQA).

The Project, which was unanimously approved by the City's board of supervisors, is a comprehensive plan to redevelop a former naval station located on Treasure Island and Yerba Buena Island in the middle of San Francisco Bay into a new, mixed-use community with updated infrastructure and vastly increased open space and recreational facilities.

CSTI's principal argument was that the EIR should have been prepared as a program EIR, not a project-level EIR, because there is insufficient detail about various aspects of the Project, including remediation of hazardous materials, building and street layout, historical resources and tidal trust resources, for "project-level" review. Furthermore, CSTI claims the project description was not sufficiently accurate and stable to meet CEQA's requirements. CSTI also argues that significant new information developed after the draft EIR was circulated for public review, thereby requiring recirculation of the EIR for additional public comment.

The court noted that the proper question was not whether a program EIR should have been prepared for the Project, but instead, whether the EIR addressed the environmental impacts of the Project to a "degree of specificity" consistent with the underlying activity being approved through the EIR. The court held in the affirmative concluding that CSTI had failed to carry its burden to prove that the EIR was inadequate.

TAX - COLORADO

Expedia, Inc. v. City and County of Denver

Colorado Court of Appeals, Div. I - July 3, 2014 - P.3d - 2014 COA 87

This case represents one of many efforts nationwide to determine whether online travel companies (OTCs) must collect and remit municipal taxes that apply to hotel accommodations.

When booking a hotel room through an OTC, a traveler pays a total price that includes the rate charged by the hotel to the OTC. The total price also includes the OTC's markup and service fees (collectively, fees). It is undisputed that the Lodger's Tax imposed by the City and County of Denver applies to the room rate charged by the hotel. The question presented here is whether that tax also

applies to an OTC's fees.

The Court of Appeals conclude that the City and County Lodger's Tax ordinance does not unambiguously include the OTC's fees within its designated tax base. Strictly construing this taxing provision against the government, the Court held that the tax does not apply to such fees.

The Court remanded with directions to vacate all of the tax assessments against the OTCs.

ZONING - CONNECTICUT

Avery v. Medina

Appellate Court of Connecticut - July 8, 2014 - A.3d - 151 Conn.App. 433

Landowners brought action against co-owners, alleging that co-owners' construction of three-foot high stone wall violated restrictive covenant in deed requiring that permanent structures be located at least 100 feet from road, and sought punitive damages and injunctive relief. The Superior Court held that stone wall was not a permanent structure. Landowners appealed.

The Appellate Court held that:

- Stone wall was a permanent structure, and
- Trial court acted within its discretion in declining to award punitive damages.

Three-foot high stone wall with a one-and-a-half-foot fence attached to top of wall was a permanent structure, as that term was used in a restrictive covenant in deed requiring that such structures be located at least 100 feet from a road, even if wall did not have a concrete core, where wall had two six-foot high stone pillars with a large wooden gate attached to one of them, wall was heavy, immobile, constructed with large rocks, and affixed with its pillars and fencing to the ground by gravity, and property owners who built wall intended for it to remain firmly in the same place where it was erected and not be moved or relocated on a seasonal basis.

ADVERSE POSSESSION - CONNECTICUT

Baruno v. Slane

Appellate Court of Connecticut - July 8, 2014 - A.3d - 151 Conn.App. 386

Clients brought action against attorney for legal malpractice. The Superior Court entered judgment for clients following a jury trial. Attorney appealed.

The Appellate Court held that evidence was insufficient to establish that attorney's wrongful conduct was proximate cause of clients' injuries, as required for attorney to be liable in malpractice action for failing to pursue an injunction against clients' neighbors' construction activity based on restrictive covenants rather than adverse possession argument. There was no evidence as to what damages resulted from neighbors' unlawful conduct during the 16-month period beginning when court would have first likely granted an injunction based on restrictive covenants argument and ending when the court actually issued the injunction.

TOURISM DISTRICT - CONNECTICUT

Single Source, Inc. v. Central Regional Tourism Dist., Inc.

Supreme Court of Connecticut - July 8, 2014 - A.3d - 312 Conn. 374

Supplier of professional photography and related services brought action against regional tourism district, seeking to hold it liable for damages under a contract supplier had executed with a local tourism district. The District Court certified questions to the Supreme Court.

The Supreme Court of Connecticut held that:

- Regional tourism district was not the legal successor of former local tourism district for purposes of a breach of contract claim brought by a Massachusetts supplier of professional photography and related services, but
- If local tourism district transferred any of its assets to the new regional district upon the local district's dissolution, thereby rendering the local district unable to pay an existing debt, then supplier would be entitled to hold the regional district responsible for the local district's contractual obligations.

EMPLOYMENT - GEORGIA

Graham v. City of Duluth

Court of Appeals of Georgia - July 3, 2014 - S.E.2d - 2014 WL 2976104

An intoxicated, off-duty City police officer, attacked citizen and others, including another off-duty police officer who came to her aid. Citizen sued city for its police officer's attack upon her claiming liability based on respondeat superior, and negligent hiring and retention. The trial court granted city's motion for summary judgment. Citizen appealed.

The Court of Appeals held that:

- City was not liable under respondeat superior; but
- Genuine issue of material fact existed as to sufficiency of pre-employment background check;
- Genuine issue of material fact existed as to city's foreseeability of personal injury resulting from hiring the officer;
- Genuine issue of material fact existed as to whether the attack was wholly unrelated to officer's employment; and
- City's decision to allow officer to return to work did not constitute negligent retention.

EMPLOYMENT - GEORGIA

Mercure v. City of Atlanta

Court of Appeals of Georgia - July 3, 2014 - S.E.2d - 2014 WL 2975980

Police officer sought review of decision of city civil service board upholding unpaid suspension.

The Court of Appeals held that statute prohibiting law enforcement agencies from adopting regulations precluding a police officer from using legal degree of force to apprehend a suspect did not preclude police officer's suspension for use of neck restraint on suspect, despite argument that

police department rule prohibiting police officers from using neck restraints not taught or approved by department conflicted with statute. Officer was not apprehending the suspect when officer administered the neck restraint maneuvers at issue but rather suspect was already under arrest, restrained, and not resisting in any way.

PENSIONS - ILLINOIS

People ex rel. Madigan v. Burge

Supreme Court of Illinois - July 3, 2014 - N.E.3d - 2014 IL 115635

Attorney General brought action against the Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago (board) seeking to enjoin board from making payments to former officer who was convicted of several felonies. The Circuit Court dismissed complaint, and Attorney General appealed. The Appellate Court reinstated complaint and remanded cause to circuit court to determine whether officer's convictions related to, arose out of, or were connected with his service as a police officer. The Supreme Court granted officer's and board's petitions for leave to appeal and consolidated cases for review.

The Supreme Court of Illinois held that board exercised exclusive, original jurisdiction in deciding that former officer's pension benefits would not be terminated based on his felony convictions, and circuit court did not have concurrent jurisdiction over Attorney General's complaint.

EMPLOYMENT - KANSAS

Denning v. Johnson County

Supreme Court of Kansas - July 11, 2014 - P.3d - 2014 WL 3377250

County sheriff appealed decision of County Sheriff's Civil Service Board (CSB), which reversed sheriff's decision to terminate deputy for violation of department's truthfulness policy. The District Court reversed decision of CSB and remanded matter to CSB for further proceedings. Deputy appealed, and the Court of Appeals dismissed appeal for lack of final order. On remand, the CSB upheld sheriff's decision to terminate deputy. Deputy appealed, and the District Court affirmed. Deputy appealed, and the Court of Appeals affirmed. Review was granted.

The Supreme Court of Kansas held that:

- CSB had authority to review sheriff's decision to terminate deputy;
- CSB's authority to review sheriff's decision to terminate deputy for reasonableness was not limited to determination whether deputy was terminated for reasons of race, religion, or politics; and
- CSB exceeded its statutory authority to review sheriff's decision to terminate deputy for reasonableness when it substituted its own judgment for that of sheriff based on its own review of evidence.

SPECIAL ASSESSMENTS - MICHIGAN

Grossmann v. Oakland County Bd. of Com'rs

Court of Appeals of Michigan - July 1, 2014 - Not Reported in N.W.2d - 2014 WL 2972020

A special assessment was issued to lakefront homeowners under the Natural Resources and Environmental Protection Act ("NREPA) to pay for a small dam to regulate the level of Bush Lake.

After filing an appeal of the assessment with the Michigan Tax Tribunal (which rejected the suit for lack of jurisdiction), plaintiffs brought action in the Circuit Court, and alleged that County Board of Commissioners: (1) did not follow the NREPA's notice procedures for the special assessment; (2) improperly calculated the assessment by including legal fees incurred from the suit that opposed the dam project; and (3) violated their right to due process. They asked the court for a writ of mandamus that would order defendants to void the special assessment and return all funds collected.

The Court of Appeals held that:

- The County complied with the NREPA's notice provisions;
- Court costs were properly included in the assessment; and
- There had been no violation of homeowner's due process rights.

MUNICIPAL ORDINANCE - NEW JERSEY

Szyfman v. Borough of Glassboro

Superior Court of New Jersey, Appellate Division - July 3, 2014 - Not Reported in A.3d - 2014 WL 2972146

Plaintiffs filed a complaint seeking a declaration that Section 354–18 of the Borough of Glassboro Code (the Borough's Code) addressing "disorderly" houses and houses of "ill fame" was preempted by the Code of Criminal Justice (the Code), N.J.S.A. 2C:1–1 to N.J.S.A. 2C:104–9.

The trial court concluded that N.J.S.A. 40:48–1 and N.J.S.A. 40:48–2 authorizes local laws like Section 354–18. Plaintiffs appealed. The appeals court reversed, holding that the ordinance was plainly preempted by the Code.

MUNICIPAL ORDINANCE - NEW JERSEY

Bayshore Regional Sewerage Authority v. Borough of Union Beach

Superior Court of New Jersey, Appellate Division - July 3, 2014 - Not Reported in A.3d - 2014 WL 2971460

Borough of Union Beach appealed a declaratory judgment action, restraining enforcement of Union Beach Ordinance 2009–150 (the Ordinance), which was designed to regulate the construction of wind energy projects.

Bayshore Regional Sewerage Authority (BRSA), which intended to construct a wind turbine at its Borough of Union Beach water treatment plant, argued that the Ordinance was preempted by N.J.S.A. 40:55D–66.12(c) of the Municipal Land Use Law, N.J.S.A. 40:55D–1 to –163.

The appeals court sided with BRSA, affirming the injunction.

TAX - NEW JERSEY

New Jersey Turnpike Authority v. Township of Monroe

Tax Court of New Jersey - July 2, 2014 - N.J.Tax - 2014 WL 3034413

Turnpike Authority purchased property in connection with a highway-widening project.

In a prior opinion, the Tax Court held that the Turnpike did not fit within the definition of a "local government unit" for purposes of N.J.S.A. 54:4–23.8 which provides an exemption for roll-back taxes if lands are acquired by a local government unit for "recreation and conservation purposes."

At issue in this case was whether the Turnpike could or should be considered as "the State" for purposes of the same exemption. The Turnpike argued that it is the alter ego of the State and thus qualifies. Township contended otherwise, and added that that property acquired by the Turnpike to comply with another unrelated statute's mitigation requirements cannot qualify even if such property is transferred by the Turnpike to, and will be held by, the New Jersey Department of Environmental Protection for conservation purposes.

The court concluded that the Turnpike is not the State for purposes of the roll-back tax exemption. It therefore did not reach the issue of whether the Turnpike's transfer of the property to the NJDEP as part of its mitigation obligation in connection with the Turnpike widening project qualifies as a purchase for "recreation and conservation purposes."

INVERSE CONDEMNATION - NEW MEXICO

Santa Fe Pacific Trust, Inc. v. City of Albuquerque

Court of Appeals of New Mexico - June 30, 2014 - P.3d - 2014 WL 3048175

Santa Fe Pacific Trust (SFPT) owned property in downtown Albuquerque, which two mayors targeted as a potential location for an events arena. Because of considerable publicity surrounding the proposed condemnation, which never came to fruition, and because of various concrete steps taken by the administration of the City of Albuquerque to see the arena project through, SFPT claimed that it lost potential sales and leases of the Property. It filed a complaint against the City asserting claims for inverse condemnation and deprivation of due process.

The Court of Appeals held that SFPT failed to demonstrate entitlement to an inverse condemnation claim under federal law, noting that mere fluctuations in value during the process of governmental decision-making are incidents of ownership that cannot be considered as a taking in the constitutional sense.

In addition, the Court adopted the *Jackovich* two-part inquiry for determining whether planning and publicity related to a potential condemnation establish a public entity's liability for inverse condemnation under state law.

In this case, the Court concluded that, while SFPT established the City's present concrete intention to condemn, SFPT failed to show that the City took any action that substantially interfered with the use and enjoyment of the property.

EMINENT DOMAIN - OHIO

State ex rel. Wasserman v. Fremont

Supreme Court of Ohio - July 8, 2014 - N.E.3d - 2014 -Ohio- 2962

Property owners petitioned for writ of mandamus to compel city and mayor to initiate eminent domain proceedings with respect to alleged partial taking of owners' drainage easement over city property, and also sought injunction to prevent further encroachment on easement pending resolution of such proceedings. The Court of Appeals issued alternative writ, in which it ordered city to initiate eminent domain proceedings or show cause as to why they had not done so. City filed motion to dismiss, motion to strike, and motion for attorney fees. The Court of Appeals granted writ.

The Supreme Court of Ohio held that city's rerouting of original pathway of drainage easement did not constitute a taking of property owners' drainage easement over city property, and therefore property owners were not entitled to mandamus to compel city to initiate eminent domain proceedings. Easement provided property owners with the right to construct and maintain a drainage tile, but provided city with right to fix the line and depth of the drainage tile, and the rerouted pipe still accomplished purpose of draining water from the property owners' property into a creek.

ANNEXATION - TENNESSEE

Silliman v. City of Memphis

Court of Appeals of Tennessee - July 2, 2014 - Slip Copy - 2014 WL 3016659

The trial court set aside a consent order regarding an annexation on the basis of the subsequent passage of legislation allegedly affecting the agreed-upon annexation. Property owners appealed.

The Court of Appeal reversed and reinstated the consent order, holding that Tennessee Code Annotated Section 6–51–122(a)(1)(A) established an annexation moratorium prohibiting annexations by ordinance wherein the municipality's annexation ordinance becomes operative from April 15, 2013 through May 15, 2014. In this case, the City's annexation Ordinance became operative thirty-one days after the order was entered sustaining the validity of the Ordinance in the quo warranto action, i.e., July 9, 2008. Because the City's Ordinance became operative prior to the moratorium established by the Tennessee General Assembly, the trial court erred in setting aside the consent order on the basis of Rule 60.02(5).

IMMUNITY - UTAH

Mallory v. Brigham Young University

Supreme Court of Utah - July 8, 2014 - P.3d - 2014 UT 27

Motorcyclist brought personal injury action against university and traffic cadet for injuries sustained in motor vehicle accident after being directed out of football stadium parking lot by cadet. The District Court dismissed action. Motorcyclist appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. University petitioned for certiorari review.

The Supreme Court of Utah held that:

- Employee status, for purposes of affording immunity under the Governmental Immunity Act of Utah (GIAU), can extend to governmental agents that are neither servants, independent

contractors, or any of the other explicitly listed classes under the Act;
- The one-year period for motorcyclist to file a claim against university and its traffic cadet for acts committed during the performance of cadet's duties as a servant of city began to run on the date motorcyclist was injured in an accident while leaving a university parking lot; and
- University and its traffic cadet were servants of city when cadet was directing traffic after football game, and therefore entitled to employee status under the GIAU.

IMMUNITY - ALASKA

State, Dept. of Health and Social Services v. Mullins

Supreme Court of Alaska - June 27, 2014 - P.3d - 2014 WL 2917478

Two sisters, who alleged they were abused by their grandparents while under the legal custody of Office of Children's Services (OCS), filed a suit against OCS for damages. The Superior Court entered judgment on jury verdict in favor of the sisters. The OCS appealed.

The Supreme Court of Alaska held that:

- The jury's allocation of 95% of the fault for the harm suffered by sisters to the OCS, and no fault to grandparents, was irrational and against the weight of the evidence, and
- The trial court was required to review sisters' allegations of negligence against the OCS to determine if the OCS's actions were protected by discretionary function immunity.

FIRST AMENDMENT - GEORGIA

Hubbard v. Clayton County School Dist.

United States Court of Appeals, Eleventh Circuit - June 27, 2014 - F.3d - 2014 WL 2915909

School administrator who was also president of state association of educators filed state court action against school district alleging First Amendment retaliation for protected speech after he gave a speech critical of board of education members. Action was removed to federal court. The District Court granted summary judgment in favor of school district. Administrator appealed.

The Court of Appeals held that administrator's speech was made in his capacity as president of state association of educators, not as employee of school district.

School administrator's speech critical of board of education members was made in his capacity as president of state association of educators, not as employee of school district, as would support his First Amendment retaliation action against district. Under agreement with school district, administrator was "on-loan" to association, which meant that he only technically remained employee of district during his tenure as president of association, he had no responsibilities as district employee during that tenure and performed no duties for district during that time, and his relationship with district was only a formality so that he could retain his benefits.

BOND VALIDATION - GEORGIA

Avery v. State

Supreme Court of Georgia - June 30, 2014 - S.E.2d - 2014 WL 2925147

County petitioned to validate county airport authority revenue bond. Citizens intervened. The Superior Court validated bond. Citizens appealed.

The Supreme Court of Georgia held that:

- Contract between airport authority and county satisfied prerequisites for an intergovernmental contract;
- Contract did not violate Lending Clause;
- Contract did not violate Gratuities Clause; and
- Sufficient public notice was given for bond validation hearing.

Contract between county airport authority and county satisfied prerequisites for an intergovernmental contract, including Intergovernmental Contracts Clause, where it was between appropriate governmental entities, the term did not exceed 50 years, the authority agreed to manage and maintain an expanded taxiway, and the county agreed to provide funding and manage the debt required to be incurred to complete the expansion, which allowed the county to reap the benefit of commercial flight service.

Contract between county airport authority and county did not violate Lending Clause, although bond resolution of airport authority required county to extend its credit, where the credit was extended for its own purposes of the expansion of taxiway.

Contract between county airport authority and county did not violate Gratuities Clause, where authority did not extend a gratuity to a commercial aviation company leasing a large portion of the airport terminal for 20 years by passing bond resolution, where bond resolution extended county's credit for its own purposes of the expansion of taxiway.

COUNTIES - KANSAS

University of Kansas Hosp. Authority v. Board of Com'rs of County of Wabaunsee

Supreme Court of Kansas - June 27, 2014 - P.3d - 2014 WL 2900961

State university hospital authority sued county for reimbursement of medical expenses incurred in treatment of man who jumped through fourth-story window of unlocked interrogation room of county jail, arguing it was entitled to relief on common law grounds and on quantum meruit. The District Court granted county summary judgment. University hospital authority appealed. The Court of Appeals reversed and remanded. County petitioned for review, which was granted.

The Supreme Court of Kansas held that:

- County was not obligated to pay for injured man's medical care, and
- County did not receive benefit, and was not unjustly enriched, when hospital authority treated injured man.

LIABILITY - LOUISIANA

Jenkins v. Doucet

Supreme Court of Louisiana - June 30, 2014 - So.3d - 2014-0879 (La. 6/30/14)

Pedestrian filed suit against city, alleging he was injured when he fell due to a crack or deviation in a sidewalk. City moved for summary judgment. The District Court denied summary judgment, and the Court of Appeal denied supervisory relief, and certiorari was granted.

The Supreme Court of Louisiana held that city was not responsible for injuries that pedestrian sustained when he fell due to a crack or deviation in a sidewalk.

Deviation in the sidewalk (approximately one to three inches) was relatively small, deviation was typical of other cracks in the sidewalk caused by tree roots, which were typical in older neighborhoods, city had received no complaints about the deviation, nor had there been any prior accidents involving the deviation in over 25 years, and pedestrian admitted he was not keeping a proper look-out at the time of the fall.

LIABILITY - LOUISIANA

Gorman v. City Of Opelousas

Supreme Court of Louisiana - July 1, 2014 - So.3d - 2013-1734 (La. 7/1/14)

After suing city for wrongful death, mother of inmate, who was fatally beaten by other inmates in city jail, brought direct action against city's liability insurer, which had not been informed by the city of the claim prior to expiration of the claims-made policy. Insurer filed motion for summary judgment. The Circuit Parish granted motion, and mother and city appealed. The Court of Appeal affirmed in part, reversed in part, and remanded. Insurer filed application for writ of certiorari, which was granted.

The Supreme Court of Louisiana held that:

- Policy provision requiring making and reporting of claims within period specified by policy was not impermissible as against public policy, abrogating *Williams v. Lemaire*, 655 So.2d 765, and *Murray v. City of Bunkie*, 686 So.2d 45, and
- Existence of subsequently-issued policy did not extend defined policy period.

AUCTION RATE SECURITIES - LOUISIANA

Fishman v. Morgan Keegan & Co., Inc.

United States Court of Appeals, Fifth Circuit - July 1, 2014 - Fed.Appx. - 2014 WL 2943201

Following the collapse of the ARS market, the Fishmans, who purchased ARS underwritten by Morgan Keegan, filed claims under federal and state securities laws, alleging that Morgan Keegan failed to disclose material information about how and when it placed bids for its own account in ARS auctions.

After holding a bench trial on the Fishmans' two remaining claims — under section 10(b) of the Securities Exchange Act of 1934 and section 712 of the Louisiana Securities Law, the District Court ruled in favor of Morgan Keegan on both the federal and state law causes of action.

The Fishmans appealed only the state law ruling, contending (1) that the Louisiana statute at issue does not require proof of loss causation and (2) the proper time to determine what the plaintiffs "could have known" as required by the statute is the time of sale, not a later time.

In response, Morgan Keegan argued that (1) the Fishmans' claim was time barred, (2) the Fishmans waived their argument regarding loss causation, and (3) the Fishmans could have known of Morgan Keegan's alleged omission at the time of purchase.

The Court of Appeals affirmed the District Court's ruling, finding that loss causation is a required element of a section 712 claim and that the Fishmans waived that argument by failing to raise it before the District Court.

In light of the foregoing, the Court of Appeals declined to address the Fishmans' remaining argument regarding section 712's knowledge element.

IMMUNITY - MASSACHUSETTS

Rodriguez v. City of Somerville

Appeals Court of Massachusetts, Middlesex - July 1, 2014 - N.E.3d - 2014 WL 2932544

In this appeal, the Appeals Court considered whether the doctrine of present execution applies to, and renders immediately appealable, the denial of a motion to dismiss that alleges inadequate presentment under the Massachusetts Tort Claims Act (Act).

The court concluded that the doctrine of present execution does not apply in such circumstances. The presentment requirement imposed on a tort claimant under the Act is not an immunity from suit preserved to the public employer, such as is contained in other provisions of the Act. Rather, presentment is a condition precedent imposed on a claimant that may be waived by the public employer.

INVERSE CONDEMNATION - MICHIGAN

Hescott v. City of Saginaw

United States Court of Appeals, Sixth Circuit - July 2, 2014 - F.3d - 2014 WL 2959289

Following jury verdict for property owners in § 1983 suit against city, alleging unconstitutional seizure and destruction of personal effects after demolition of rental property, owners moved for award of attorneys' fees under § 1988 and city moved for award of attorneys' fees based on continued litigation after owners rejected city's offer of judgment. The District Court granted in part and denied in part parties' motions, and granted in part and denied in part owners' motion for reconsideration.

The Court of Appeals held that:

- Special circumstances did not exist to justify denial of § 1988 attorneys' fees award to owners;
- Federal rule governing offers of judgment cannot force prevailing civil rights plaintiff to pay defendant's post-offer attorneys' fees; and
- Attorneys' fees were not properly awardable to city under § 1988, precluding award of post-offer fees under federal rule governing offers of judgment.

Concerns that property owners' § 1983 claims against city involved only loss of modest residence in bad neighborhood, that city acted in good faith in demolishing house and pursuing its defense throughout suit, and that owners overreached both in number of claims they pursued and damages

they sought at trial did not constitute special circumstances to justify denial of attorneys' fees award to owners under § 1988. Concern over value of property ran counter to purpose of § 1988, which was to enable plaintiffs to enforce civil rights even where amount of damages would not otherwise make it feasible to do so, city's good faith simply was not special circumstance justifying denial of attorneys' fees, and owners' failure to secure punitive damages award was irrelevant to determining whether special circumstances existed.

Section 1988 is not a two-way fee-shifting statute, and thus federal rule governing offers of judgment cannot force a prevailing civil rights plaintiff to pay a defendant's post-offer attorneys' fees.

Attorneys' fees were not properly awardable to city under § 1988, barring the city's recovery of post-offer attorneys' fees under federal rule governing offers of judgment, where city did not prevail on property owners' Fourth Amendment claim, and thus it could not possibly prove that owner's § 1983 suit was frivolous, unreasonable, or without foundation.

BANKRUPTCY - MICHIGAN

In re Syncora Guarantee Inc.

United States Court of Appeals, Sixth Circuit - July 2, 2014 - F.3d - 2014 WL 2959242

Monoline insurer sought relief from automatic stay for release of casino tax revenues to it that were owed to debtor municipality. The bankruptcy court denied insurer's motion. Insurer appealed. The District Court stayed insurer's appeal after the bankruptcy court later certified its decision for direct appeal to the Court of Appeals and the Court of Appeals granted the petition. The district court then denied insurer's motion for reconsideration. Insurer petitioned for writ of mandamus.

The Court of Appeals held that insurer was entitled to order for district court to adjudicate its appeal.

Insurer was entitled to petition for writ of mandamus to order from Court of Appeals for district court to adjudicate its appeal of bankruptcy court's denial of its motion for relief from automatic stay to recover casino tax revenues that were owed to debtor municipality, since district court had stayed appeal which threatened to deprive Court of Appeals of opportunity to consider merits of appeal over whether substantial revenue stream was rightly considered property of bankruptcy estate and it also presented specter that insurer might be forced to abandon its appeal and instead to seek appellate review of bankruptcy court's decision in form of emergency motion for stay of confirmation plan.

BENEFITS - NEW JERSEY

Berg v. Christie

Superior Court of New Jersey, Appellate Division - June 26, 2014 - A.3d - 2014 WL 2883872

Retired government attorneys filed complaint seeking judgment declaring that statute suspending cost of living increases (COLA) was unconstitutional, and alleging suspension of their COLAs constituted breach of express and implied contract and violated Contract Clause of federal and state constitutions.

The Superior Court, Appellate Division, held that:

- Decision upholding constitutionality of statute suspending COLAs was incorrectly premised on Debt Limitation and Appropriations Clauses;
- Statute reserving right in legislature to alter retirement systems did not defeat breach of contract claim;
- Arguments asserted by PFRS members were properly rejected;
- Non-forfeitable right statute applied to COLAs; but
- Remand was required on constitutional impairment-of-contract claim.

SODA POP - NEW YORK

New York Statewide Coalition of Hispanic Chambers of Commerce v. New York City Dept. of Health and Mental Hygiene

Court of Appeals of New York - June 26, 2014 - N.E.3d - 2014 N.Y. Slip Op. 04804

Coalition of interest groups, brought hybrid article 78/declaratory judgment proceeding against the New York City Department of Health and Mental Hygiene (DOHMH) and New York City Board of Health, challenging the constitutionality of an amendment to the New York City Health Code known as the "Sugary Drinks Portion Cap Rule" or the "Soda Ban," which prohibited New York City restaurants, movie theaters, and other food service establishments) from serving certain sugary drinks in sizes larger than 16 ounces. The Supreme Court, New York County, granted the petition, declared the regulation invalid, and enjoined respondents from implementing or enforcing it. Respondents were granted leave to appeal. The Supreme Court, Appellate Division, affirmed. Respondents appealed.

The Court of Appeals held that:

- City Board of Health did not have inherent legislative powers separate and apart from City Council;
- City Board of Health, when promulgating Rule, chose between public policy ends, thereby engaging in law-making beyond its regulatory authority; and
- Board of Health, when promulgating Rule, did not supplement existing legislation.

MUNICIPAL ORDINANCE - NEW YORK

Wallach v. Town of Dryden

Court of Appeals of New York - June 30, 2014 - N.E.3d - 2014 N.Y. Slip Op. 04875

Energy company commenced hybrid Article 78 proceeding and declaratory judgment action to challenge town's amendment to its comprehensive plan and zoning ordinance to ban oil and gas production activities, including hydrofracking, within municipal boundaries. The Supreme Court, Tompkins County, granted town's motion for summary judgment and declared amendment valid, with exception of provision invalidating state and federal permits, and company appealed. The Supreme Court, Appellate Division affirmed. In second suit, corporation challenged another town's zoning law that prohibited natural gas exploration. The Supreme Court, Otsego County, granted town's motion to dismiss complaint. The Supreme Court, Appellate Division, affirmed. In their respective cases, energy company and corporation sought leave to appeal.

The Court of Appeals held that Oil, Gas and Solution Mining Law (OGSML) did not preempt towns'

laws.

Towns acted within their home rule authority in adopting those laws, in absence of any legislative intent in OGSML's plain language, overarching statutory structure, or legislative history, much less any "clear expression," requiring preemption of local land use regulations.

LAW ENFORCEMENT - RHODE ISLAND

City of Pawtucket v. Laprade

Supreme Court of Rhode Island - July 2, 2014 - A.3d - 2014 WL 2969430

City appealed decision of hearing committee on disciplinary proceedings against police officer under the Law Enforcement Officers' Bill of Rights Act (LEOBOR). The Superior Court denied appeal. City petitioned for and was granted certiorari review.

The Supreme Court of Rhode Island held that:

- Hearing committee's findings were accorded great deference, while questions of law, including interpretation of statutes, were reviewed de novo;
- Superior court lacked jurisdiction to review decision of hearing committee denying city's request for extension of 30-day period for conducting initial hearing on complaint; and
- Even assuming superior court's jurisdiction was properly invoked, it exceeded statutory authority in determining whether city showed good cause for extending 30-day period by ordering that parties find mutually agreeable date then treat that hearing as if held on originally scheduled date.

LAW ENFORCEMENT - SOUTH CAROLINA

State v. Burgess

Supreme Court of South Carolina - July 2, 2014 - S.E.2d - 2014 WL 2959106

Defendant was convicted in the Circuit Court of possession of crack cocaine with intent to distribute. Defendant appealed, and the Court of Appeals affirmed. The Supreme Court granted certiorari.

The Supreme Court of South Carolina held that:

- Multi-jurisdictional Narcotics Enforcement Team (NET) agreement entered into between county sheriff and town's chief of police, but not expressly approved by town council and county council, was invalid and therefore did not confer authority to assign arresting officer to work temporarily outside of his territorial jurisdiction;
- Even assuming validity of agreement, statute authorizing agreements between multiple law enforcement jurisdictions for purpose of criminal investigation did not confer authority to arrest defendant under the circumstances presented;
- Conviction was valid, despite the invalidity of NET agreement under which arresting officer acted; and
- Trial court did not abuse its discretion in prohibiting defendant from cross-examining arresting officer about his officer's personnel records in order to impeach his credibility and demonstrate bias.

IMMUNITY - TEXAS

Lubbock County Water Control and Imp. Dist. v. Church & Akin, L.L.C.

Supreme Court of Texas - July 3, 2014 - S.W.3d - 2014 WL 2994645

Commercial tenant of marina sued landlord, which was county water control and improvement district, for breach of contract, alleging that landlord had no right to terminate lease. Landlord filed plea to the jurisdiction asserting governmental immunity. The District Court denied plea. Landlord filed interlocutory appeal. The Court of Appeals affirmed. Landlord petitioned for review, and review was granted.

The Supreme Court of Texas held that:

- Lease's restriction that premises were to be used only as a marina did not waive landlord's immunity from suit;
- Lease's clause that stated marina would issue catering tickets did not waive landlord's immunity from suit; and
- Tenant's agreement to pay profit-based rent did not trigger waiver of landlord's governmental immunity from suit.

ASSESSMENTS - WASHINGTON

Gabelein v. Diking Dist. No. 1 of Island County of State

Court of Appeals of Washington, Division 1 - June 30, 2014 - P.3d - 2014 WL 2937080

Property owners brought action against county diking district to challenge methodology by which district developed its benefit assessment roll and calculated the drainage assessment against their property. The Superior Court granted summary judgment in favor of property owners. District appealed.

The Court of Appeals held that:

- Scope of record on judicial review was not limited to administrative record;
- District's methodology to develop benefit assessment roll did not comply with statutory and constitutional requirements; and
- District's prelitigation misconduct warranted award of attorney's fees.

Methodology used by county diking district to develop benefit assessment roll and calculate drainage assessments failed to comply with state constitutional provision governing special assessments and statute permitting diking districts to fund the cost of continuous functioning, where district used hypothetical costs designed solely to provide notice to property owners for comparative purposes to determine actual continuous base benefits, methodology failed to indicate the actual amount of the assessment, district's board of commissioners, consisting of individuals with a financial interest in the outcome, determined the system of assessments, and methodology did not determine benefits to the assessed properties.

MUNICIPAL ORDINANCE - WASHINGTON

City of Seattle v. Evans

Court of Appeals of Washington, Division 1 - June 30, 2014 - P.3d - 2014 WL 2931586

Defendant was convicted in the trial court of unlawful use of weapons. Defendant appealed, and the Superior Court affirmed. The Court of Appeals granted discretionary review.

The Court of Appeals held that:

- Fixed-blade kitchen knife found in defendant's pants pocket was not "arms" within meaning of state constitutional provision protecting an individual's right to bear arms; and
- As matter of first impression in Washington, city ordinance that prohibited carrying a fixed-blade knife in public was substantially related to city's important interest in public safety, and, therefore, survived intermediate scrutiny in an as-applied challenge asserted under the Second Amendment right to bear arms.

ZONING - ALASKA

Tweedy v. Matanuska-Susitna Borough Bd. of Adjustment and Appeals

Supreme Court of Alaska - June 20, 2014 - P.3d - 2014 WL 2795900

Applicant sought judicial review of borough board of adjustment appeals' affirmation of planning director's decision to deny request for an exemption or variance from borough's setback requirement. The Superior Court affirmed and applicant appealed.

The Supreme Court of Alaska held that:

- Zoning ordinance that governed how close to a body of water a property owner could build a structure on subdivided land was not limited to directly implementing the borough's platting authority;
- Applicant's addition of stairwell to his property was unlawful;
- Board of adjustment appeals did not retroactively apply zoning ordinance to improvements constructed by applicant prior to the date the ordinance was passed;
- Borough's setback requirement, and its lack of a provision to allow for the expansion of existing nonconforming structures, were both reasonably related to a legitimate government purpose, and thus, did not violate applicant's substantive due process rights;
- No procedural due process issues were raised by borough board of adjustment appeals' application of the setback requirement to applicant's property;
- Enforcement of the setback requirement did not constitute an unlawful "taking"; and
- Applicant was not entitled to a variance from borough's 75-foot shoreline setback requirement.

EMPLOYMENT - ALASKA

Brown v. Personnel Bd. for City of Kenai

Supreme Court of Alaska - June 20, 2014 - P.3d - 2014 WL 2795897

City employee sought review of city personnel board's decision to terminate his employment based on findings that he had engaged in misconduct. Employee's argument was based upon the fact that the city's personnel board rejected the city manager's conclusion that employee was guilty of sexual harassment The Superior Court affirmed. Employee appealed.

The Supreme Court of Alaska held that:

- Board stated adequate basis for terminating employee;
- Board's findings were sufficiently definite to support its decision to terminate employee; and
- Board's termination of employee did not violate implied covenant of good faith and fair dealing.

ANNEXATION - CALIFORNIA

City of Patterson v. Turlock Irrigation District

Court of Appeal, Fifth District, California - June 25, 2014 - Cal.Rptr.3d - 2014 WL 2885394

Turlock Irrigation District (TID) imposed a surcharge on electrical rates collected from customers in a service area outside the TID's boundaries. These outsiders were not eligible to vote in TID's elections or to sit on its board of directors and, therefore, are not represented in the rate-setting process.

The City of Patterson sought to obtain voting rights for the disenfranchised customers by requesting that the Stanislaus Local Agency Formation Commission (LAFCO) approve an expansion of TID's boundaries through an annexation of the electrical service area. TID opposed the City's request and submitted a resolution to LAFCO requesting the annexation proceedings be terminated.

City responded by filing a lawsuit to challenge the validity of TID's resolution. City alleged that TID's resolution did not meet the requirements of section 56857. In particular, City argued that the water-related financial and service concerns described in TID's resolution were not legitimate because the application for the annexation of territory was limited to retail electrical service and would not expand TID's obligations to provide irrigation water.

The trial court denied all of City's challenges and entered judgment in favor of TID. City appealed.

The Court of Appeal held that the statutory provisions that governed City's application for TID's annexation of the territory where it provided electrical service required that the application must include a plan for providing services to the annexed territory and that plan must describe the services to be extended to the affected territory. (§ 56653.)

Here, City's application did not include such a plan and did not seek to extend any services to the affected territory. Therefore, the application failed to comply with the statutory requirements in section 56653. Because City's application was not a type of application authorized by statute, it cannot succeed. Therefore, it would be meaningless to allow City to challenge the validity of TID's resolution requesting termination of the annexation proceedings.

INVERSE CONDEMNATION - GEORGIA

Liberty County v. Eller

Court of Appeals of Georgia - June 26, 2014 - S.E.2d - 2014 WL 2884097

Martha and Adam Eller filed an action against Liberty County for trespass, continuing trespass, nuisance, inverse condemnation, and damages based on a drainage pipe that discharged storm water run-off into a pond on their property.

The County filed motions for summary judgment arguing that the statute of limitations had run on the Ellers' inverse condemnation claim and that their other claims were barred by sovereign immunity.

The trial court denied the County's motions for summary judgment, and the County appealed.

The Court of Appeals reversed, holding that the statute of limitations barred the claim of inverse condemnation by nuisance, as the Ellers had failed to establish a continuing nuisance.

CONCESSIONS - ILLINOIS

Independent Voters of Illinois Independent Precinct Organization v. Ahmad

Appellate Court of Illinois, First District, Sixth Division - June 20, 2014 - N.E.3d - 2014 IL App (1st) 123629

Taxpayers challenged Chicago's concession agreement with Chicago Parking Meters (CPM), pursuant to which the City transferred to CPM its metered parking system and all revenue produced from the parking meters for 75 years, in exchange for a one-time payment of $1.15 billion.

The circuit court granted summary judgment in favor of the City and taxpayers appealed.

The Appellate Court held that:

- The concession agreement did not violate the Public Purpose provision of the Illinois Constitution; and
- The concession agreement, which was authorized by the Metered Parking System Ordinance, was in accordance with the Home Rule provision of the Illinois Constitution because the City expressly retained all its police powers over the parking meter system.

"… we certainly understand the argument made by plaintiffs that the concession agreement transferring the City's control of the metered parking system to CPM for 75 years should not have been so hastily entered into and that the accompanying Metered Parking System Ordinance should not have been enacted. However, arguments about why the concession was a bad deal for the City do not provide a basis for invalidating the concession agreement and the adopting Ordinance."

"The City of Chicago, as do other governmental units throughout the state and country, faces fiscal challenges. There is no doubt that when presented with an opportunity to receive over $1.15 billion to be put to use for the public purposes and benefit, the City saw a chance to ease its financial burdens. The concession agreement allowed the City to transfer responsibility for the upkeep and maintenance of the parking meters and the risk of fluctuating revenues from the meters. The City preserved its police power, although at a cost. The City also preserved its right to collect fines from the parking meter violations to be used for public purposes and which constitute millions in revenue. Despite these benefits received by the City, the concession agreement has been criticized and subjected to healthy debate. We urge the City and the City Council to debate and act wisely in the future when seeking to ease the financial crisis."

IDBs - KENTUCKY

Delphi Automotive Systems, LLC v. Capital Community Economic/Indus. Development Corp., Inc.

Supreme Court of Kentucky - June 19, 2014 - S.W.3d - 2014 WL 2893398

Following default on a promissory note and security agreement, Delphi Automotive Systems filed a declaratory judgment action in which it asserted that its perfected security interest in Certified Tool's equipment, including specifically a Komatsu press, which was superior to the unperfected security interest claimed by Capital Community Economic/Industrial Development Corporation, Inc., an industrial development entity established pursuant to Kentucky Revised Statutes 154.50–301–.50–346.

Capital Development countered that its interest in the Komatsu press was not a security interest but rather an ownership interest, with the press being simply leased to Certified Tool. Alternatively, Capital Development maintained that even if its interest in the Komatsu press was a security interest, Article 9 of the Uniform Commercial Code is not applicable due to one or more of the following: (1) limitations on the scope of Article 9 set forth in KRS 355.9–109(4)(q) regarding governmental units; (2) the KRS 355.9–109(3) exemption of transactions controlled by other statutes; and (3) public policy in Kentucky relevant to economic development.

On appeal, the Court of Appeals concluded that the agreement was a security interest rather than a lease, but did not reach the public policy point relied upon by the trial court, finding instead that KRS 355.9–109(4)(q) applied to exempt the transaction from the filing requirements of Article 9. The Court of Appeals concluded that the exemption in KRS 355.9–109(4)(q) applies to a transaction involving assets where the government or a governmental unit was either the borrower or the creditor. With that construction of the statute, the appellate panel held that Capital Community was not required to perfect its security interest by filing a financing statement and its 2001 security interest was superior to Delphi's subsequent, perfected 2008 security interest.

The Supreme Court of Kentucky reversed, holding that Capital Development's security interest press was subject to the provisions of Article 9. Delphi's perfected security interest was thus superior to that of Capital Development.

TAX - LOUISIANA

Pine Prairie Energy Center, LLC v. Soileau

Court of Appeal of Louisiana, Third Circuit - June 11, 2014 - So.3d - 2014-5 (La.App. 3 Cir. 6/11/14)

An Industrial Development Board was formed in order to acquire, own, and lease property to operator (PPEC) of a natural gas storage facility. The IDB issued bonds to finance the facility and the Parish Assessor exempted the property from taxation.

In May 2006, PPEC conveyed the property to the IDB and leased it back. In 2011, the Assessor placed the PPEC project property on the tax rolls. PPEC objected, paid the taxes under protest, and sued, seeking a declaratory judgment and a refund.

The Court of Appeal held that:

- The pipeline was an accessory to the pipeline servitude, and was thus conveyed along with the servitudes under the Act of Conveyance;

- La.R.S. 51:1160, which created the tax exemption for IDBs, was constitutional;
- The PPEC project was beneficial to the public of Evangeline Parish and, thus, was being used for a public purpose;
- There was valid consideration for the conveyance and lease-back agreements and, as a result, the transaction was not a simulation; and
- The Parish was enjoined from issuing further tax assessments, bills and/or liens, and from instituting any further enforcement proceedings against PPEC or the IDB in connection with the property during the term of the lease-back between those parties.

AUCTION RATE SECURITIES - LOUISIANA

Louisiana Pacific Corp. v. Merrill Lynch & Co., Inc.

United States Court of Appeals, Second Circuit - June 25, 2014 - Fed.Appx. - 2014 WL 2870146

IN 2007, Louisiana Pacific (LP) purchased more than $50 million in auction rate securities at auctions managed by Merrill Lynch (ML). When ML withdrew their support from the ARS market on February 13, 2008, LP was left holding illiquid long-term financial instruments.

LP brought claims against ML for market manipulation and material misstatements or omissions under section 10(b) of the Exchange Act and Rule 10b–5. It also asserted a control-person liability claim under section 20(a) of the Exchange Act. Finally, it asserted claims against ML under California law and common law.

The District Court dismissed all claims, holding that the claims were not pled with the required particularity. The Court of Appeals affirmed.

EMINENT DOMAIN - MARYLAND

Makowski v. Mayor and City Council of Baltimore

Court of Appeals of Maryland - June 24, 2014 - A.3d - 2014 WL 2853818

City petitioned for immediate possession and title to property owner’s office building. The Circuit Court granted city’s petition, and property owner appealed.

The Court of Appeals held that:

- Evidence was sufficient to support Circuit Court’s finding that property owner was a “hold out,” and that city’s quick-take action was warranted, and
- Property owner failed to properly authenticate a map he proffered to show that his property was in an area the city had designated as historic.

Evidence was sufficient to support trial court’s finding that property owner was the only “hold out” who was preventing city from engaging in demolition in furtherance of an urban renewal plan, and thus, that city’s quick-take action was warranted. City had acquired nearly 150 other properties in an entire square city block, it needed to acquire property owner’s property before it could begin demolition, and the owner of the only other property it had not obtained title to was willing to sell and was only waiting on a formal conveyance of the property before accepting city’s offer.

ZONING - MASSACHUSETTS

Deadrick v. Zoning Bd. of Appeals of Chatham

Appeals Court of Massachusetts, Suffolk - June 25, 2014 - N.E.3d - 85 Mass.App.Ct. 539

Neighbors brought action seeking review of decision of town zoning board of appeals, granting property owners special permit to reconstruct a preexisting nonconforming structure on their nonconforming lot. The Land Court Department entered summary judgment in favor of owners, and neighbors appealed.

The Appeals Court held that:

- Town board was required to determine applicability of bylaw exempting certain height restrictions, and
- Introduction of a new nonconformity would require a variance, not a special permit.

Town zoning board of appeals, in determining whether special permit or variance was required for property owners seeking to reconstruct a preexisting nonconforming structure on their nonconforming lot, was required to determine applicability of town bylaw exempting certain structures from otherwise applicable height restrictions if federal regulations required the additional height unless the new structure was an "expansion." Finding of board in decision approving special permit, that reconstruction would "expand" the prior structure, was not a finding as to applicability of bylaw, but instead was merely descriptive of the new structure in a general sense.

Under statute governing prior nonconforming uses, introduction of a new nonconformity to a pre-existing nonconforming residential structure would require a variance, not a special permit, for property owners seeking to reconstruct a preexisting nonconforming structure on their nonconforming lot, to the extent that proposed increase in height of the new structure would constitute as additional nonconformity not otherwise exempted by town zoning bylaw.

ZONING - MASSACHUSETTS

GPH Cohasset, LLC v. Trustees of Reservations

Appeals Court of Massachusetts, Suffolk - June 25, 2014 - N.E.3d - 85 Mass.App.Ct. 555

Neighbor brought action challenging decision of town planning board, approving application for special permit and site plan approval to erect a wind turbine on landowner's property. The Land Court Department issued a decision upholding the approval.

The Appeals Court held that:

- Board made sufficient findings to support approval of application;
- Board sufficiently ensured compliance with noise level standards;
- Board sufficiently ensured that turbine would not produce excessive shadow flicker;
- Board sufficiently addressed safety concerns;
- Trial court could exclude neighbor's expert witnesses; and
- Trial court was not required to compel turbine manufacturer to produce turbine operator's manual.

ADVERSE POSSESSION - MICHIGAN

Waisanen v. Township of Superior

Court of Appeals of Michigan - June 24, 2014 - N.W.2d - 2014 WL 2871387

In 1971, Kenneth Waisanen purchased property in a subdivision. The parcel abuts First Street, a lake access roadway dedicated to public use. At the time Waisanen purchased the property, it contained a break wall. In 1981, Waisanen constructed an addition to his home on the property.

In 2008, defendant conducted a survey of lake access roadways in the subdivision. According to the 2008 survey and unbeknownst to Waisanen, the break wall encroached approximately ten feet onto First Street, and the addition encroached approximately three feet onto First Street.

Following the survey, Waisanen filed an action to quiet title to the portion of First Street that included his break wall and addition. The Township counterclaimed for possession of that same portion of First Street. The circuit court granted Waisanen's request to quiet title in his favor, finding that Waisanen had established the elements of adverse possession or, in the alternative, that he had acquired title through acquiescence. Township argued on appeal that the trial court erred with respect to both theories.

The Court of Appeals held that:

- The elements of adverse possession had been established; and
- Given defendant's active and passive acquiescence to the use being made by the Waisanen family up to the break wall for a period well in excess of 15 years, the trial court did not err by granting plaintiff's motion to quiet title under the alternate theory of acquiescence.

EMPLOYMENT - NEW YORK

In re McCollum

Supreme Court, Appellate Division, Third Department, New York - June 19, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 04544

Employer, a school district, appealed two decisions of the Unemployment Insurance Appeal Board which ruled that it was liable for additional unemployment insurance contributions based on remuneration paid to the coordinator of its adult education program and others similarly situated.

The Supreme Court, Appellate Division, held that substantial evidence supported determination that claimant was an employee of the school district, such that school board was liable for additional unemployment insurance contributions.

Claimant testified that when she was hired, she received training, was given a school district computer for use in her job, maintained a file cabinet and mailbox at the school and had use of the photocopier and postage machine, as well as access to school district transportation, that she performed most of her work at the school, and that the superintendent had disapproved classes and directed her to hire a specific teacher against her wishes, and both claimant and the superintendent testified that claimant also provided office help and performed general records management duties for the district.

BONDS - PENNSYLVANIA

Wells Fargo Bank, Nat. Ass'n As Indenture Trustee v. Parking Authority of City of Scranton

Commonwealth Court of Pennsylvania - June 26, 2014 - A.3d - 2014 WL 2884451

Union and the Parking Authority entered into a CBA. The CBA includes mandatory AAA arbitration to resolve grievances. While the CBA was in effect, the Bond Trustee exercised its right to seek a court-appointed Receiver due to the Parking Authority's payment default on the outstanding bonds used to finance certain Parking Authority facilities.

Following entry of a Consent Order, Parking Authority employees represented by the Union were displaced from their jobs and the Receiver contracted with a third-party to run the facilities. Thereafter, the Union initiated arbitration against the Parking Authority, alleging breaches of the CBA.

On May 30, 2013, the Court of Common Pleas preliminarily enjoined the Union from pursuing arbitration. The Union appealed, arguing that the trial court's order violated the Pennsylvania Labor Anti–Injunction Act and the Public Employe Relations Act.

In response, the Receiver and the Bond Trustee contended that the trial court acted appropriately under authority conferred by the Pennsylvania Parking Authority Law.

The Appeals Court reversed, holding that, although the Consent Order required court approval for any action against the Receiver, nothing in the Consent Order required the Union to seek permission from the trial court before grieving a labor dispute against the Parking Authority under the CBA.

ANNEXATION - SOUTH DAKOTA

Save Our Neighborhood-Sioux Falls v. City of Sioux Falls

Supreme Court of South Dakota - June 18, 2014 - N.W.2d - 2014 S.D. 35

Landowner members of "Save Our Neighborhood" sought to invalidate an annexation resolution adopted by the City of Sioux Falls under SDCL 9–4–1, annexing property to be developed for a Walmart store. The land was unplatted and zoned for agricultural use. Its owner voluntarily petitioned for its annexation to Sioux Falls. Save Our Neighborhood asserted that SDCL 9–4–5 required the City to obtain approval from the Lincoln County Board of County Commissioners before legally adopting a resolution to annex unplatted agricultural land.

The Supreme Court of South Dakota held that the Legislature did not intend SDCL 9–4–5 to apply to a resolution adopted for a voluntary petition for annexation under SDCL 9–4–1.

EMINENT DOMAIN - UTAH

Utah Dept. of Transp. v. Carlson

Supreme Court of Utah - June 24, 2014 - P.3d - 2014 UT 24

Utah Department of Transportation (DOT) initiated action for eminent domain against property

owner, seeking to condemn entirety of owner's 15-acre parcel, even though only 1.2 acres was necessary for light-rail transportation project. The District Court entered summary judgment for DOT, and owner appealed.

The Supreme Court of Utah held that:

- DOT had statutory authority to acquire, by eminent domain, property in excess of that needed for public improvement;
- DOT's statutory authority to acquire by eminent domain land in excess of that needed for planned improvement was not limited to condemnation for specifically enumerated public uses identified in eminent domain statute;
- Canon of constitutional avoidance was not appropriate method for resolving owner's challenge to scope of DOT's statutory authority to acquire by eminent domain property in excess of that needed for public use; and
- Remand was required for District Court to consider in first instance owner's claim that statute authorizing condemnation of land in excess of that needed for public use violated Takings Clauses of federal and state constitutions.

CONTRACTS - WASHINGTON

Public Hosp. Dist. No. 1 of King County v. University of Washington

Court of Appeals of Washington, Division 1 - June 23, 2014 - P.3d - 2014 WL 2853894

Successor officers of county hospital district sought to invalidate strategic alliance agreement between it and state university that established means for joint or cooperative action between parties for operation of district's health care system as ultra vires.

The Superior Court granted university summary judgment. District appealed.

The Court of Appeals held that the agreement was not ultra vires, despite contention that agreement delegated district's core legislative powers to others. The agreement was authorized by statutes governing public hospital districts and Interlocal Corporation Act, agreement was not unlawful delegation of district's powers, and agreement was binding on successor officers of district, such that mere view of successor officers as to validity of agreement did not render it ultra vires.

BONDS - WISCONSIN

Stifel, Nicolaus & Co., Inc. v. Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin

United States District Court, W.D. Wisconsin - June 19, 2014 - Slip Copy - 2014 WL 2801236

In this long-running bond litigation, the District Court granted Stifel, Nicolaus & Company, Inc.'s motion for equitable reformation of its Bond Purchase Agreement with the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin (the "Band").

The parties had mistakenly executed version 6 of the BPA – which provided for jurisdiction by the Tribal Court – rather than the final version 8, which granted jurisdiction to the District Court.

However, the court denied Stifel's motion for declaratory judgment that the Band may not proceed to sue Stifel in a currently-pending action in Tribal Court. The court gave Stifel "yet another" opportunity to proffer additional evidence, "if any," that the forum selection clause in the Bond Purchase Agreement clearly precluded the Band from proceeding in Tribal Court, given that the jurisdiction of the District Court was not explicitly exclusive.

GOVERNMENT CLAIMS ACT - WYOMING

Stroth v. North Lincoln County Hosp. Dist.

Supreme Court of Wyoming - June 23, 2014 - P.3d - 2014 WY 81

Personal representative of deceased patient's estate brought wrongful death action against county hospital district, town, and ambulance service after patient died from complications following his treatment at hospital. The District Court dismissed based on representative's failure to comply with Wyoming Governmental Claims Act (WGCA). Representative appealed.

The Supreme Court of Wyoming held that:

- Submission of notice of medical malpractice claim to Medical Review Panel did not toll time period representative had to file notice of claim under WGCA;
- Time period for submitting notice of claim under WGCA was not extended by continuous treatment doctrine; and
- Time period for filing notice of claim under WGCA was not extended due to deceased patient's incapacity.

IMMUNITY - ALABAMA

Ex Parte City of Midfield

Supreme Court of Alabama - June 13, 2014 - So.3d - 2014 WL 2619862

Motorist and his passenger's estate filed various negligence claims against city and two of its police officers in connection with police chase that culminated in collision of suspect's vehicle with motorist's vehicle. The Circuit Court denied summary judgment motion filed by defendants that was predicated on state-agent immunity. Defendant petitioned for writ of mandamus.

The Supreme Court of Alabama held that:

- There was no evidence that police officers pursuing suspect failed to discharge duties pursuant to detailed rules or regulations, or acted beyond their authority, as necessary to come within an exception to state-agent immunity;
- City was immune to suit on claims as to which officers had state-agent immunity; but
- City failed to establish immunity on claim of negligent training and supervision.

MUNICIPAL ORDINANCE - CALIFORNIA

Luis M. v. Superior Court of Los Angeles County

Supreme Court of California - June 19, 2014 - P.3d - 2014 WL 2769024

The Superior Court found wardship petition alleging that minor committed vandalism to be true, placed minor on deferred entry of judgment (DEJ), and ordered minor to pay restitution. Minor petitioned for writ of mandate. The Court of Appeal granted petition. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that graffiti restitution model that did not reflect actual cleanup cost did not support restitution award.

City's failure to adopt a Graffiti Removal and Damage Recovery Program ordinance authorizing the probation department to recoup its costs for graffiti abatement as restitution in a juvenile proceeding, and its failure to update its cost findings within the three years preceding minor's victim restitution order, made the city's cost model unavailable as a basis for determining restitution for minor's offense of vandalism based on acts of graffiti, where the model represented an estimate of an average of all costs of graffiti cleanup rather than the actual economic losses incurred as the result of the minor's conduct, and the model included law enforcement investigative costs.

IMMUNITY - GEORGIA

Georgia Dept. of Corrections v. Couch

Supreme Court of Georgia - June 16, 2014 - S.E.2d - 2014 WL 2700961

Inmate filed suit against Department of Corrections for injuries sustained while working on paint detail at warden's house. Following jury trial, the State Court entered judgment on jury's verdict for inmate, and then granted inmate's motion for attorney fees and costs under statute authorizing plaintiff to recover same when offer of settlement is rejected and amount recovered is more than 125 times settlement offer. Department appealed. The Court of Appeals affirmed, and certiorari was granted.

The Supreme Court of Georgia held that:

- Sovereign immunity was waived, under offer of settlement statute, as to award for attorney fees and litigation expenses;
- Trial court could not rely exclusively on contingency fee agreement that inmate had with attorney, in awarding attorney fees; and
- Inmate was not entitled to full amount of fees provided by contingency fee agreement.

Sovereign immunity was waived, under offer of settlement statute, as to award for attorney fees and litigation expenses in inmate's premises liability action against the Department of Corrections. While payment of attorney fees and litigation expenses under the statute were not made as compensation for a tort "claim" within meaning of the Georgia Tort Claims Act (GTCA), they were made as an incident of Department's inappropriate conduct in the underlying tort action.

IMMUNITY - IDAHO

Block v. City of Lewiston

Supreme Court of Idaho., Coeur d'Alene, April 2014 Term - June 17, 2014 - P.3d - 2014 WL 2735287

Owner of home in which foundation cracked brought action against city, city engineer, and previous

owner of property, alleging negligence and gross negligence stemming from city's issuance of two permits to previous owner allowing previous owner to place and grade fill. The District Court granted summary judgment in favor of city and city engineer. Property owner appealed.

The Supreme Court of Idaho held that:

- City did not act with gross negligence, so as to defeat immunity under Idaho Tort Claims Act (ITCA);
- Property owner did not act with bad faith so as to warrant award of attorney fees under ITCA; and
- ITCA was exclusive means for award of attorney fees.

PUBLIC UTILITIES - IDAHO

Idaho Power Co. v. New Energy Two, LLC

Supreme Court of Idaho., Boise, April 2014 Term - June 17, 2014 - P.3d - 2014 WL 2726924

Electricity providers, which had entered into agreements with power company for the sale of electricity generated by use of renewable energy, filed motion requesting permissive appeal from Public Utilities Commission's determination that it had jurisdiction to decide whether force majeure clause in agreements excused electricity providers from their contractual obligations to have their power generation facilities constructed and in operation by specified dates in agreements. Permissive appeal was granted.

The Supreme Court of Idaho held that Commission had authority to adjudicate whether or not event of force majeure occurred.

Public Utilities Commission had authority to adjudicate whether event of force majeure occurred that excused electricity providers' performance under energy sales agreements with power company, since parties had agreed to have Commission resolve disputes regarding interpretation of agreements. Provision providing that Commission would resolve parties' disputes included determination of whether electricity providers' claimed force majeure was within scope of energy sales agreements' force majeure clause, and central issue of parties' dispute was determination of whether power company still had obligation under agreements to purchase power from electricity providers.

Illinois Recovery of Fraudulently Obtained Public Funds Act - ILLINOIS

LaGrange Park Public Library Dist. ex rel. Cronin v. J.P. Morgan Securities, Inc.

Appellate Court of Illinois, First District, Second Division - June 17, 2014 - Not Reported in N.E.3d - 2014 IL App (1st) 122723-U

Resident-taxpayer filed a taxpayer derivative action as a putative class action pursuant to section 104 of the Illinois Recovery of Fraudulently Obtained Public Funds Act against J.P. Morgan Securities, Inc. on behalf of the LaGrange Park Public Library District.

Plaintiff sought to recover alleged overcharges fraudulently charged by defendants in their "yield-burning" scheme in advance-defeasance refinancing of municipal debt held by the District. Plaintiff argued that defendants conducted this same yield-burning scheme against other municipalities and

similarly excessively marked up the Treasuries sold.

The trial court denied plaintiff's motion for class certification, reasoning that the Code did not permit such an action and that common questions of fact and law would not predominate over questions affecting individual members. The court subsequently granted J.P. Morgan's motion for summary judgment. Plaintiff appealed.

The Appellate Court held that:

- Denial of class certification was proper because plaintiff's action was derivative and not individual.
- Summary judgment was proper where plaintiff failed to present evidence of material fact of whether defendants' sale price and markup were reasonable.

INVERSE CONDEMNATION - NEW JERSEY

Wreden v. Township of Lafayette

Superior Court of New Jersey, Appellate Division - June 17, 2014 - A.3d - 2014 WL 2718155

Property owners brought action against township, township's engineer, and excavation contractor, asserting that retaining wall and drainage structures, which were built next to road and owners' land in right of way, caused unauthorized diversion of stormwater runoff onto land. The Superior Court granted township's motion to dismiss and later denied property owners' motion to amend complaint to add inverse-condemnation claim. Property owners appealed.

The Superior Court, Appellate Division, held that:

- Trial court was required to determine whether township's actions constituted continuing tort, for purposes of continuing tort doctrine;
- Property owners were not required to file another notice of claim when retaining wall fell onto their land;
- Trial court was precluded from considering certification of township committee member concerning approval of engineer's plans; and
- Entire controversy doctrine did not bar property owners from amending complaint.

LIABILITY - IOWA

Doe v. New London Community School Dist.

Supreme Court of Iowa - June 20, 2014 - N.W.2d - 2014 WL 2782295

Former high school student brought action against school district, asserting claims for respondeat superior, negligent hiring, negligent retention, negligent supervision, and negligent infliction of emotional distress arising from student's alleged sexual abuse by teacher. District moved for summary judgment on statute of limitations grounds. The District Court denied district's summary judgment motion. The Supreme Court granted district's application for interlocutory appeal.

The Supreme Court of Iowa held that:

- Common law discovery rule does not apply to actions under a former version of the Iowa Municipal

Tort Claims Act (IMTCA);
- Special limitations period for child sexual abuse claims did not apply to student's claims; and
- Absence of a common law discovery rule in the former version of the IMTCA does not violate equal protection.

LIABILITY - IOWA

Madden v. City of Iowa City

Supreme Court of Iowa - June 13, 2014 - N.W.2d - 2014 WL 2619407

Bicyclist, who fell while riding on a sidewalk abutting grounds of state university, brought action against city alleging that defect in sidewalk caused accident. City brought the State in as a third-party defendant and cross-claimed for contribution from State. State moved to dismiss cross-claim. The District Court denied State's motion. State moved for interlocutory review.

The Supreme Court of Iowa held that:

- Statute that stated that an abutting property owner could be required by ordinance to maintain all property outside the lot and property lines and inside the curb lines upon the public streets did not expressly or impliedly provide for private cause of action;
- In a matter of first impression, city ordinance that imposed liability on abutting property owner for injuries caused by sidewalk defects was not preempted by state law;
- Ordinance did not impose an unauthorized tax; and
- State was not protected by sovereign immunity from liability under city ordinance.

MUNICIPAL ORDINANCE - MAINE

State v. Brown

Supreme Judicial Court of Maine - June 17, 2014 - A.3d - 2014 ME 79

The state brought a complaint against farmer for violations of state licensing and labeling laws. The Superior Court entered summary judgment in favor of the state and enjoined farmer from selling milk without a license, selling unpasteurized milk without labeling it as such, and operating a food establishment without a license. It later imposed civil penalties totaling $1000 and costs of $132 and denied farmer's motion to stay and motion to alter or amend the judgment. Farmer appealed.

The Supreme Judicial Court of Maine held that:

- Previous statement by state veterinarian did not estop the state from requiring farmer to obtain a milk distributor's license;
- Municipal ordinance would be construed to avoid a preemption issue; and
- Civil penalties could be imposed on farmer for each act that constituted a violation of state licensing and labeling laws.

ENVIRONMENTAL - NEW YORK

Suffolk County Water Authority v. Dow Chemical Co.

Supreme Court, Suffolk County, New York - June 16, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op.

24155

Municipal water supplier brought action against manufacturer of and distributor of a chemical used by drycleaners and others, i.e., perchloroethylene (Perc or PCE), alleging toxic chemical contamination of supplier's water wells. Defendants filed motion to dismiss for failure to state a cause of action.

The Supreme Court, Suffolk County held that water supplier's allegations were sufficient to invoke market share liability.

Under market share liability of product manufacturers, the burden of identification shifts to defendants if plaintiff establishes a prima facie case on every element of the claim except for identification of the actual tortfeasor or tortfeasors, and plaintiff has joined manufacturers representing a substantial share of the relevant market.

Allegations of municipal water supplier in action against manufacturer of and distributor of a chemical used by drycleaners and others, i.e., perchloroethylene (Perc or PCE), that perc was defective from the moment of its manufacture, that it was a generically fungible product, and that it took many years from seepage into ground until it appeared in one of supplier's wells, were sufficient to invoke market share liability, for purposes of stating a cause of action against manufacturer and distributor for toxic chemical contamination of supplier's water wells.

IMMUNITY - NORTH CAROLINA

Bynum v. Wilson County

Supreme Court of North Carolina - June 12, 2014 - S.E.2d - 2014 WL 2612632

Pedestrian brought action against county, as lessee, and lessor of county building after he allegedly fell down the front exterior stairs, sustaining injuries. The Superior Court denied defendants' motions for summary judgment. Defendants appealed. The Court of Appeals affirmed in part and dismissed in part. Defendants petitioned for discretionary review.

The Supreme Court of North Carolina held that county was entitled to the defense of governmental immunity from pedestrian's premises liability action.

County's responsibility with regard to locating, supervising, and maintaining county buildings that served the county's discretionary, legislative, and public functions, was governmental in nature, and thus, county, as lessee of building in which county's water department offices were located, was entitled to the defense of governmental immunity from pedestrian's premises liability action, regardless of the pedestrian's involvement with the county and the reason for his presence at a governmental facility.

TAX - OHIO

Health Care REIT, Inc. v. Cuyahoga Cty. Bd. of Revision

Supreme Court of Ohio - June 18, 2014 - N.E.3d - 2014 -Ohio- 2574

Taxpayer and school district appealed decision of county board of revision, determining taxation value of taxpayer's real property, an assisted living facility. The Board of Tax Appeals (BTA) entered

decision assigning a value based on taxpayer's appraisal. School district appealed.

The Supreme Court of Ohio held that:

- Sale of property was not recent, and
- BTA could determine tax value of property based on an appraisal that used comparisons to apartment buildings.

Sale of real property was not recent, and thus sale price was not required to be considered to be the property's true value for taxation purposes, where sale had occurred 26 months prior to tax lien date, there had been two appraisals of property since sale neither of which had used sale price to determine value, and general market changes had caused a decline in property value since sale.

BTA could determine tax value of real property, an assisted living facility, based on appraisal that used comparisons to apartment buildings in order to distinguish the property's real-property value from its business-property value, even though city zoning did not permit use of property as an apartment building.

TAX - OKLAHOMA

Board of County Com'rs of Kay County, Okla. v. Federal Housing Finance Agency

United States Court of Appeals, District of Columbia Circuit - June 13, 2014 - F.3d - 2014 WL 2619884

County board of commissioners brought action against the Federal Housing Finance Agency, as conservator for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) for failure to pay transfer taxes. The United States District Court for the District of Columbia, dismissed the action. The board appealed.

The Court of Appeals held that:

- Fannie Mae and Freddie Mac did not owe county transfer taxes for conveyances of their real estate, and
- Board forfeited Commerce Clause argument on appeal.

ZONING - PENNSYLVANIA

Geryville Materials, Inc. v. Board of Supervisors of Lower Milford Tp.

Commonwealth Court of Pennsylvania - June 18, 2014 - Not Reported in A.3d - 2014 WL 2754930

Geryville Materials, Inc. and the Board of Supervisors of Lower Milford Township each appealed an order of the Court of Common Pleas of that ruled upon Geryville's substantive challenge to several provisions of the Township's Zoning Ordinance.

The trial court held that almost all of Section 523, entitled "Extraction of Natural Resources," was preempted by the Noncoal Surface Mining Conservation and Reclamation Act (Noncoal Act). The trial court also held that Section 470, entitled "Protection of Natural Resources," was not unduly

restrictive of non-coal surface mining in the Township and, thus, was constitutional and compliant with the Pennsylvania Municipalities Planning Code (MPC).

The appeals court affirmed.

INVERSE CONDEMNATION - WASHINGTON

Nelson v. Skamania County

Court of Appeals of Washington, Division 2 - June 17, 2014 - Not Reported in P.3d - 2014 WL 2796031

Landowner sued Skamania County, alleging that the County's former landfill operation on adjacent property caused debris to flow onto his property. The County successfully moved for summary judgment arguing that all of landowner's claims were barred by applicable statutes of limitations.

Landowner appealed, arguing (1) the trespass from migrating debris was both continuing and abatable and the County was liable for damages until the County removed the debris, (2) if the trespass was not abatable, the County was liable under a theory of inverse condemnation for any takings that had occurred in the 10 years prior to landowner filing suit, and (3) the trial court abused its discretion in failing to exclude evidence of a code violation landowner received four years before filing this lawsuit.

The Court of Appeals held that:

- Genuine issues of material fact precluded summary judgment on landowner's trespass claim.
- Landowner was precluded by the subsequent purchaser rule from recovering under inverse condemnation.

LIABILITY - ALABAMA

Ex Parte Labbe

Supreme Court of Alabama - June 6, 2014 - So.3d - 2014 WL 2535344

Surviving family members sued city, alleging negligent and/or wanton hiring, training, or supervision of individual firefighters who allegedly failed to recover all of decedent's remains from fire scene. City moved for summary judgment. The Circuit Court denied motion. City filed petition for writ of mandamus.

The Supreme Court of Alabama held that:

- Volunteer fire department did not become professional fire department not entitled to immunity by fact that city donated money to it;
- City could not be vicariously liable for firefighters' alleged negligence; and
- City could not be liable for wanton or intentional conduct.

LIABILITY - CONNECTICUT

Coley v. City of Hartford

Supreme Court of Connecticut - June 10, 2014 - A.3d - 312 Conn. 150

Administrator of estate of mother of family violence victim brought wrongful-death action against city, alleging that city's police officers, who responded to victim's complaint that father of her child appeared at her house, should have remained at scene. The Superior Court granted city's motion for summary judgment. Administrator appealed. The Appellate Court affirmed. Administrator appealed.

The Supreme Court of Connecticut held that police officers' duty under city's police response procedures policy to remain at scene was discretionary, not ministerial, and thus city was entitled to discretionary-act immunity.

City police officers' duty under city's police response procedures policy to remain at scene regarding incident in which abuser allegedly violated domestic violence protective order by coming to victim's residence was discretionary, not ministerial, and thus city was entitled to discretionary-act immunity regarding wrongful-death action arising from fatal shooting of victim's mother when abuser returned to residence after officers left to obtain arrest warrant, although policy stated that officers shall remain at the scene for a reasonable time if an arrest were not made. Policy language vesting discretion with police officers to determine what constituted reasonable time was inextricably intertwined with policy language stating that police officers "shall remain" at the scene.

INVERSE CONDEMNATION - FLORIDA

Ocean Palm Golf Club Partnership v. City of Flagler Beach

District Court of Appeal of Florida, Fifth District - May 30, 2014 - So.3d - 2014 WL 2217255

Landowners brought inverse condemnation action against city, challenging the city's refusal to change the comprehensive plan's designation of former golf course property, which consisted of two parcels, to allow for residential development of property. The Circuit Court entered judgment in favor of city. Landowner appealed.

The District Court of Appeal held that:

- City's refusal to change its comprehensive plan was not a total taking, and
- City's refusal to change its comprehensive plan was not a partial taking.

MUNICIPAL ORDINANCE - FLORIDA

Masone v. City of Aventura

Supreme Court of Florida - June 12, 2014 - So.3d - 2014 WL 2609201

The Supreme Court of Florida took up the issue of whether municipal ordinances imposing penalties for red light violations detected by devices using cameras were invalid because they were preempted by state law.

The Court concluded that such municipal ordinances were preempted by state law.

IMMUNITY - IOWA

Godfrey v. State

Supreme Court of Iowa - June 6, 2014 - N.W.2d - 2014 WL 2553412

Workers' compensation commissioner brought action against State, governor, lieutenant governor, chief of staff to governor, legal counsel to the governor, communications director to the governor, and director of Iowa Workforce Development stemming from alleged demand for commissioner's resignation and subsequent salary reduction. After the attorney general certified that defendants were acting within the scope of their employment at time of allegations, the District Court granted motion to substitute State for individual defendants on some counts and dismissed other counts. Commissions applied for interlocutory review, which was granted.

The Supreme Court of Iowa held that attorney general's certification that employees acted within scope of employment was inapplicable to common law claims against employees in individual capacities.

Attorney general's certification that individual state-employee defendants were acting within the scope of their employment at time of allegations in action by workers' compensation commissioner, such that certain immunities applied pursuant to Iowa Tort Claims Act (ITCA), was not applicable to commissioner's common law claims alleging that the individual defendants acted outside the scope of their employment, where provision of ITCA governing such certification expressly applied only to claims under the ITCA, and, when a state employee acted outside the scope of his or her employment, the employee was responsible for the attorney fees and the damages, not the public.

CRIMINAL - LOUISIANA

State v. Price

Court of Appeal of Louisiana, Third Circuit - June 4, 2014 - So.3d - 2014-127 (La.App. 3 Cir. 6/4/14)

Defendant was convicted, in the District Court of resisting an officer. Defendant appealed.

The Court of Appeal held that:

- Evidence was sufficient to support conviction;
- Police officers had reasonable suspicion that defendant had committed crime of battery so as to warrant investigatory stop to question defendant regarding his actions; and
- Officers had probable cause to arrest defendant for resisting an officer after officers arrived at defendant's property to question him and defendant repeatedly refused officers' requests to secure his three dogs.

SCHOOLS - LOUISIANA

Robinson v. St. Tammany Parish Public School System

United States Court of Appeals, Fifth Circuit - May 29, 2014 - Fed.Appx. - 2014 WL 2211976

Parent of high school student who was transferred to another school for three months after hearing on allegations he engaged in sexual misconduct on school bus during field trip filed § 1983 action

against public school board and its supervisor of administration, who was disciplinary hearing officer, alleging deprivation of First and Fourteenth Amendment rights and violation of student's due process rights protected by Louisiana constitution. Parent also raised state law claims of intentional infliction of emotional distress (IIED) against supervisor of administration, negligence for board's alleged failure to train and supervise employees, and defamation. The District Court granted summary judgment in favor of defendants. Parent appealed.

The Court of Appeals held that:

- Supervisor did not violate procedural due process;
- Board did not violate Louisiana law by failing to review supervisor's finding that student engaged in sexual misconduct and determination that he would be transferred to another school for three months;
- Supervisor was entitled to immunity from liability for defamation; and
- One-year prescriptive period applied to claim for negligent failure to train.

BONDS - LOUISIANA

Bluebonnet Hotel Ventures, L.L.C. v. Wells Fargo Bank, N.A.

United States Court of Appeals, Fifth Circuit - June 6, 2014 - F.3d - 2014 WL 2565661

Prospective issuer of variable rate tax-exempt bonds brought action against bank under Louisiana law, seeking rescission of interest-rate swap agreement it had entered into with bank, as prospective issuer of letter of credit for the bonds, which were issued without the letter of credit. The District Court granted summary judgment to bank. Borrower appealed.

The Court of Appeals held that inability of borrower to obtain letter of credit was not failure of cause constituting error, as would provide basis for rescission of swap agreement.

The swap agreement specifically obliged borrower to pay bank any unfavorable difference between fixed interest rate amount and floating interest rate amount as such payments became due, irrespective of whether borrower was able to obtain a letter of credit from bank or any other financial institution.

Interest-rate swap agreement was not ambiguous regarding parties' intent, as would be required under Louisiana law for admission of parol evidence, as swap agreement specifically obliged borrower to pay bank any unfavorable difference between fixed interest rate amount and floating interest rate amount as such payments became due, irrespective of whether borrower was able to obtain a letter of credit from bank or any other financial institution.

ZONING - MICHIGAN

Prose v. Clough

Court of Appeals of Michigan - June 10, 2014 - Not Reported in N.W.2d - 2014 WL 2600743

Glennbrook Beach Association is a homeowners association, founded and incorporated under the Summer Resort Owners Corporation Act. Landowner owns property in Glennbrook.

Landowner alleged that the Township did not have authority to exercise zoning powers over territory

incorporated by Glennbrook.

Landowner commenced action against Township in circuit court seeking declaratory relief to determine which governmental entity had zoning powers over his land, a writ of prohibition to prevent Township from continuing to exceed the bounds of their offices, a writ of mandamus against Township officials to cease their efforts to prevent the exercise of his property rights, and an order for superintending control over the Township's zoning board of appeals to prevent it from asserting jurisdiction over plaintiff's property.

The Court of Appeals held that the Township had jurisdiction and authority to zone property located within Glennbrook's territory pursuant to the Michigan Zoning Enabling Act (MZEA).

IMMUNITY - MISSISSIPPI

City of Jackson v. Lewis

Supreme Court of Mississippi - June 5, 2014 - So.3d - 2014 WL 2535237

Occupants of vehicle and wrongful death beneficiaries filed personal injury suit against city, stemming from incident in which fleeing suspect collided with plaintiffs' vehicle following police chase. The Circuit Court found in favor of plaintiffs. City appealed. The Court of Appeals reversed and remanded. Plaintiffs petitioned for writ of certiorari, which was granted.

The Supreme Court of Mississippi held that:

- Officer's initiation of pursuit did not violate police department's policy governing pursuits;
- Officer's continuing pursuit of suspect constituted violation of department's policy;
- Officer failed to take sufficient steps required to communicate that pursuit had ended;
- Substantial evidence supported finding that officer pursued suspect at speed well above speed limit;
- Neighborhood in which pursuit occurred weighed in favor of determination that officer pursued suspect in reckless disregard of safety of others; and
- Officer's conduct in pursuing fleeing suspect evinced reckless disregard for public under totality of the circumstances.

EMPLOYMENT - NEW MEXICO

Weiss v. Board of Educ. of Santa Fe Public Schools

Court of Appeals of New Mexico - June 3, 2014 - P.3d - 2014 WL 2534073

After teacher's request for hearing on board of education's decision not to renew her teaching contract was denied, teacher filed suit against board and public school superintendent, seeking declaratory judgment that board and superintendent were required to provide teacher with hearing to contest her termination. The District Court ruled in favor of teacher. Board and superintendent appealed.

The Court of Appeals held that teacher, as certified school employee in her third consecutive year of employment, was entitled to heightened substantive and procedural protections for employees who had been employed for at least three consecutive years, even though teacher had not actually completed all three years of employment at time she received her notice of termination.

Act of termination under School Personnel Act referred to act of not reemploying employee for ensuing school year, such that teacher would have completed her full third year of employment after receiving notice, any difference in treatment between certified and non-certified employees with respect to termination under Act was by design, and sections of Act governing mentorship, evaluation, and professional development did not demonstrate intent that teachers who had not yet completed their third consecutive year of employment would be excluded from heightened protections.

LIABILITY - NEW YORK

Wittorf v. City of New York

Court of Appeals of New York - June 5, 2014 - N.E.3d - 2014 N.Y. Slip Op. 04037

Bicyclist brought action against city for personal injuries sustained when she hit pothole. Following jury verdict for bicyclist, the Supreme Court, New York County, granted city's motion to set aside the verdict. Bicyclist appealed. The Supreme Court, Appellate Division affirmed. Bicyclist appealed.

The Court of Appeals of New York held that city employee was acting in proprietary capacity at time of bicyclist's accident.

City employee was engaged in proprietary function at time he failed to warn bicyclist of conditions in transverse when bicyclist hit pothole, as required to hold city liable for breach of proprietary duty to keep its roads and highways in a reasonably safe condition. Employee was in park on the day of accident specifically to oversee road maintenance project in his capacity as a city department of transportation supervisor, at the time he failed to warn bicyclist, he was blocking transverse to vehicular traffic in preparation for road repair, and although maintenance work had not yet begun, employee and his crew could not have repaired roadway without having closed road to traffic.

LAND USE - NEW YORK

Capruso v. Village of Kings Point

Court of Appeals of New York - June 12, 2014 - N.E.3d - 2014 N.Y. Slip Op. 04228

Village residents and state brought two related actions against village, mayor, and board of trustees, seeking declaratory and injunctive relief predicated on village's use of alleged dedicated parkland for non-park purposes without legislative approval, in violation of the public trust doctrine.

The Court of Appeals held that:

- The causes of action challenging village's proposed Department of Public Works (DPW) project were not barred by the statute of limitations;
- The "continuing wrong doctrine" applied to toll the running of the statute of limitations with respect to plaintiffs' cause of action seeking to enjoin village's present non-park use of portion of parkland;
- Laches could not bar state's cause of action; and
- Laches has no application when plaintiffs allege a continuing wrong.

TRUST INDENTURE - NEW YORK

Quadrant Structured Products Co., Ltd. v. Vertin

Court of Appeals of New York - June 10, 2014 - N.E.3d - 2014 N.Y. Slip Op. 04114

Noteholder, individually and derivatively on behalf of corporate issuer of notes covered by trust indentures, sued issuer's purported indirect parent company, purported parent's affiliate, issuer's board of directors, and issuer as nominal defendant, asserting, *inter alia*, claims for breach of fiduciary duty, fraudulent transfer, breach of implied covenant of good faith and fair dealing, tortious interference with contractual relations, and civil conspiracy. The Delaware Court of Chancery dismissed complaint based on noteholder's failure to comply with indentures' no-action clauses. Noteholder appealed. The Delaware Supreme Court remanded with directions. The Court of Chancery issued report on remand, holding that motion to dismiss should be granted in part and denied in part. The Delaware Supreme Court certified questions of New York law to the New York Court of Appeals.

The Court of Appeals held that:

- No-action clauses of trust indentures, which do not refer to claims arising under the securities, do not apply to such claims, and
- No-action clauses in the case at bar did not apply, in absence of default.

No-action clauses of trust indentures for notes issued by corporation, which clauses applied only to contractual claims arising under the indentures, and which indentures triggered the trustee's duties only upon an event of default, did not preclude a noteholder, individually and derivatively on behalf of corporate issuer, from bringing claims seeking damages and injunctive relief for breaches of fiduciary duty, fraudulent transfer, breach of covenant of good faith and fair dealing, intentional interference with contractual relations, and conspiracy, against issuer's purported indirect parent company, purported parent's affiliate, issuer's board of directors, and issuer as nominal defendant, relating to alleged scheme to ensure that junior noteholders were paid, despite their inferior status vis-a-vis plaintiff noteholder's senior notes. There had been no default, and instead, the action was seeking to avoid default on senior notes held by plaintiff noteholder.

MUNICIPAL ORDINANCE - NORTH CAROLINA

King v. Town of Chapel Hill

Supreme Court of North Carolina - June 12, 2014 - S.E.2d - 2014 WL 2612603

Operator of vehicle towing business brought action against city seeking to prevent enforcement of city ordinances relating to regulation of towing practices and mobile phone usage. The Superior Court granted injunction enjoining enforcement of ordinances. City appealed. The Court of Appeals reversed. Operator petitioned for discretionary review.

The Supreme Court of North Carolina held that:

- Municipality was not without the authority to regulate nonconsensual towing from private lots;
- The general authority of municipality to regulate nonconsensual towing from private lots was broad enough to sustain municipal towing ordinance's notice and signage requirements; but
- Municipality exceeded its authority by imposing a fee schedule for nonconsensual towing from private lots;

- Municipality exceeded its authority by prohibiting towing companies from passing the cost of accepting credit card payments on to those who had been towed for being illegally parked;
- Striking the fee schedule and credit card fee provision of municipal towing ordinance did not hinder the overall purpose of the ordinance to minimize and control the harmful and adverse effects that occur during the non-consensual towing of motor vehicles, and thus, the remainder of the ordinance remained intact;
- Municipality's mobile phone ordinance's alleged substantial encumbrance on economic activity constituted a manifest threat of irreparable harm sufficient to invoke the equity jurisdiction of the Superior Court; but
- The legislature's comprehensive scheme regarding mobile telephone usage on streets and highways precluded municipality from attempting to regulate mobile telephone usage by drivers through its general ordinance-making power.

IMMUNITY - OHIO

State ex rel. Cleveland v. Astrab

Supreme Court of Ohio - June 10, 2014 - N.E.3d - 2014 -Ohio- 2380

Plaintiffs brought action against city and city police officers, alleging tort claims arising when pedestrian was struck and killed by car engaged in high-speed chase with officers. The Court of Common Pleas denied immunity-based motion to dismiss, and city and officers appealed. The Court of Appeals reversed and remanded. On remand, the Court of Common Pleas dismissed plaintiffs' complaint without prejudice. City and officers brought action for writ of mandamus, seeking to compel trial judge to dismiss the action with prejudice on immunity grounds, as allegedly required by mandate of Court of Appeals. The Court of Appeals denied the writ, and city and officers appealed.

The Supreme Court of Ohio held that:

- Decision of Court of Appeals, that city and officers in their official capacities were immune, was law of the case, but
- Court of Appeals did not establish that immunity barred claims against officers in their individual capacity.

LIABILITY - TEXAS

Alexander v. Walker

Supreme Court of Texas - June 6, 2014 - S.W.3d - 2014 WL 2535949

Arrestee sued county sheriff's deputy and sergeant on various tort claims arising from two separate incidents. The District Court denied defendants' motion for summary judgment. Defendants appealed. The Court of Appeals affirmed. Defendant filed petition for review, which was granted.

The Supreme Court of Texas held that allegations in arrestee's petition were based on conduct within general scope of officers' employment and could have been brought under Texas Tort Claims Act (TTCA), compelling dismissal under statute's election-of-remedies provision.

IMMUNITY - TEXAS

City of Watauga v. Gordon

Supreme Court of Texas - June 6, 2014 - S.W.3d - 2014 WL 2535995

Arrestee brought action against city based on police officer's use of handcuffs during arrest. City entered plea to the jurisdiction. The District Court denied city's plea, and city appealed. The Court of Appeals affirmed. City petitioned for review.

The Supreme Court of Texas held that arrestee's action was an action for battery rather than one for negligence, and thus city had not waived governmental immunity to action.

INVERSE CONDEMNATION - WASHINGTON

Pacific Highway Park, LLC v. Washington State Dept. of Transp.

Court of Appeals of Washington, Division 2 - June 3, 2014 - Not Reported in P.3d - 2014 WL 2547695

Pacific Highway Park, LLC (PHP) appealed the trial court's dismissal on summary judgment of its claims against the Washington State Department of Transportation (WSDOT) for inverse condemnation, trespass, and damage to property under RCW 4.24.630.

PHP alleged that these claims arose from WSDOT's alterations to surface water drainage facilities in a 2001 project to widen nearby State Route (SR) 99, which allegedly resulted in the deposit of excess stormwater on PHP's property.

The Court of Appeals held that:

- Because PHP did not purchase the property at issue until after the alleged taking occurred, the subsequent purchaser doctrine precluded PHP from asserting an inverse condemnation claim;
- Questions of fact existed about whether WSDOT's 2001 drainage work resulted in an invasion of PHP's property; and
- PHP's trespass and RCW 4.24.630 claims were not precluded on other legal grounds.

ZONING - WYOMING

Tarver v. City of Sheridan Bd. of Adjustments

Supreme Court of Wyoming - June 5, 2014 - P.3d - 2014 WY 71

Neighbors petitioned for review of city board of adjustments approval of a request for a special exemption to operate a bed and breakfast in an area zoned residential. The District Court affirmed the board's decision, and neighbors appealed.

The Supreme Court of Wyoming held that:

- Applicants' second application for a special exception to operate a bed and breakfast in a residential area was not barred by res judicata or collateral estoppel;
- City board of adjustments had the power to impose parking restrictions on applicants' bed and breakfast as a condition of granting a special exemption to operate a bed and breakfast in an area

zoned residential; and
- Evidence was sufficient to support city board of adjustment's finding that applicants' use of their property as a bed and breakfast met the standards set out in the relevant statutes and city ordinances, and that, with parking restrictions, was consistent with city's master plan.

BANKRUPTCY - CALIFORNIA

In re City of San Bernardino

United States District Court, C.D. California - June 4, 2014 - Not Reported in F.Supp.2d - 2014 WL 2511096

City filed for Chapter 9 municipal bankruptcy.

City sought, in Bankruptcy Court, to prevent state agencies from withholding disputed tax revenues accrued by the City's Redevelopment Agency (RDA) from both the debtor City and the third-party non-debtor Successor Agency established when the state abolished all RDAs.

The Bankruptcy Court denied the state agencies' claim that they were immune from suit under the Tenth and Eleventh Amendments.

State agencies appealed and the District Court reversed, finding that the state agencies were immune from suit.

PUBLIC UTILITIES - CALIFORNIA

Disenhouse v. Peevey

Court of Appeal, Fourth District, Division 1, California - June 3, 2014 - Cal.Rptr.3d - 2014 WL 2464960

The Court of Appeal took up a case requiring it to reconcile a Public Utilities Code provision depriving the superior courts of jurisdiction "to enjoin, restrain, or interfere with the Public Utilities Commission in the performance of its official duties" (Pub.Util.Code, § 1759, subd. (a)) with a Government Code provision authorizing any interested person to "commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations" of the state's opening meeting law. (Gov.Code, § 11130, subd. (a).)

The court concluded that a person desiring to commence such an action against the commission may only do so by filing a petition for writ of mandate in the Supreme Court or the Court of Appeal.

ZONING - CALIFORNIA

Sierra Club v. County of Fresno

Court of Appeal, Fifth District, California - May 27, 2014 - Cal.Rptr.3d - 14 Cal. Daily Op. Serv. 5810 - 2014 Daily Journal D.A.R. 6590

Objectors petitioned for writ of mandate challenging county's approval of environmental impact report (EIR) for residential development. The Superior Court entered judgment for county and developer. Objectors appealed.

The Court of Appeal held that:

- County general plan did not preclude changing agricultural land use designations by amendment;
- EIR adequately addressed balancing of effluent production, storage, and disposal; but
- EIR was inadequate in its discussion of health impacts of air pollutants;
- EIR's mitigation measures were improperly vague and unenforceable; and
- EIR improperly allowed for deferred formulation of mitigation measures.

EMPLOYMENT - DELAWARE

Council on Police Training v. State

Supreme Court of Delaware - June 2, 2014 - A.3d - 2014 WL 2466327

Retired state police officer appealed the decision of the Council on Police Training to revoke his certification as a police officer. The Superior Court reversed and remanded the Council's decision. Council appealed.

The Supreme Court of Delaware held that officer's retirement while under suspension was not a sufficient basis to decertify him as a police officer.

IMMUNITY - GEORGIA

Marshall v. McIntosh County

Court of Appeals of Georgia - May 30, 2014 - S.E.2d - 2014 WL 2219709

Wife of 911 caller brought wrongful death action against county and the director of its 911 emergency telephone system, alleging that director refused to send medical assistance after caller reported that he was having a heart attack. The trial court dismissed action on grounds of sovereign and official immunity. Wife appealed.

The Court of Appeals held that:

- Statute providing that no local government of the state would be liable for death or injury as result of carrying out duties involved in operating emergency 911 system, except in cases of wanton and willful misconduct or bad faith, did not waive sovereign immunity as to claims against county and against director in her official capacity;
- Whether director's were discretionary or ministerial was factual issue that could not be decided on director's motion, predicated on qualified immunity, to dismiss claim asserted against her in her individual capacity; and
- Complaint sufficiently alleged wanton and willful misconduct and bad faith on part of director to survive motion, predicated on qualified immunity, to dismiss claim against director in her individual capacity.

PUBLIC UTILITIES - IOWA

Hawkeye Land Co. v. Iowa Utilities Bd.

Supreme Court of Iowa - May 23, 2014 - N.W.2d - 2014 WL 2154006

Owner of railroad-crossing easement sought review of Utilities Board's decision that allowed independent transmission company to use pay-and-go procedure under railroad-crossing statute to run electrical power lines across railroad at three locations. The District Court affirmed. Easement owner appealed.

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

- Board lacked interpretive authority as to statute;
- Owner was successor in interest under statute; and
- Transmission company was not public utility company within meaning of statute.

ZONING - IOWA

Den Hartog v. City of Waterloo

Supreme Court of Iowa - May 30, 2014 - N.W.2d - 2014 WL 2434598

Taxpayers filed petition for writ of mandamus and temporary injunction challenging municipality's agreement to transfer to residential developer property originally acquired for use as a road right-o--way, alleging that municipality failed to follow statutory procedures for sale of unused right-of-way. The District Court dismissed action. Taxpayers appealed.

The Supreme Court of Iowa held that land in question constituted unused right-of-way, and therefore municipality was not permitted to sell or transfer it to a developer without first following the statutory procedure mandating notice to the present owners of adjacent property and to the persons who owned the land at the time it was acquired for road purposes.

Statutory requirements were applicable to both land acquired for highway purposes but never used, and land acquired for highway purposes and previously or currently in use, rather than only to property acquired, but never used for, highway purposes.

BANKRUPTCY - KENTUCKY

In re Seven Counties Services, Inc.

United States Bankruptcy Court, W.D. Kentucky, Louisville Division - May 30, 2014 - B.R . - 2014 WL 2442176

Kentucky Employees Retirement System (KERS) filed complaint seeking a determination that debtor, a tax-exempt nonprofit employer which operated mental health facilities in Kentucky, was "governmental unit" that was statutorily barred from seeking Chapter 11 relief, as well as to enjoin debtor from seeking to withdraw from KERS and to require debtor to continue to contribute to KERS. Debtor moved to reject its alleged contract with KERS.

The Bankruptcy Court held that:

- Non-profit charitable organization which was established by private individual, and which was only later recognized by the Commonwealth as regional mental health board to operate mental health facilities pursuant to contracts with the Commonwealth, was not department, agency, or instrumentality of the Commonwealth and did not qualify as "governmental unit";
- Federal statute requiring trustee or debtor-in-possession to manage and operate property

postpetition pursuant to valid state laws in effect where property was located could not be interpreted so broadly as to prevent debtor from withdrawing from KERS;
- Debtor's contributions to KERS were not in nature of "regulatory fees," "taxes" or "assessments";
- Arrangement between debtor and KERS was in nature of contract; and
- Contract was still "executory" and could be rejected by debtor.

IMMUNITY - LOUISIANA

Haab v. East Bank Consol. Special Service Fire Protection Dist. of Jefferson Parish

Court of Appeal of Louisiana, Fifth Circuit - May 28, 2014 - So.3d - 13-954 (La.App. 5 Cir. 5/28/14)

Renters who suffered loss of personal property when parish fire personnel failed to promptly respond to a fire at the house they were renting during a hurricane brought action against parish and several of its departments and employees responsible for public safety, seeking to hold defendants liable for the loss of their property. Defendants moved for summary judgment, alleging that they were immune from suit. The District Court granted summary judgment in favor of defendants. Plaintiffs appealed.

The Court of Appeal held that:

- Parish and departments were entitled to absolute immunity from suit under the Louisiana Homeland Security and Emergency Assistance and Disaster Act (HSA) regarding their conduct in activating fire service disaster response plan and in failing to immediately respond to a residential fire on account of hurricane's high winds;
- Parish and departments were not entitled to absolute immunity from suit under HSA regarding their conduct in formulating, adopting, and reviewing parish fire disaster response plan;
- Parish public safety employees were immune from suit under HSA for their conduct in delaying response to residential fire on account of hurricane's high winds;
- Parish public safety employees were entitled to discretionary immunity from suit under state discretionary immunity statute for their conduct in delaying response to residential fire on account of hurricane's high winds; and
- Parish and departments were entitled to discretionary immunity regarding their conduct in formulating, adopting, and reviewing the parish fire service disaster response plan.

PUBLIC UTILITIES - MARYLAND

PPL EnergyPlus, LLC v. Nazarian

United States Court of Appeals, Fourth Circuit - June 2, 2014 - F.3d - 2014 WL 2445800

Utility companies brought action against the Commissioner of the Maryland Public Service Commission (PSC), challenging the PSC's order directing Maryland utilities to enter into a contract for differences with new power generation plant to incentivize the construction of the plant. The District Court entered judgment for the utilities. The PSC appealed.

The Court of Appeals held that:

- The PSC's order was preempted under field preemption, and

- The PSC’s order was preempted under conflict preemption.

Under the Federal Power Act, Congress intended that the Federal Energy Regulatory Commission (FERC) occupy the field of wholesale sales of energy in interstate commerce, thus field preempting PSC’s order, as the PSC order had the effect of functionally setting the rate that the new facility would receive in capacity auctions overseen by FERC.

Maryland PSC’s order directly conflicted with the FERC’s regulation of the wholesale sale of energy in interstate commerce under the Federal Power Act (FPA), and thus the PSC order was preempted on conflict grounds by the FERC. The PSC’s order had the potential of disrupting the FPA’s goal of using price signals in capacity auctions to incentivize new generation sources, and the PSC’s 20-year contract for difference incentive greatly exceeded the three years provided by the FPA for such incentives.

ZONING - MARYLAND

County Council of Prince George's County v. Zimmer Development Co.

Court of Appeals of Maryland - May 28, 2014 - A.3d - 2014 WL 2208279

Property developer applied for approval of a comprehensive design plan and a specific design plan for a proposed retail center. County planning board approved the plans. District council decided on its own motion to review the case, held a public hearing, and remanded to the planning board to reconsider certain issues. Planning board held a hearing and again approved the application. District council again decided on its own motion to review the case and, after it heard oral argument, denied the application. Developer petitioned for judicial review. The Circuit Court reversed district council’s decision and reinstated planning board’s approval of the plans. Appeal followed.

The Court of Appeals held that:

- Issue of whether developer could obtain judicial review was one of standing, not subject-matter jurisdiction;
- District council is vested with appellate jurisdiction, not original jurisdiction, over zoning matters; and
- When reviewing the case for the second time, district council was limited to the remand issues expressly considered by planning board.

BENEFITS - MASSACHUSETTS

Twomey v. Town of Middleborough

Supreme Judicial Court of Massachusetts, Plymouth - June 2, 2014 - N.E.3d - 468 Mass. 260

Retired town employees brought action against town, town board of selectmen, and town manager, seeking declaratory relief and writ of mandamus to require town to implement vote of special town meeting, approving article purporting to establish percentage of the total monthly premium for insurance coverage by a health maintenance organization (HMO) to be paid by the employees. The Superior Court entered summary judgment in favor of defendants, and employees appealed.

The Supreme Judicial Court of Massachusetts held that town board of selectmen, not town meeting,

had authority to establish the percentage of the total monthly premium for HMO coverage to be paid by employees, under statute governing payment of HMO premiums by municipalities. Statute expressly designated board of selectmen as the municipal entity to implement its provisions and did not make any reference to town meeting.

LIABILITY - NEW YORK

Samantha R. v. New York City Housing Authority

Supreme Court, Appellate Division, First Department, New York - May 22, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 03754

Child brought action against city housing authority and general contractor, seeking damages for injuries sustained when she tripped over a decorative wicket fence that surrounded planting area and fell onto the pavement. Defendants moved for summary judgment. The Supreme Court, New York County, denied motion. Defendants appealed.

The Supreme Court, Appellate Division, held that alleged defective condition on housing authority's premises was open and obvious, and not inherently dangerous.

EMINENT DOMAIN - OKLAHOMA

State ex rel. Dept. of Transp. v. Lamar Advertising of Oklahoma, Inc.

Supreme Court of Oklahoma - June 3, 2014 - P.3d - 2014 OK 47

Oklahoma Department of Transportation (ODOT) brought condemnation proceeding regarding outdoor advertising sign. Following a jury trial, the District Court awarded compensation to owners of sign. ODOT and owners appealed, and appeals were consolidated.

The Supreme Court of Oklahoma held that:

- Owners were entitled to the fair market value of the property interests taken, whether real or personal;
- Income generated from rental of sign's face was relevant factor for consideration in determination of fair market value;
- Trial court acted within its broad discretion in excluding evidence of possibility of relocation;
- Owners had burden of proof as to valuation of sign, even though ODOT was party that demanded jury trial; and
- Burden that owners had in order to secure jury award in excess of ten percent of commissioners' award so that they could recover attorney fees did not violate owners' due process rights.

INVERSE CONDEMNATION - OREGON

Hall v. State ex rel Oregon Dept. of Transp.

Supreme Court of Oregon, En Banc - May 30, 2014 - P.3d - 355 Or. 503

Landowners brought inverse condemnation action against Oregon Department of Transportation (ODOT). Plaintiffs alleged that ODOT, by repeatedly making representations to others about its intention to landlock their property and initiate a condemnation action, created a nuisance that

"blighted" their property, resulting in a compensable taking of the property under the Oregon Constitution. The Circuit Court entered judgment in favor of landowners. ODOT appealed. The Court of Appeals reversed. Landowners petitioned for review.

After grant of petition, the Supreme Court of Oregon held that representations made by ODOT regarding ODOT's intention to landlock landowners' property and to initiate a condemnation action did not constitute a de facto taking.

ODOT's actions did not deprive landowners of all economically viable use of property, since landowners were able to sell billboard easements on property, and there was no physical occupation of property.

SCHOOLS - SOUTH CAROLINA

Palms v. School Dist. of Greenville County

Court of Appeals of South Carolina - May 30, 2014 - S.E.2d - 2014 WL 2453328

Parents, as guardians ad litem for student, sued school district seeking writ of mandamus directing district to restore student's original grade point average (GPA) and class rank, and for an injunction prohibiting district from altering GPA in manner inconsistent with writ. The Circuit Court granted writ and injunction. District appealed.

The Court of Appeals held that parents failed to present justiciable controversy.

Student's parents who sought writ of mandamus directing school district to restore high school student's GPA and class rank to the higher levels originally calculated under district's formula for transfer students, following reduction of student's GPA after other parent expressed concern that transferor school inflated grades, failed to present justiciable controversy.

There was no evidence that district acted corruptly or in bad faith, or that it abused its power, when it recalculated student's GPA and ranking, grade calculation was fundamental function of district, and disputes such as whose student would be valedictorian were academic disputes for district to resolve.

TAX - SOUTH CAROLINA

Town of Hilton Head Island v. Kigre, Inc.

Supreme Court of South Carolina - June 4, 2014 - S.E.2d - 2014 WL 2516515

Business owner filed constitutional challenge to town's business license tax ordinance, which required businesses within the town to pay an annual license fee based upon business's classification and gross income. The Circuit Court entered judgment finding the ordinance valid. Owner appealed.

The Supreme Court of South Carolina held that the business license tax ordinance was not unconstitutional.

Business license fee was a tax on the privilege of doing business within the town, and therefore, it was the manufacturing activity of taxpayer's business which occurred wholly within the town limits,

and not its receipt of income or sales of its products in interstate commerce, that was the business activity being taxed.

UTILITIES - SOUTH CAROLINA

Horry Telephone Co-op., Inc. v. City of Georgetown

Supreme Court of South Carolina - June 4, 2014 - S.E.2d - 2014 WL 2516069

Telecommunications company brought declaratory-judgment action against city, asserting that city's denial of company's application for franchise to provide cable television services in city was unlawful under Competitive Cable Services Act. The Circuit Court dismissed company's complaint. Company appealed.

The Supreme Court of South Carolina held that:

- Competitive Cable Services Act creates a private cause of action for aggrieved cable television providers;
- Testimony of individual city council members as to their motivations for denying consent was not competent evidence; and
- Evidence supported trial court's finding that city's reasons for denial of application did not violate Competitive Cable Services Act.

RATINGS - CALIFORNIA

California Public Employees' Retirement System v. Moody's Investors Service, Inc.

Court of Appeal, First District, Division 3, California - May 23, 2014 - Cal.Rptr.3d - 14 Cal. Daily Op. Serv. 5720

California Public Employees' Retirement System (CalPERS) brought action against credit rating agencies for negligent misrepresentation after CalPERS lost $1 billion in structured investment vehicles, rated "AAA" by agencies, that subsequently collapsed. The Superior Court denied anti-strategic lawsuit against public participation (SLAPP) motion. Agencies appealed and CalPERS cross-appealed.

The Court of Appeal held that:

- Negligent misrepresentation cause of action arose from an act in furtherance of agencies' right of petition or free speech;
- Ratings potentially were representations of material fact giving rise to negligent misrepresentation liability;
- Agencies potentially lacked a reasonable ground for believing the credit ratings to be true;
- Agencies potentially intended through their ratings to influence CalPERS or a class to which CalPERS belonged; and
- CalPERS potentially relied upon credit rating agencies' alleged misrepresentations.

STANDING - CALIFORNIA

Wheatherford v. City of San Rafael

Court of Appeal, First District, Division 1, California - May 22, 2014 - Cal.Rptr.3d - 14 Cal. Daily Op. Serv. 5626

Resident filed a complaint for declaratory and injunctive relief challenging city's and county's enforcement practices with respect to the impoundment of vehicles. The Superior Court dismissed. Resident appealed.

The Court of Appeal held that:

- Resident's payment of sales and gasoline taxes as a consumer did not confer taxpayer standing;
- Resident's payment of fees for services such as water and sewage did not confer taxpayer standing;
- Any disparate treatment based upon wealth was reviewed for rational basis under equal protection clause; and
- Wealth-based classification concerning taxpayer standing to restrain county or city expenditures did not violate equal protection.

MUNICIPAL ORDINANCE - COLORADO

Town of Dillon v. Yacht Club Condominiums Home Owners Association

Supreme Court of Colorado - May 27, 2014 - P.3d - 2014 CO 37

In 2009, the Town of Dillon enacted two municipal ordinances, one authorizing a local road improvement project, and the other concerning parking enforcement on the public right-of-way. Owners of the Yacht Club Condominiums ("YCC") challenged the ordinances. They alleged, among other things, that the ordinances were an unreasonable exercise of the Town's police power because they eliminated the ability of YCC owners and guests to use the Town's rights-of-way near the YCC for overflow parking.

The Supreme Court of Colorado held that, in enacting the two ordinances at issue here, the Town did not abuse its police power or deprive the YCC owners of due process.

An ordinance comports with due process where it bears a reasonable relationship to a legitimate government interest. The ordinances here were within the Town's police power to regulate matters of public health, safety, and welfare. The measures were a reasonable exercise of that power because they were reasonably related to the Town's objectives of improving traffic safety, improving water drainage, and remedying a missing portion of a recreational bike path.

ZONING - CONNECTICUT

Greenwood Manor, LLC v. Planning and Zoning Com'n of City of Bridgeport

Appellate Court of Connecticut - May 27, 2014 - A.3d - 150 Conn.App. 489

Landowner appealed from a decision of the city planning and zoning commission, which amended city's zoning regulations and zoning districts in accordance with city's amended plan of conservation and development, but which did not recommend any change to the zoning of landowner's property. The Superior Court dismissed landowner's appeal. Landowner's petition for certification to appeal was granted.

The Appellate Court, as matters of first impression, held that:

- Landowner was not statutorily aggrieved by city planning and zoning commission's sua sponte revision of city's zoning regulations and zoning districts, which did not alter the zoning of landowner's property in any manner;
- When a zoning commission, as part of its sua sponte application to amend its zoning regulations, refrains from taking action to alter in any manner the zoning classification of a particular property that is not specified in the application as the subject thereof, that property is not "land involved in the decision" of the commission, and thus, the property owner is not entitled to appeal the commission's decision amending its zoning regulations; and
- Landowner was not classically aggrieved by commission's sua sponte revision of city's zoning regulations and zoning districts, since commission's decision did not adversely affect landowner's interests.

IMMUNITY - GEORGIA

Greenway v. Northside Hosp., Inc.

Court of Appeals of Georgia - May 27, 2014 - S.E.2d - 2014 WL 2180172

Dog owner brought negligence action against hospital, sheriff, deputy sheriff, and operator of county animal control shelter arising from euthanization of dogs after owner was admitted to hospital. The Superior Court granted summary judgment in favor of all defendants. Owner appealed. The Court of Appeals reversed and remanded. Defendants filed for writ of certiorari, which was granted. The Supreme Court of Georgia reversed and remanded with direction.

On remand, the Court of Appeals held that fact issue as to whether deputy acted with actual malice and intent to injure owner precluded summary judgment.

EMPLOYMENT - GEORGIA

Smith v. City of Atlanta

Court of Appeals of Georgia - May 21, 2014 - S.E.2d - 2014 WL 2109138

After civil service board upheld termination of former city firefighter based on positive drug test result, firefighter filed petition for writ of certiorari. The Superior Court denied petition. Firefighter filed petition for discretionary appeal, which was granted.

The Court of Appeals held that failure to give drug test as outlined in employer's written policy did not violate firefighter's due process rights.

Employer's administration of drug screen test to city firefighter that was different from test outlined in employer's written policy in effect at time of screening, which resulted in firefighter's termination, did not violate firefighter's due process rights, since firefighter was given multiple notices and opportunities to be heard. After chief medical officer contacted firefighter with positive test result, firefighter accepted offer to have split specimen tested, firefighter was given written notice of his termination, and firefighter had hearing before civil service board and pursued certiorari in trial court.

EMPLOYMENT - LOUISIANA

Bell v. Department of Police

Court of Appeal of Louisiana, Fourth Circuit - May 21, 2014 - So.3d - 2013-1529 (La.App. 4 Cir. 5/21/14)

City police officer who was terminated from her employment following incident in which she drove while intoxicated, crashed into a parked vehicle, and fled the scene of the accident sought review of city police department's termination decision. The City Civil Service Commission Orleans, No. 8047, overturned police department's termination decision and ordered officer's employment reinstated, based upon department's alleged failure to complete its administrative investigation within the statutory time limit. Police Department appealed.

The Court of Appeal held that sixty-day limitations period for appointing authority to complete its administrative disciplinary investigation into city police officer's misconduct was tolled during pendency of criminal investigation into officer's conduct, and thus, 60-day limitations period for administrative investigation did not begin to run until officer criminal proceedings against officer were completed when officer received a nolle prosequi from traffic court.

TAX - NEBRASKA

Conroy v. Keith County Board of Equalization

Supreme Court of Nebraska - May 23, 2014 - N.W.2d - 288 Neb. 196

Tax Commissioner and Property Tax Administrator appealed from Tax Equalization and Review Commission determination that parcels of land owned by Power and Irrigation District but leased to private parties were not subject to property tax.

The Supreme Court of Nebraska held that:

- Department of Revenue had until June 1st to file its appeals from County Board of Equalization determination;
- Commission lacked jurisdiction to consider whether property taxes could be assessed against the lessees, as the lessees were not parties to the action; and
- District's payment in lieu of tax exempted District from liability for property taxes regardless of whether the parcels were used for an authorized public purpose.

LIABILITY - NEW YORK

Scott v. City of New Rochelle

Supreme Court, Westchester County, New York - May 21, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 24131

Suspect's sister brought action against city and individual police officers to recover damages for personal injuries she allegedly sustained when the city's police officers searched her home. Defendants moved to dismiss.

The Supreme Court held that:

- Sister was not required to name the individual officers in her notice of claim;
- Sister provided sufficient notice that a claim for civil assault was being asserted;
- Relation-back doctrine permitted sister to add individual officer as a defendant;
- Fact issues precluded summary judgment on sister's false arrest/false imprisonment claims;
- Officer who did not have any physical contact with sister aside from removing her handcuffs was not liable for assault and battery;
- Fact issue precluded summary judgment on sister's intentional infliction of emotional distress claim against officers; and
- Fact issue precluded summary judgment on officers' qualified immunity defense.

EMPLOYMENT - NEW YORK

McEvoy v. Oyster Bay Fire Co. No. 1

Supreme Court, Appellate Division, Second Department, New York - May 21, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 03688

Volunteer firefighter commenced article 78 proceeding to review determination of fire company's chief officers which, without a hearing, suspended him from active duty for period of one year, and determination of company's disciplinary review board which, after a hearing, reduced penalty to suspension from active duty for period of six months and suspension from social functions for period of another six months. The Supreme Court, Nassau County, granted petition to extent of remitting matter to company to conduct hearing. Company appealed.

The Supreme Court, Appellate Division, held that:

- Firefighter's status as exempt volunteer firefighter, standing alone, did not entitle him to procedural protections under Civil Service Law, but
- Company's failure to hold hearing prior to suspending firefighter violated his due process rights.

LIABILITY - NEW YORK

Stora v. City of New York

Supreme Court, Appellate Division, First Department, New York - May 20, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 03613

Men's shelter resident brought negligence action against city, non-profit organization that ran shelter, and security contractor that provided security services for shelter, seeking damages for injuries sustained when he was shot by another resident. Organization cross-claimed against contractor for contractual indemnification, and cross-motions for summary judgment were filed. The Supreme Court, New York County, granted contractor's motion and denied city's and organization's motions. City and organization appealed.

The Supreme Court, Appellate Division, held that:

- City could not be held liable for resident's injuries;
- Fact issues precluded summary judgment on resident's negligence claim against organization; and
- Fact issues precluded summary judgment on organization's contractual indemnification claim against contractor.

MUNICIPAL ORDINANCE - OHIO

Cleveland v. McCardle

Supreme Court of Ohio - May 28, 2014 - N.E.3d - 2014 -Ohio- 2140

In separate cases, defendants were charged with violation of city ordinance that prohibited them from remaining in public square between hours of 10:00 p.m. and 5:00 a.m. without permit. The Cleveland Municipal Court denied their motions to dismiss. Both defendants entered no contest pleas, and execution of judgments was stayed in both cases pending their appeals. The Court of Appeals reversed and remanded. State filed discretionary appeal.

The Supreme Court of Ohio held that:

- Ordinance was content-neutral and thus would be subjected to intermediate scrutiny, and
- Ordinance did not violate First Amendment guarantee of free speech.

An ordinance establishing a curfew in a public park is constitutional under the First Amendment right to free speech if it is content neutral, is narrowly tailored to advance a significant government interest, and allows alternative channels of speech.

City ordinance, prohibiting persons from remaining in a public square between the hours of 10:00 p.m. and 5:00 a.m. without a permit, was content-neutral, and thus would be subject to intermediate scrutiny in determining whether it violated the First Amendment guarantee of free speech. Ordinance applied to all persons regardless of their message or their activities.

City ordinance, prohibiting persons from remaining in a public square between the hours of 10:00 p.m. and 5:00 a.m. without a permit, did not violate First Amendment guarantee of free speech. Ordinance advanced significant government interest of protecting the safety of those wishing to use the square after hours and protecting city's investment in that property, ordinance was narrowly tailored since it allowed unfettered and unrestricted access when curfew was not in effect, and left open alternative avenues of communication because it excluded adjacent streets, sidewalks, and bus shelters.

WATER LAW - OKLAHOMA

Sinor's Long Bay Marina, LLC v. Wagoner County Rural Water Dist. No. 2

Supreme Court of Oklahoma - May 27, 2014 - P.3d - 2014 OK 43

Two customers of county rural water district brought action contesting the rate charged for providing water to their respective recreational vehicle parks, alleging violations of the Oklahoma Antitrust Reform Act. The District Court entered judgment on jury verdict in favor of customers. Both customers and the district appealed.

The Supreme Court of Oklahoma held that:

- Antitrust Reform Act did not apply to rates charged by a rural water district, and
- Customer's relief to challenge rate charged by district was to seek review first by district, then seek judicial review.

Oklahoma Antitrust Reform Act did not apply to rates charged by a rural water district, where the

Antitrust Act did not apply to all pricing activity, but only the pricing activity of a party that met the definition of "person" as set forth in the Act, this section expressly excluded "the State of Oklahoma, its departments and its administrative agencies" from the definition of person, and the Rural Water Act expressly stated that water districts were agencies of the State.

Pursuant to the Rural Water Act, a customer's sole relief to challenge a rate charged by a rural water district was to seek review by the water district and appeal to district court from any adverse decision by the district of such grievance. A complaint by a customer that a rate was discriminatory would make review of the rate by the district "necessary, convenient and appropriate" within the authority granted to the district by the Act, and the district's further powers to "regulate" and "adjust" rates evinced legislative intent that the district decide such complaints in the first instance.

IMMUNITY - OKLAHOMA

Smith v. City of Stillwater

Supreme Court of Oklahoma - May 20, 2014 - P.3d - 2014 OK 42

Father of motorcyclist who was killed during police pursuit brought wrongful death action against city and county. The trial court dismissed county on grounds of sovereign immunity and granted summary judgment in favor of the City. Father appealed. The Court of Civil Appeals affirmed in part and reversed in part. Father and county petitioned for certiorari review.

The Supreme Court of Oklahoma held that:

- The mere mention of "policy" in father's complaint was insufficient to invoke statutory immunity under the Governmental Tort Claims Act (GTCA), and
- In a matter of first impression, statutory provision that granted exemptions to the traffic laws for authorized emergency vehicles did not provide that law enforcement officers of a state or political subdivision engaged in a police pursuit owed a duty of care to a fleeing suspect.

ZONING - OREGON

Friends of the Hood River Waterfront v. City of Hood River

Court of Appeals of Oregon - May 21, 2014 - P.3d - 2014 WL 2118598

Developer and city sought review of decision of the Land Use Board of Appeals (LUBA) remanding the city's decision granting conditional use and preliminary site plan approval for a waterfront office and hotel development.

The Court of Appeals held that:

- LUBA properly rejected city's interpretation of comprehensive plan provision on development in flood prone areas;
- Comprehensive plan provision regarding building in flood prone areas required developer's proposed waterfront hotel and office building project to meet the requirements of the floodplain overlay zone; and
- Comprehensive plan provision did not require developer to map the 100-year floodplain on the site affected by its proposal.

UTILITIES - OREGON

City of Eugene v. Comcast of Oregon II, Inc.

Court of Appeals of Oregon - May 21, 2014 - P.3d - 2014 WL 2119215

City sued internet service provider (ISP), arguing that city was entitled to collect registration and license fees from ISP for cable modem services under city telecommunications ordinance. The Circuit Court found in favor of ISP. City appealed.

The Court of Appeals held that:

- Cable modem services were subject to fees under ordinance;
- Internet Tax Freedom Act (ITFA) did not bar license fee;
- Even if registration fee was not discriminatory, fee was tax barred by ITFA; and
- City's efforts to enforce license fee did not violate Equal Protection or state constitution.

Internet service provider's (ISP) cable modem service qualified as "transmission for hire" of electronic data within ordinary meaning of those words as used to define telecommunications services under city's telecommunications ordinance, such that ordinance applied to ISP, despite Federal Communications Commission's (FCC) conclusion that such services were not telecommunication services and testimony from ISP's telecommunications expert regarding distinction between transmission services and internet access services. ISP provided its cable modem services in exchange for subscriber fees, FCC based its conclusion on language in federal Telecommunications Act, which was materially different from ordinance, and expert did not offer industry meaning of "transmission for hire."

Federal Internet Tax Freedom Act (ITFA) did not bar city's license fee imposed on internet service provider for its cable modem services under telecommunications ordinance, since license fee was not a tax for purposes of IFTA. Fee was imposed in exchange for using city's right-of-way to provide telecommunications service, and under IFTA, tax was "not a fee imposed for a specific privilege, service, or benefit conferred.

Even if registration fee imposed against internet service provider (ISP) for its cable modem service under city's telecommunication's ordinance was not discriminatory, fee was tax on internet access barred by federal Internet Tax Freedom Act (ITFA). Despite contention that ISP's predecessor had actual notice that fee would apply to cable modem services; city did not make public proclamation that provided notice that it interpreted and applied such a tax to internet access servers, and predecessor's comment that mentioned potential for dual-use technologies did not demonstrate actual notice.

City's efforts to enforce license fee against internet service provider (ISP) for it cable modem service under city's telecommunication ordinance did not violate Equal Protection Clause or state constitutional article governing uniformity of taxation, absent evidence that city's decision to impose license fee amounted to intentional and systematic pattern of discrimination or something akin to fraud.

JURISDICTION - RHODE ISLAND

State v. Morris

Supreme Court of Rhode Island - May 28, 2014 - A.3d - 2014 WL 2208889

Defendant filed motions to suppress evidence obtained by city police detectives after they arrested him while they were outside their jurisdiction. The Superior Court granted most of the motions. The state appealed.

The Supreme Court of Rhode Island held that:

- The extrajurisdictional arrest was unauthorized and in excess of detectives' authority;
- Fourth Amendment did not require exclusion of evidence obtained by detectives after the arrest; and
- Statutory exclusionary rule did not require exclusion of evidence obtained by detectives after the arrest.

EMPLOYMENT - ALABAMA

Joyner v. Town of Elberta

United States District Court, S.D. Alabama, Southern Division - May 16, 2014 - Slip Copy - 2014 WL 2006780

Former Interim Police Chief of the Town of Elberta, Alabama brought an Equal Pay Act ("EPA") lawsuit against the town.

The District Court found that the Interim Chief had established a prima facie case under the EPA because her position as Interim Chief was sufficiently comparable to the position of permanent Police Chief.

However, the court found that the evidence clearly supported that the pay differential between the Interim Chief and the permanent Chief of Police was justified by the prior pay and superior experience of the permanent Chief and that this was a "factor other than sex."

IMMUNITY - CALIFORNIA

Gong v. City of Rosemead

Court of Appeal, Second District, Division 5, California - May 20, 2014 - Cal.Rptr.3d - 14 Cal. Daily Op. Serv. 5496

Developers brought action against city for fraud, extortion, assault and battery, intentional infliction of emotional distress, and promissory estoppel for the alleged tortious conduct of John Tran, a former member of its City Council and former mayor of the City. The Superior Court sustained demurrer without leave to amend. Developers appealed.

The Court of Appeal held that:

- Statute limiting public entities' liability for intentional torts of their elected officials does not create a new cause of action;
- Claims presentation requirements of Government Claims Act apply to claims governed by the statute limiting public entities' liability for intentional torts of elected officials;

- Claims filed by developers did not fairly reflect causes of action in their lawsuit; and
- City was immune from promissory estoppel cause of action for city's failure to approve real estate project.

Developers' claims were subject to the claim presentation requirements and the immunity provisions of the Government Tort Claims Act. Because they failed to satisfy the claim presentment requirements of the Act with respect to their causes of action for fraud and extortion, assault and battery, and intentional infliction of emotional distress, and because the City is immune from their promissory estoppel claim, the trial court properly sustained the City's demurrer.

ZONING - CALIFORNIA

218 Properties, LLC v. City of Carson

Court of Appeal, Second District, Division 8, California - May 14, 2014 - Cal.Rptr.3d - 14 Cal. Daily Op. Serv. 5320

Two mobilehome park operators petitioned for writs of mandate challenging city's denial of applications to convert the parks to resident ownership. The Superior Court directed city to approve the conversions. City appealed.

The Court of Appeal held that:

- City properly denied conversion application based on unanimous survey of residents; but
- City abused its discretion in denying conversion application based on survey of residents showing opposition of majority of respondents; and
- City council could not deny conversion application on basis that owner's Tenant Impact Report (TIR) purportedly was incomplete.

ANNEXATION - COLORADO

Board of County Commissioners of County of Teller v. City of Woodland Park

Supreme Court of Colorado - May 19, 2014 - P.3d - 2014 CO 35

The Board of Commissioners of the County of Teller filed a "Petition for Review of Annexations Pursuant to C.R.S. 31–12–116," seeking the district court's review of the City of Woodland Park's annexation of certain real property.

The District Court denied the City's motion to dismiss for lack of subject matter jurisdiction. The City appealed.

The Supreme Court of Colorado held that:

- The District Court did not have jurisdiction to review the County's petition under section 31–12–116, C.R.S. (2013);
- Section 31–12–116(2)(a)(II) requires a party to file a motion for reconsideration with the governing body of the annexing municipality within ten days of the effective date of an annexation ordinance as a precondition for obtaining judicial review of a municipal annexation; and
- The County did not file a timely motion for reconsideration with the City Council.

Accordingly, the court reversed the district court's order, making the rule absolute, and remanded for further proceedings consistent with the opinion.

LIABILITY - COLORADO

Young v. Brighton School District 27J

Supreme Court of Colorado - May 19, 2014 - P.3d - 2014 CO 32

Student, who slipped and fell in puddle of water that had accumulated on concrete walkway at his elementary school, and his mother brought premises-liability action against school district. The District Court denied school district's motion to dismiss. School district filed interlocutory appeal. The Court of Appeals reversed and remanded with directions. Student and mother petitioned for certiorari review.

The Supreme Court of Colorado held that:

- Waiver provisions in Colorado Governmental Immunity Act (CGIA) are not mutually exclusive;
- Walkway was not, in and of itself, "public facility," for purposes of CGIA's recreation area waiver; and
- Walkway was not component of larger public facility that was the playground.

The CGIA's waiver provisions listed in section 24–10–106(1)(a)–(h) are not mutually exclusive. Rather, because the waivers represent alternative avenues for exposing a public entity to tort liability, more than one waiver may be triggered and analyzed by the trial court depending on the factual circumstances in a given case.

For purposes of recreation area waiver of governmental immunity in Colorado Governmental Immunity Act (CGIA), walkway that ran between elementary school's playground and school building was not, in and of itself, "public facility," as would support conclusion that waiver did not apply regarding claim arising from injuries that student allegedly sustained when he slipped and fell in puddle of water on walkway, although students used walkway as means of accessing playground. Walkway was designed for multiple purposes, and walkway was not designed to promote specific play activity.

For purposes of recreation area waiver of governmental immunity in Colorado Governmental Immunity Act (CGIA), walkway that ran between elementary school's playground and school building was not component of larger public facility that was the playground, and thus waiver did not apply regarding claim arising from injuries that student allegedly sustained when he slipped and fell in puddle of water on walkway. Walkway did not promote broader, overall purpose of children's play in same way that individual components of playground, such as swing set or sand box, did.

COUNTIES - ILLINOIS

Illinois County Treasurers' Ass'n v. Hamer

Appellate Court of Illinois, Fourth District - April 22, 2014 - N.E.3d - 2014 IL App (4th) 130286

County treasurers' association brought declaratory judgment and mandamus action against director of Department of Revenue and state comptroller, alleging department and comptroller failed to pay county treasurers the full amount of mandated annual stipends. The Circuit Court granted summary judgment to department and comptroller. Association appealed.

The Appellate Court held that:

- Judicial branch could compel payment of statutorily-mandated amount of stipends without violating separation of powers, and
- Officer suit exception to sovereign immunity applied.

Judicial branch could compel payment of county treasurers' stipends, in amount required by statute, for particular years without violating separation of powers, even though General Assembly had failed to make sufficient appropriation for payment of stipends. Failure to pay stipends in amount required by statute violated constitutional provision prohibiting a decrease in salary of an elected officer of any unit of local government from taking effect during the term for which that officer was elected.

Officer suit exception to sovereign immunity applied to allow declaratory judgment and mandamus action against director of Department of Revenue and state comptroller by county treasurers' association, seeking to require payment to county treasurers of full amount of mandated annual stipends. Action was not against the state, and association prayed for a judgment declaring that director and comptroller acted in violation of constitution.

MUNICIPAL ORDINANCE - ILLINOIS

Wisam 1, Inc. v. Illinois Liquor Control Com'n

Supreme Court of Illinois - May 22, 2014 - N.E.3d - 2014 IL 116173

City issued a notice of hearing to liquor licensee, charging a violation of a liquor ordinance prohibiting an agent or employee of a licensee from engaging in conduct in or about the licensed premises that was prohibited by federal law. After a hearing, a local commissioner revoked licensee's liquor license. Licensee appealed. The Illinois Liquor Control Commission affirmed. Licensee filed a complaint for administrative review. After a hearing, the Circuit Court affirmed the commission's decision. Licensee appealed. The Appellate Court affirmed. Licensee filed a petition for leave to appeal, which the Supreme Court allowed.

The Supreme Court of Illinois held that:

- Due process did not entitle licensee to relitigate a federal conviction of licensee's agent for conspiring to structure financial transactions from licensee's bank account to evade federal reporting requirements;
- Licensee had a meaningful opportunity to test, explain, and refute city's evidence prior to local commissioner's determination that licensee violated the liquor ordinance; and
- Any error in local commissioner's admission of allegedly inadmissible hearsay was not prejudicial error.

Due process did not entitle liquor licensee, in a license-revocation proceeding on a charge that licensee violated a liquor ordinance prohibiting a licensee's agent from engaging in conduct in or about the licensed premises that was prohibited by federal law, to relitigate a federal conviction of licensee's agent for conspiring to structure financial transactions from licensee's bank account to evade federal reporting requirements. Under the strict-accountability provisions of the Liquor Control Act of 1934, licensee stood in agent's shoes.

CODE ENFORCEMENT - ILLINOIS

Village of Lake in Hills v. Niklaus

Appellate Court of Illinois, Second District - May 15, 2014 - N.E.3d - 2014 IL App (3d) 130654

Village filed petitions to enforce administrative adjudication orders finding resident liable for various municipal ordinance violations, and assessing fines against resident. The Circuit Court denied petitions. Village appealed.

The Appellate Court held that:

- Administrative adjudication order entered by a hearing officer of a home-rule municipality may be enforced in circuit court, and
- Method attempted by village to initiate enforcement was appropriate under enforcement provision in Municipal Code.

RURAL IMPROVEMENT ZONE - IOWA

Kilgore v. Iowa State Appeal Bd.

Court of Appeals of Iowa - May 14, 2014 - Slip Copy - 2014 WL 1976868

Kevin Kilgore was one of twelve signatories to a petition to protest the Sun Valley Rural Improvement Zone ("RIZ") budget for fiscal year 2013. The Iowa State Appeal Board ("Board") concluded the petition to protest lacked the requisite number of signatures because only two of the signatories owned property in the RIZ and therefore did not schedule a protest hearing.

Kilgore argued that all eligible voters in the county were authorized to sign a budget protest petition

protesting the budget. He asserted the requirement in Iowa Code section 384.195 that only "persons affected by the budget" may protest the budget includes any resident of the county and not just those residents who own property or reside within the RIZ.

Kilgore filed a petition for judicial review in the district court, and the Board's decision to deny the budget-protest hearing was affirmed by the district court.

On appellate review, the Court of Appeals agreed the protest petition lacked the requisite number of signatures, and therefore affirmed the ruling of the district court.

Only those persons "in the municipality" are qualified to sign the petition, and the word "municipality" in the statute necessarily refers to the municipality which proposes the budget, expenditure. The statute specifically excludes "county" from the definition of "municipality."

ZONING - LOUISIANA

Cronley v. Board of Zoning Adjustments

Court of Appeal of Louisiana, Fifth Circuit - May 14, 2014 - So.3d - 13-789 (La.App. 5 Cir. 5/14/14)

Applicants filed suit, seeking reversal of the zoning board's denial of their request for a variance to allow them to park their recreational vehicle (RV) on the side of their home to assist their disabled child's needs. The District Court reversed and granted a variance. Zoning board appealed.

The Court of Appeal held that:

- Trial judge did not err by allowing applicants to present additional testimony, and
- Applicants failed to establish that the zoning board's decision was arbitrary, capricious, or an abuse of discretion.

Applicants failed to establish that the zoning board's decision to deny them a variance to allow them to park their recreational vehicle on the side of their home to assist their disabled child's needs was arbitrary, capricious, or an abuse of discretion. Record of proceedings did not support a finding that the variance would positively affect neighborhood prosperity and welfare, and while the applicants certainly had shown a hardship due to their child's medical condition, they had not shown that circumstances special to the property created the hardship.

SIGNAGE - MARYLAND

Clear Channel Outdoor, Inc. v. Mayor and City Council of Baltimore

United States District Court, D. Maryland - May 19, 2014 - Not Reported in F.Supp.2d - 2014 WL 2094028

The City of Baltimore enacted an ordinance imposing a charge on outdoor advertising displays. Clear Channel Outdoor, Inc., an outdoor media company, alleged that the ordinance imposing the

charge impermissibly regulated commercial speech in violation of the First and Fourteenth Amendments to the United States Constitution.

Principally at issue was (1) whether the charge constituted a tax under the Tax Injunction Act (the "TIA"), 28 U.S.C. § 1341 (2012), and (2) whether charging outdoor advertising displays directly advanced the government's interests in traffic safety and aesthetics as required by the First Amendment.

The District Court found that the ordinance is a fee, not a tax, for the purposes of the TIA. Regarding the First Amendment issue, the court found a legitimate question as to whether charging displays directly advances the government's interests in traffic safety and aesthetics, denying the City's motion to dismiss.

EMINENT DOMAIN - NEBRASKA

Hike v. State Department of Roads

Supreme Court of Nebraska - May 9, 2014 - N.W.2d - 288 Neb. 60

In eminent domain proceeding, after parties were unable to negotiate pre-taking fair market value of property, jury trial was held to determine compensation. The District Court entered judgment on jury's verdict for owners for $53,209. Owners appealed.

The Supreme Court of Nebraska held that:

- Evidence of Nebraska Department of Roads (NDOR) intent to convert United States highway, which adjoining property owners accessed solely by easement over neighbor's land that connected to driveway that led to highway, into freeway at least ten years prior to taking, was relevant to determination of fair market value of property;
- Testimony of NDOR's appraiser did not mislead jury into believing that NDOR did not have to compensate owners for taking of easement;
- Appraiser's testimony as to pre-taking fair market value was not based on misapplication of law;
- Appraiser's consideration of State's future land use plan in calculating pre-taking value of property, although impermissibly conjectural and speculative, did not render determination of pre-taking fair market value unreliable;
- NDOR's former staff appraiser's proposed testimony that he told owners that property was suitable for commercial use and about comparable commercial sale was inadmissible evidence of conduct or statements made in compromise negotiations;
- Structural damage to owners' property caused by NDOR's post-taking improvement to highway was not relevant to determination of property's pre-taking fair market value;
- Evidence did not warrant instructions prohibiting jury from considering any change in fair market value of property caused by public improvement or by knowledge that improvement would be constructed or that owners' access to improvement would be taken or relating to taking of new permanent easement;
- Owners were not prejudiced by trial court's refusal of proffered instructions regarding nature of permanent easement and its compensability; and
- Comment by attorney for NDOR during closing argument that "[w]e're the Nebraska Department

of Roads[,] not the Nebraska State Lottery," although improper hyperbole, did not warrant mistrial.

EMINENT DOMAIN - NEW YORK

Sherman v. Town of Chester

United States Court of Appeals, Second Circuit - May 16, 2014 - F.3d - 2014 WL 1978726

Developer brought state court action against town, asserting town prevented him from developing his land by employing a decade of unfair and repetitive procedures. Town removed the action. Subsequently, the District Court granted town's motion to dismiss. Developer appealed.

The Court of Appeals held that:

- Developer's takings claim was ripe under *Williamson County Regional Planning Commission v. Hamilton Bank*, even though town had not yet reached an official decision concerning his application for subdivision approval, and
- Developer failed to state claim based on § 1981.

Developer's takings claim against town, including that repeated zoning changes prevented him from developing his land, was ripe under *Williamson County Regional Planning Commission v. Hamilton Bank*, even though town had not yet reached an official decision concerning his application for subdivision approval, where seeking a final decision from the town would be futile because the town had used unfair and repetitive procedures for over ten years to avoid a final decision, and the town had removed the case from state court.

Developer's allegations that town discriminated against him because he was Jewish and "municipal Defendants" knew he was Jewish, that he heard town citizens express fear at a town board meeting that his proposed subdivision might become a "Hassidic Village," and that a model home was vandalized with a spray-painted swastika were insufficient to state claim against town based on § 1981, absent allegations linking town officials to the conduct and allegations that any similarly situated non-Jews were treated differently.

EMINENT DOMAIN - NEW YORK

Rose Park Place, Inc. v. State

Supreme Court, Appellate Division, Fourth Department, New York - May 2, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 03070

Claimants commenced proceeding, seeking damages for diminished value of approximately 16 acres of what they characterized as "remaining land" following state's taking of approximately 1.22 acres of land from what was their 17.3–acre parcel. Following trial, the Court of Claims entered judgment awarding claimants consequential damages with respect to what the court concluded was 12.835

acres of that parcel, which included 4.63 acres of land sold by claimants to a third party months before the taking of the 1.22 acres. State appealed.

The Supreme Court, Appellate Division held that consequential damages are unavailable relative to property that is sold prior to a planned taking and from which no land is ultimately appropriated.

SIGNAGE - PENNSYLVANIA

Nittany Outdoor Advertising, LLC v. College Tp.

United States District Court, M.D. Pennsylvania - May 20, 2014 - Slip Copy 2014 - WL 2094335

Nittany Outdoor Advertising, LLC, and Stephanas Ministries filed a complaint seeking redress of College Township's denial of Nittany's applications to post three billboards bearing the Ministries's messages along East College Avenue.

Plaintiffs claimed that the Township's Sign Ordinance, under which the Township Zoning Officer denied Nittany's applications, violated the First Amendment of the United States Constitution and the Constitution of the Commonwealth of Pennsylvania. Plaintiffs sought damages as well as declaratory, injunctive and other equitable relief.

In support of its motion for summary judgment and permanent injunctive relief, Nittany argued that the Township's pre-amendment Sign Ordinance and amended Sign Ordinance violated the First Amendment and the Pennsylvania Constitution for multiple reasons, including the Ordinance's failure to meet the strict scrutiny standard applicable to content-based regulations, the Ordinance's preference for commercial over noncommercial speech (together, Nittany's "substantive" challenges), and the Ordinance's vesting of unbridled discretion in Township officials.

The District Court held that:

- Nittany lacked standing to pursue its substantive challenges to the Township's pre-amendment Sign Ordinance;
- Nittany's substantive challenges to the Township's amended Sign Ordinance fail on the merits;
- Nittany had standing to mount a facial challenge to the Ordinance on the grounds that the Ordinance invests Township officials with unbridled discretion;
- The Sign Ordinance vested unbridled discretion in Township officials; and
- Those aspects of the Ordinance implementing a permitting scheme, as well as the Ordinance's variance provision, are unconstitutional, and the court will enjoin enforcement of the permitting scheme in its current form.

LIABILITY - SOUTH DAKOTA

Gabriel v. Bauman

Supreme Court of South Dakota - May 21, 2014 - N.W.2d - 2014 S.D. 30

Driver sued volunteer firefighter and rural fire protection district after driver was injured when his vehicle was struck by firefighter's personal truck as firefighter was speeding to a fire station to respond to a fire, asserting that firefighter's conduct was willful, wanton, or reckless and that fire district was negligent and was vicariously liable for firefighter's negligence. The Circuit Court granted summary judgment to firefighter and fire district. Driver appealed.

The Supreme Court of South Dakota of held that:

- Firefighter did not act willfully, wantonly, or recklessly, and thus firefighter did not lose immunity from liability for emergency care under the Good Samaritan statute, and
- The Good Samaritan statute does not protect the acts of a fire department or fire district.

Volunteer firefighter whose personal truck collided with a vehicle that turned in front of the truck as he drove in excess of the speed limit to a fire station to respond to a fire did not act willfully, wantonly, or recklessly, and thus firefighter did not lose immunity from liability for emergency care under the Good Samaritan statute, absent evidence that firefighter consciously realized, before it was too late to avoid the collision, that vehicle's driver would in all probability turn in front of him.

INVERSE CONDEMNATION - TEXAS

City of Austin v. Liberty Mut. Ins.

Court of Appeals of Texas, Austin - May 16, 2014 - S.W.3d - 2014 WL 2041867

A wildfire that started on September 4, 2011, in a vacant lot in western Travis County and spread into the surrounding neighborhood, causing personal injury and extensive property damage. A group of homeowners and insurers brought actions against the city as subrogation claims on behalf of a number of their insured property owners. Plaintiffs asserted that the City was responsible for the fire, which they allege started when the electric utility's overhead distribution lines came in contact with each other during high winds, causing electrical arcing, which in turn caused "molten metal globules" to fall to the ground and ignite dry vegetation.

For plaintiffs' inverse condemnation claims to be valid, the damage from the fire had to be the almost-certain result of the City's fiscally driven decision to curtail inspection of its overhead power lines. The City had to know at the time it made the decision that the chain of events was "substantially certain" to result from that decision.

The Court of Appeals concluded that the facts pleaded by appellees did not reasonably permit a conclusion that the fire and resulting damage were substantially certain to occur. The relevant power lines, even if not inspected, were not "almost certain" to become so slack that they would contact each other in high winds. Even if they became slack enough to allow for contact, it was not "almost certain" that those wires would actually come in contact with each other in high winds. And even if they did come in contact with each other, it was not "almost certain" that such contact would cause electrical arcing sufficient to create molten metal globules that would then fall to the ground. Nor was it almost certain that any molten globules that fell would fall onto vegetation as opposed to a less flammable surface such as a roadway or parking lot or, for that matter, on green vegetation

after the current drought has ended.

"We conclude that the series of events that connects the City's maintenance decision to the property damage, while arguably foreseeable, was not an almost-certain result of or necessarily incident to that decision. At best, appellees' factual allegations would show that the City's conduct furnished a condition that made property damage a substantial risk. That is far different, however, from being the substantial certainty required for a valid takings claim. Toleration of a dangerous condition may or may not set the stage for a subsequent disaster, yet, as discussed above, only if the event causing damage is the substantially certain result of the conduct can the City be charged with the requisite level of intent to constitute a taking. The fact that a disaster happens does not, by virtue of its occurrence, mean that it was a substantial certainty from the outset."

ZONING - WASHINGTON

Miotke v. Spokane County

Court of Appeals of Washington, Division 2 - May 20, 2014 - P.3d - 2014 WL 2095072

County resident and neighborhood alliance sought review of a final decision and order of the regional growth management hearings board, which invalidated county resolution amending county's comprehensive plan to expand county's urban growth area, on grounds that ordinance failed to comply with relevant provisions of the Growth Management Act (GMA), and a subsequent determination by the board that county's repeal of invalidated ordinance was sufficient to establish GMA compliance. The Superior Court affirmed the board's determinations. Resident and neighborhood alliance appealed.

The Court of Appeals held that:

- After county resolution amending county's comprehensive plan to expand urban growth area was declared invalid for noncompliance with GMA, fact that certain property owners had acquired vested rights to develop urban projects did not excuse county from its obligation to comply with relevant provisions of GMA;
- County failed to carry its burden to establish that existing county development regulations adequately fulfilled GMA's goals pertaining to transportation and public services, so as to bring county into compliance with GMA; and
- County's action in repealing the invalid resolution, without more, was not sufficient to establish compliance with GMA.

Although property owners who obtained permits to pursue urban development pursuant to county resolution that amended county's comprehensive plan to expand urban growth area retained the right to develop the land, under the vested rights doctrine, after the regional growth management hearings board invalidated the resolution under which the permits were issued based on the ordinance's noncompliance with the Growth Management Act (GMA), the vested rights doctrine did not excuse the county from its obligation to take action to comply with the GMA's planning goals after the disputed resolution was declared invalid. Vested rights doctrine protected landowners and developers from unforeseeable changes in rules and regulations, but doctrine did not shield county from liability for its own errors in the process of planning for urban growth and enactment of its resolution.

Following determination of the regional growth management hearings board that county resolution amending county's comprehensive plan to expand urban growth area was invalid, on grounds that resolution interfered with goals set forth in Growth Management Act (GMA) regarding urban growth, sprawl reduction, transportation, and public services, county's action in repealing the invalid resolution, without more, was not sufficient to demonstrate county's compliance with GMA goals. Urban development rights had vested when property owners filed permit applications for urban development in period of time between ordinance's enactment date and date on which it was declared invalid, such that, even though county repealed challenged ordinance and reverted land to rural designation, certain urban development remained in place, and county was required to specifically demonstrate how GMA goals could be met despite presence of urban development in rural area of county.

TAX - WASHINGTON

City of Wenatchee v. Chelan County Public Utility Dist. No. 1

Court of Appeals of Washington, Division 3 - May 20, 2014 - P.3d - 2014 WL 2090613

City brought declaratory judgment action against county public utility district, seeking determination that city was authorized to impose utility tax on domestic water sales. The Superior Court entered judgment in favor of district. City appealed.

The Court of Appeals held that:

- State constitutional provisions governing taxing authority did not limit legislative grant of taxing authority;
- District's domestic water sales were proprietary function, rather than governmental function;
- Governmental immunity did not preclude taxation of district's proprietary function; and
- Express legislative authorization was only required to impose tax on municipality's governmental function.

Utility tax for domestic water sales that city levied on county public utility district, a municipal corporation, was on activities that were proprietary (in whole or in large part), rather than governmental, and therefore city had authority, pursuant to statute that granted code cities broad general authority to impose excise taxes for regulation or revenue, to levy and collect the tax from district. Statute granted to code cities authority to impose excises for revenue in regard to all kinds of business and any other lawful activity, and in the erection and operation of waterworks and the like, a municipal corporation acted as a business concern.

BANKRUPTCY - WEST VIRGINIA

In re Fairmont General Hosp., Inc.

United States Bankruptcy Court, N.D. West Virginia - May 19, 2014 - Slip Copy - 2014 WL 2082298

Fairmont General Hospital, Inc. (the "Debtor"), and District 1199 West Virginia/Kentucky/Ohio,

Service Employees International Union ("District 1199"), requested a declaration from the court that their November 1, 2013 Collective Bargaining Agreement (the "CBA") was executed in the ordinary course of the Debtor's business under 11 U.S.C. § 363(c)(1) and was consequently an effective agreement under the Bankruptcy Code.

UMB Bank, N.A., as successor indenture trustee with respect to certain hospital revenue bonds (the "Indenture Trustee"), objected on the basis that that the CBA required court approval because the Debtor was in Chapter 11 and sought to sell substantially all its assets. The Indenture Trustee asserted that court approval of the CBA should be denied on the grounds that the existence of the CBA might result in a lower sales price for the Debtor's business as potential purchasers might not desire to purchase a business with a unionized workforce. In addition, the Indenture Trustee stated that the CBA constituted a settlement agreement under Fed. R. Bankr.P. 9019 which must be approved by the court.

The court found that the CBA was executed in the ordinary course of the Debtor's business and was effective under § 363(c)(1) without obtaining court approval. The court also found that the CBA did not constitute a settlement as contemplated under Rule 9019.

TAX - ALASKA

BP Pipelines (Alaska) Inc. v. State, Dept. of Revenue

Supreme Court of Alaska - May 9, 2014 - P.3d - 2014 WL 1873734

Oil pipeline owners and municipalities sought review of decision of the State Assessment Review Board valuing pipeline for property tax purposes. After ruling on the merits of the case, the Superior Court determined that municipalities were prevailing parties and awarded them attorney's fees and costs. Pipeline owners appealed.

The Supreme Court of Alaska held that:

- Civil rules governing attorney's fees and costs applied, rather than appellate rule;
- Municipalities' appeals were against owners, rather than State and Board;
- Trial court was not required to allocate fees and costs among appeals;
- Municipalities received non-money judgment, rather than money judgment; and
- 15% enhancement of award of attorney's fees to municipalities was warranted.

Civil rules governing awards of costs and attorney's fees to prevailing parties, rather than appellate rule governing such awards, applied in trial de novo on judicial review of decision of the State Assessment Review Board valuing an oil pipeline for property tax purposes, where the rules governing procedure in the superior court applied in a trial de novo.

Municipalities appeals from State Assessment Review Board's valuation of oil pipeline for property tax purposes were against pipeline owners, rather than the State and the Board, and therefore municipalities prevailed against pipeline owners so as to entitle municipalities to award of attorney's fees and costs from owners in trial de novo concerning review of valuation; owners, because they filed an appeal, were appellants, and each of the municipalities was automatically deemed an appellee, regardless of how parties are formally arranged, fees and costs could be awarded based on actual adversity of interests, and municipalities and owners were clearly aligned against one another on every substantive issue.

ZONING - INDIANA

Carroll Creek Development Co., Inc. v. Town of Huntertown

Appellate Court of Indiana - May 9, 2014 - N.E.3d - 2014 WL 1873702

Real estate developer that constructed water main which connected to town's water service facility, for the purpose of serving its own real estate and other surrounding real estate, brought breach of contract action against town, alleging that town breached its contractual obligations by failing to collect and pay to developer connection fees from certain real estate owners that had connected to the water main, and seeking an accounting of all real estate owners who had connected to water main and amount of fees that town had charged them.

The Appellate Court held that, under plain language of contract, town was required to collect and remit to developer connection fees from real estate owners within contractually-defined excess area who connected to the water main in order to serve land adjacent to the excess area.

Under provision of water main construction contract requiring that town, which agreed to have real estate developer construct a water main and connect it to the town's water service facility, to collect and remit to developer "connection charges" from present or future owners of real estate within the contractually-defined excess area who connected to the water main, "whether by direct tap or through the extension or connection of lateral lines to service the real estate situated in the excess area or adjacent to the excess area," town was required to collect and remit to developer connection charges from those real estate owners who owned real estate in the excess area and who connected to the water main in order to serve land adjacent to the excess area; plain language of contract provided that owners in excess area who connected to water main to serve either real estate in the excess area or real estate adjacent to the excess area were subject to connection charge.

TAX - LOUISIANA

Thomas v. Bridges

Supreme Court of Louisiana - May 7, 2014 - So.3d - 2013-1855 (La. 5/7/14)

Individual taxpayer who was the sole member of Montana limited liability company (LLC) that purchased recreational vehicle sought review of decision of Board of Tax Appeals finding that he was personally liable for sales tax from purchase of recreational vehicle. The District Court reversed, and Department of Revenue appealed. The Court of Appeals affirmed and Department petitioned for certiorari review.

The Supreme Court of Louisiana held that the Department of Taxation had no legal basis for assessing sales tax for the purchase of recreational vehicle against member of Montana LLC.

Department of Taxation had no legal basis for assessing sales tax for purchase of recreational vehicle against member of Montana LLC individually and in derogation of the protections afforded to

members of LLCs, Louisiana's obligation to provide full faith and credit to the laws of Montana, and member's constitutional right to due process, regardless of whether member and his wife, Louisiana residents, signed the purchase agreement. Only members can act on behalf of the LLC, which cannot provide a signature on its own, the LLC was clearly listed as the buyer at the top of the executed purchase agreement, and at no time did the Department apply Montana law in determining whether the veil of the LLC could be pierced.

Use of particular business entities to avoid taxes and other liabilities, far from being fraudulent, is a common and legal practice. The legal right of a taxpayer to decrease the amount of what would otherwise be his taxes, or altogether avoid them by means which the law permits, cannot be doubted.

ZONING - LOUISIANA

City of Baton Rouge/Parish of East Baton Rouge v. Myers

Supreme Court of Louisiana - May 7, 2014 - So.3d - 2013-2011 (La. 5/7/14)

City brought action seeking to compel property owner to cease his alleged violation of city's unified development code, and property owner made a reconventional demand for declaratory judgment, alleging development code's restrictive definition of "family" was unconstitutional. Following a bench trial, the District Court declared that the zoning law's definition of "family" was unconstitutional and therefore unenforceable.

The Supreme Court of Louisiana held that:

- Property owner lacked standing to challenge the constitutionality of city ordinance's definition of "family" on the basis it violated the rights of others;
- Two clauses in city code that defined "family" were not in conflict or unconstitutionally vague;
- Application of city code did not require homeowner to inquire into the familial status of prospective tenants in violation of the Fair Housing Act (FHA);
- Evidence was insufficient to support property owner's claim that he had been unconstitutionally deprived of some part of his economic interest in his property because his potential profit as a lessor had been impaired by city's unified development code's zoning restrictions;
- The challenged city code provision was only required to be rationally related to a legitimate state interest, rather than narrowly tailored to further a compelling state interest; and
- Statutory provision that governed delays for taking suspensive appeals should have been applied to city's appeal of the declaratory judgment on the constitutionality of city zoning ordinance.

TAX - MASSACHUSETTS

Beacon South Station Associates v. Board of Assessors of Boston

Appeals Court of Massachusetts, Suffolk - May 14, 2014 - N.E.3d - 85 Mass.App.Ct. 301

Lessee that leased real property from Massachusetts Bay Transportation Authority (MBTA) appealed decision of city board of assessors, refusing to abate real estate taxes. The Appellate Tax Board

granted the abatement, and board of assessors appealed.

The Appeals Court held that:

- Property was exempt under statute exempting all property owned by MBTA from taxation, and
- Improvements on property were not lessee's separately taxable property.

LIABILITY - MASSACHUSETTS

Estate of Gavin v. Tewksbury State Hosp.

Supreme Judicial Court of Massachusetts, Middlesex - May 15, 2014 - N.E.3d - Mass.

Patient's estate brought wrongful death action against state hospital and against commonwealth, seeking damages arising from patient's death allegedly caused by negligence of hospital staff. The Superior Court dismissed the complaint, and estate appealed. The Appeals Court affirmed. Estate applied for further appellate review.

The Supreme Judicial Court of Massachusetts held that estate was a "claimant" entitled under Tort Claims Act to make presentment of claim.

Patient's estate was a "claimant" entitled under Massachusetts Tort Claims Act to make presentment to Attorney General and state hospital of wrongful death claim arising from patient's death allegedly caused by negligence of staff at state hospital, even though estate lacked statutory authority to bring wrongful death action. Presentment by estate, rather than executor or administrator of the estate, did not prevent commonwealth from investigating claim or initiating settlement negotiations, since there was no question about the identity of the individuals behind the claim presented by the estate.

BONDS - MISSOURI

Cromeans v. Morgan Keegan & Co., Inc.

United States District Court, W.D. Missouri, Central Division - May 13, 2014 - Slip Copy - 2014 WL 1901197

After failed issuance, bondholders brought class action against the underwriter, Morgan Keegan, alleging material misrepresentations and omissions in the Official Offering Statement.

Morgan Keegan filed a Third–Party Complaint against counsel to underwriter and Industrial Development Authority, Cunningham, Vogel & Rost, P.C. (CVR), seeking indemnity and contribution from CVR in the event that Morgan Keegan was found liable to the bondholders for any misrepresentations in the Official Statement.

The primary, and ultimately dispositive, question presented on CVR's motion to dismiss the Third-Party Complaint was whether Morgan Keegan had plausibly alleged that CVR was liable directly to

the Bondholders for the conduct that was the basis of Morgan Keegan's claims for indemnity and contribution.

Morgan Keegan claimed that CVR was liable to the bondholders for misrepresentations, express or by omission, that CVR allegedly made to Morgan Keegan. Morgan Keegan also argued that CVR owed a general duty to the bondholders to see that the Official Statement contained accurate information.

The District Court held that:

- CVR was not liable to the bondholders for negligent representation, as CVR had no way of knowing that Morgan Keegan might relay any allegedly misleading information directly to the bondholders to guide them in the transaction;
- CVR was not liable to the bondholders for fraudulent misrepresentation, as the record demonstrated that CVR believed Morgan Keegan was conducting its own due diligence review that involved verifying the accuracy of the information CVR had previously conveyed to Morgan Keegan;
- Morgan Keegan failed to state a claim for fraudulent omission because Morgan Keegan had not alleged that CVR omitted any information with the intent or expectation that its omission would influence the bond purchasers' investment decision;
- Morgan Keegan's conclusory assertion that CVR owed a duty to the bondholders to ensure the accuracy of the entire Official Statement, whether premised on CVR's purported ultimate authority over this document or otherwise, lacked a plausible basis in fact or law; and
- CVR was not jointly and severally liable for the bondholders' claims under the Missouri Blue Sky Law.

BONDS - NEW JERSEY

Committee of Petitioners for Repeal of Ordinance Number 522 (2013) of Borough of West Wildwood v. Frederick

Superior Court of New Jersey, Appellate Division - May 15, 2014 - A.3d - 2014 WL 1923275

In May 2013, the Borough of West Wildwood passed an ordinance authorizing the issuance of bonds to finance various capital improvements. Following publication of the ordinance, the Committee of Petitioners for the Repeal of Ordinance No. 522 (2013) of the Borough of West Wildwood, sought repeal of the ordinance via referendum. The Committee procured sixty-two signatures and submitted the petition to the Acting Municipal Clerk of the Borough. The Clerk rejected the petition, identifying specific notarial defects and explaining plaintiff failed to comply with the applicable statute, which mandated names and addresses of five committee members be affixed to the petition when circulated. Plaintiff resubmitted the petition after correcting the noted deficiencies; however, Frederick again returned the petition stating the corrections were insufficient to cure the defects.

Committee filed a complaint in lieu of prerogative writs, demanding presentation of the referendum to voters in the November 2013 election. Following a hearing, the trial court entered judgment directing the Borough to place the question challenging the ordinance on the 2013 general election ballot. The Borough's request to stay the order was granted.

On appeal, the Borough challenge the Law Division's consideration of the plaintiff's complaint,

arguing the protest was untimely. Alternatively, Borough challenged the judge's findings on two issues: first, that the Committee not required to affix the names and addresses of five members on the petition prior to its circulation; and second, that the Clerk's rejection of the petition on the basis of notarial errors was arbitrary and capricious.

The appeals court affirmed, concluding a voter protest of a bond ordinance is governed by the procedures set forth in the Home Rule Act, which does not require listing the Committee of Petitioners found in the referendum provisions governing ordinance challenges, other than those for capital improvement indebtedness, in a municipality formed under the Walsh Act.

TAX - NEW JERSEY

Red Bull Arena, Inc. v. Town of Harrison

Superior Court of New Jersey, Appellate Division - May 12, 2014 - Not Reported in A.3d - 2014 WL 1875318

Red Bull Arena, Inc. appealed from the grant of summary judgment to Town of Harrison, and from the dismissal of its complaints, which sought to vacate local property tax assessments on land owned by The Harrison Redevelopment Agency and on a stadium Red Bull constructed on the land. Red Bull contended that the land and stadium were exempt from local property taxes pursuant to the County Improvement Authorities Law and the Local Redevelopment and Housing Law.

The appeals court found that operation of the stadium did not serve the specific public purposes described in the Authorities Law or Redevelopment Law, the statutes pursuant to which the stadium was constructed.

Unlike the Sports Authority Law, neither the Authorities Law nor Redevelopment Law authorize the Authority or Agency to construct, acquire, own, manage, construct, or operate a sports stadium for professional athletic teams. Rather, the Authority and Agency are only authorized to redevelop the redevelopment area, not the actual operation of a stadium or any other commercial establishment.

Red Bull's actual operation of the stadium exceeded the Authority's and Agency's statutory mandates. Accordingly, because the property was not used for a statutorily authorized public purpose, it was not tax exempt.

LIABILITY - NEW YORK

Williams v. Weatherstone

Court of Appeals of New York - May 13, 2014 - N.E.3d - 2014 N.Y. Slip Op. 03425

Mother brought action on behalf of her minor daughter against motorist and school district, seeking recovery for injuries daughter sustained when she was struck by vehicle while waiting for school bus. The Supreme Court, Onondaga County, denied school district's motion for summary judgment. School district appealed. The Supreme Court, Appellate Division, affirmed as modified. School district appealed.

The Court of Appeals held that:

- Student's injuries did not occur during the act of busing itself;
- School district owed student no duty at time of accident;
- Bus driver's act of turning bus around was not the functional equivalent of bus driver waving or signaling to student to cross street; and
- School district did not owe special duty to student based on her individualized education program (IEP).

ANNEXATION - NEW YORK

City of Fulton v. Town of Granby

Supreme Court, Appellate Division, Fourth Department, New York - May 9, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 03371

City filed petition seeking a determination that proposed annexation of industrial and vacant land from town was in the public interest.

After court-designated referees issued report concluding that annexation was in the public interest, the Supreme Court

Annexation would benefit the city, as land housed city's wastewater treatment facility, which was a vital component of the city's municipal utility infrastructure, reduce the city's tax liability, benefit territory itself, as city, not town, provided municipal services, and enable city to stabilize rates it charged to residents and businesses in the area, including the town, which could spawn industrial growth and development in the surrounding area.

LIABILITY - NEW YORK

Bakioglu v. Tornabene

Supreme Court, Appellate Division, Second Department, New York - May 7, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 03219

Police officer and his wife, suing derivatively, brought action against city, police department, and others to recover for injuries sustained in motor vehicle accident. The Supreme Court, Kings County, granted plaintiffs' motion for leave to serve and file a late notice of claim, and city and department appealed.

The Supreme Court, Appellate Division, held that officer could serve late notice of claim upon city and police department.

Police officer could serve late notice of claim upon city and police department for personal injuries sustained in motor vehicle accident while on duty and riding in department vehicle, even though officer had no reasonable excuse for not timely filing claim, where city and department had actual notice of essential facts constituting claim well within 90–day period for serving notice of claim,

department conducted prompt investigation into matter and possessed pertinent records from investigation, and there was no substantial prejudice to city defendants in maintaining defense.

BONDS - NEW YORK

Oppenheimer AMT-Free Municipals v. ACA Financial Guar. Corp.

Supreme Court, Appellate Division, First Department, New York - September 3, 2013 - 110 A.D.3d 280 - 971 N.Y.S.2d 95 - 2013 N.Y. Slip Op. 05768

Municipal bond holders brought action against financial guaranty insurer, seeking declaration that insurer was still obligated to pay in the event that issuer, which had filed for Chapter 9 bankruptcy, defaulted. Bond holders and insurer filed cross-motions for summary judgment. The Supreme Court, New York County, granted bond holders' motion and denied insurer's motion. Insurer appealed.

The Supreme Court, Appellate Division, held that financial guaranty insurer was not relieved of its obligation to make payments to municipal bond holders in the event of issuer's default by cancellation of original bonds and replacement with new bonds as result of restructuring plan in issuer's Chapter 9 bankruptcy proceedings.

Certificates of bond insurance (CBI) required insurer to unconditionally guarantee payment and were noncancellable, with no exclusion for bankruptcy. Bankruptcy filing was an event of default under trust agreement and served to accelerate holders' claims against issuer, and restructuring of bonds and reissuance in lower principal amount with longer payment period represented that holders sustained a loss.

ASSESSMENTS - OHIO

Rhea v. Federer

Court of Appeals of Ohio, Second District, Clark County - May 9, 2014 - Slip Copy - 2014 - Ohio- 1979

Trustee appealed from a summary judgment rendered in favor of County Auditor, contending that the trial court erred in finding, as a matter of law, that the Trust lacked standing to bring a declaratory judgment action challenging the validity of assessments made on real property on which the Trust has the first and best lien.

The facts in this case involved a mortgagee with a first and best lien on property subject to a mortgage in default, seeking a declaration regarding a municipal ordinance imposing a substantial assessment against that property.

The Court of Appeals concluded that the Trust had alleged an injury by the Auditor's conduct and that this injury was likely to be redressed by the relief requested in the complaint. The facts involved a mortgage that had been declared the first and best lien on a property that allegedly was inadvertently taxed to the point of making the property virtually worthless. Based on the record, the court concluded that the Trust had met the constitutional minimum of standing.

TAX - OHIO

Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision

Supreme Court of Ohio - May 15, 2014 - N.E.3d - 2014 -Ohio- 1940

Taxing authority appealed decision of county board of revision determining tax value of taxpayer's 21 condominium units. The Board of Tax Appeals (BTA) reversed, and taxpayer appealed. The Supreme Court of Ohio reversed. Taxing authority filed motion for reconsideration.

The Supreme Court of Ohio held that valuation of units was required to be based on value of individual units rather than bulk appraisal.

Under statute deeming each unit of a condominium property to be a separate parcel for taxation purposes, bulk appraisal of taxpayer's 21 condominium units, based on what a single investor would pay for all units in bulk sale, was not valid for purposes of determining tax value of units.

Tax valuation of taxpayer's 21 condominium units was required to be determined according to price units would sell for individually on open market, not according to what a single investor would pay in a bulk sale of all units. Appraiser's report stated that highest and best use of the properties as owner-occupied residential condominiums, taxpayer continuously marketed and sold the condominiums individually, at no point did taxpayer list the 21 units as a bulk-sale investment property, and bulk appraisal did not assess true value of the units but instead improperly predicted actual sale prices and then discounted those sale prices to arrive at a cash-in-hand valuation.

EMPLOYMENT - OKLAHOMA

Brewer v. City of Seminole

Supreme Court of Oklahoma - May 13, 2014 - P.3d - 2014 OK 41

Terminated probationary police trainee brought action against city. The District Court certified three questions to the Oklahoma Supreme Court.

The Supreme Court of Oklahoma held that:

- Trainee did not have statutory right to be terminated only for cause, and
- Trainee did not have statutory right to post-termination hearing.

Statute governing the appellate procedure for a terminated member of municipal police pension and retirement system did not provide a right to a probationary police trainee to be terminated only for cause. Although trainee was a member of the pension and retirement system and was employed by a municipality that had entered into a collective bargaining agreement (CBA) with a recognized bargaining agent under the Fire and Police Arbitration Act, due to trainee's probationary status, trainee was excluded by the terms of the CBA from having access to the arbitration and grievance process contained in the CBA in connection with the termination of her employment.

Statute governing the appellate procedure for a terminated member of municipal police pension and retirement system did not provide a right to a probationary police trainee to a post-termination

hearing. Although trainee was a member of the pension and retirement system and was employed by a municipality that had entered into a collective bargaining agreement (CBA) with a recognized bargaining agent under the Fire and Police Arbitration Act, due to trainee's probationary status, trainee was excluded by the terms of the CBA from having access to the arbitration and grievance process contained in the CBA in connection with the termination of her employment.

INVERSE CONDEMNATION - OREGON

Dunn v. City of Milwaukie

Supreme Court of Oregon, En Banc - May 8, 2014 - P.3d - 2014 WL 1873691

Homeowner brought action against city for inverse condemnation, seeking compensation for damage to her home caused by sewage that backed up through bathroom fixtures due to city's use of highly pressurized water to clean adjacent sewer lines. Following jury trial, *the* Circuit Court entered judgment in favor of homeowner. City appealed. The Court of Appeals affirmed. City petitioned for review, and review was granted.

The Supreme Court held that, as a matter of first impression, city did not have requisite intent to cause backup. Natural and ordinary consequences test, permitting inference of requisite intent to take in inverse condemnation claim when consequences of governmental action are necessary, inevitable, or substantially certain to result, examines whether government intentionally undertook to act in a manner that necessarily caused injurious invasion of plaintiff's property. In order for factfinder to infer requisite intent to take in inverse condemnation claim under natural and ordinary consequences test, plaintiff need not prove that governmental actor subjectively intended consequential invasion of property interests or undertook action knowing, even if not desiring, that consequences would follow.

In order for factfinder to infer requisite intent to take in inverse condemnation claim under natural and ordinary consequences test, plaintiff must show that government intentionally undertook its actions and that inevitable result of those actions, in ordinary course of events, was invasion of plaintiff's property that is basis for plaintiff's inverse condemnation claim.

City did not have requisite intent to cause sewage backup in property owner's home under natural and ordinary consequences test when it intentionally used highly pressurized water to clean sewer lines near owner's home, as required for city's actions to constitute a taking in owner's inverse condemnation claim, absent evidence that sewage backup was necessary, certain, predictable, or inevitable result of city's intentional manner of cleaning adjacent sewer. City regularly cleaned sewers using highly pressurized water, and backups of sewage into adjacent houses due to city's cleaning of sewers was rare.

MUNICIPAL ORDINANCE - ARIZONA

State v. Coles

Court of Appeals of Arizona, Division 1 - May 6, 2014 - P.3d - 2014 WL 1797592

Defendant was charged with violating city ordinance prohibiting public intoxication. The Municipal Court dismissed the charge, and city appealed. The Superior Court reversed, and defendant appealed.

The Court of Appeals held that the ordinance was preempted by statute.

City ordinance prohibiting being "under the influence of alcohol" in public was preempted by statute prohibiting local laws criminalizing or having as an element of an offense being a common drunkard or being found in an intoxicated condition. Ordinance conflicted with statute, since a person who was "intoxicated" was in fact "under the influence" to a particular, greater degree, and statute addressed a matter of statewide concern, signaling legislature's determination that alcoholism should be treated as a disease and not criminalized unless a person under the influence of alcohol engages in specified activities such as driving or operating other types of vehicles or equipment.

TAX - FLORIDA

Seminole Tribe of Florida v. Florida Dept. of Revenue

United States Court of Appeals, Eleventh Circuit - May 5, 2014 - F.3d - 2014 WL 1760855

Indian tribe brought action seeking declaratory judgment that tribe was exempt from paying state tax on fuel and injunction requiring refund of taxes paid. The District Court dismissed complaint, and tribe appealed.

The Court of Appeals held that:

- State's sovereign immunity barred action, and
- Action did not fall within scope of *Ex parte Young* exception to state's Eleventh Amendment immunity.

Indian tribe's action against director of Florida Department of Revenue seeking declaratory judgment that tribe was exempt from paying state tax on fuel purchased outside of Indian land did not fall within scope of *Ex parte Young* exception to state's Eleventh Amendment immunity from suit in federal court, where tribe joined director as representative of state, not as individual against whom personal judgment was sought, tax was imposed on all fuel sold in state, and declaratory judgment that tribe sought would demand that director award it money from state coffers equaling amount of fuel taxes that Department would have already collected from supplier.

ZONING - FLORIDA

Kentner v. City of Sanibel

United States Court of Appeals, Eleventh Circuit - May 8, 2014 - F.3d - 2014 WL 1813316

Owners of property along water in city brought state court action against the city, challenging a municipal ordinance that prohibited them from building a boat dock or accessory pier on their properties. City removed the action. Subsequently, the District Court granted city's motion to dismiss. Property owners appealed.

The Court of Appeals held that:

- Riparian rights asserted by property owners were state-created rights, not fundamental rights, for purposes of their substantive due process claims;
- Owners were challenging a legislative act, for purposes of their substantive due process claims; and
- Ordinance did not violate property owners' substantive due process rights.

TAX INCREMENT FINANCING - ILLINOIS

Village of East Dundee v. Village of Carpentersville

Appellate Court of Illinois, Second District - April 30, 2014 - Not Reported in N.E.3d - 2014 IL App (2d) 131006-U

The Village of East Dundee, filed an action against the Village of Carpentersville and Wal–Mart Stores, Inc., alleging that section 11–74.4–3(q)(13) of the Tax Increment Allocation Redevelopment Act (Act) applied to Wal–Mart's decision to close its East Dundee retail store and open a Wal–Mart Supercenter less than 10 miles away within Carpentersville's Route 25 redevelopment project area.

East Dundee sought a declaratory judgment that Carpentersville was required to make certain findings pursuant to section 11–74.4–3(q)(13) of the Act, based on documentation submitted by Wal–Mart, before it could fund any redevelopment project costs directly related to Wal–Mart's planned relocation. East Dundee also sought a writ of prohibition, a writ of *mandamus,* and an injunction.

The trial court granted Carpentersville's motion to dismiss East Dundee's amended complaint pursuant to section 2–615 of the Illinois Code of Civil Procedure and Wal–Mart's motion to dismiss the amended complaint pursuant to section 2–619(a)(9) of the Code, concluding that the amended complaint failed to present an actual controversy that was ripe for adjudication. East Dundee appealed.

The appeals court affirmed, finding that the trial court properly dismissed East Dundee's amended complaint because it did not present an actual controversy that was ripe for review. The well-pleaded factual allegations of the amended complaint presented only speculation that defendants might in the future fail to comply with section 11–74.4–3(q)(13) of the Tax Increment Allocation Redevelopment Act. Under the facts alleged, it was equally plausible that defendants would comply with the Act.

REDISTRICTING - INDIANA

Ballard v. Lewis

Supreme Court of Indiana - May 7, 2014 - N.E.3d - 2014 WL 1819023

Council member brought action against members of county election board for declaratory judgment that county redistricting ordinance failed to comply with redistricting statute for Marion County since council passed ordinance in last month of 2011 before opposing political party gained control of council. The Superior Court granted mayor's request to intervene, but declared that ordinance failed to satisfy the requirement for mandatory redistricting during 2012 and divided the county into

twenty-five new districts. Mayor appealed and requested transfer. Transfer was granted.

The Supreme Court of Indiana held that since dispute did not present a redistricting impasse, Supreme Court would adopt interpretation of redistricting statute that upheld ordinance.

Dispute over whether council and mayor acted too early by passing redistricting ordinance for Marion County in December of 2011 and signing it on January 1, 2012, just before opposing political party took control of council, did not present a redistricting impasse that required judicial intervention, and, thus, the Supreme Court, as a matter of judicial restraint, would adopt interpretation of redistricting statute that upheld ordinance and avoided judicial line-drawing in what was presumptively a matter for the legislative and executive branches of local government to address.

PENSIONS - LOUISIANA

East Baton Rouge Parish School Bd. v. Louisiana School Employees' Retirement System

Court of Appeal of Louisiana, First Circuit - May 1, 2014 - Not Reported in So.3d - 2013-1300 (La.App. 1 Cir. 5/1/14)

School boards brought suit against the Louisiana State Employees' Retirement System (LSERS), alleging that it was the state's responsibility, not theirs, to pay to LSERS the employers' portion of the retirement contributions made on behalf of plaintiffs' employees that are needed to fund the "normal" cost and the unfunded accrued liability of the plaintiffs' employee pensions.

The Court of Appeal held that:

- Plaintiffs failed to show the existence of a genuine issue of material fact regarding whether the legislature appropriated the required pension funding through the Minimum Foundation Program (MFP) block grants;
- Plaintiffs failed to show that there was a genuine issue of material fact concerning the funding of the unfunded accrued liability of the plaintiffs' employee pensions; and
- Plaintiffs failed to raise a genuine issue of material fact concerning whether requiring them to make the employer pension contributions to LSERS out of the MFP funding constitutes a prohibited unfunded mandate.

BALLOT INITIATIVE - MAINE

Friends of Congress Square Park v. City of Portland

Supreme Judicial Court of Maine - May 6, 2014 - A.3d - 2014 ME 63

Nonprofit organized to oppose planned sale of city park brought action seeking judicial review of city's refusal to issue citizens' initiative petition forms, a declaration that the petition was a proper subject of a citizens' initiative, and claiming city's refusal to issue the forms violated petitioners' free

speech rights. The Superior Court entered judgment ordering city to issue petition forms for a citizen's initiative, and to amend the city's land bank ordinance. City appealed.

The Supreme Judicial Court of Maine held that:

- The scope of initiative power, pursuant to city code, was limited to those initiatives that affected legislative matters, as opposed to administrative matters, and
- In an apparent matter of first impression, proposed amendments to city's land bank ordinance were not exempt from the scope of the citizens' initiative power pursuant to the city code.

LIABILITY - MASSACHUSETTS

Wilkins v. City of Haverhill

Supreme Judicial Court of Massachusetts, Essex - May 9, 2014 - N.E.3d - Mass.

Pedestrian, who was attending a parent-teacher conference, brought personal injury action against city for injuries she sustained when she slipped and fell on ice that had accumulated on the walkway of the public school. The Superior Court granted city summary judgment. Pedestrian appealed.

The Supreme Judicial Court of Massachusetts held that city was not immune under the public use statute from pedestrian's personal injury action.

Limitation on liability provided by public use statute extended solely to land open to the general public, and during the relevant time the school was open only to a discrete group and not to the general public since only parents, students, and teachers could participate in parent-teacher conferences.

INDEMNIFICATION - MISSOURI

Kershaw v. City of Kansas City

Missouri Court of Appeals, Western District - May 6, 2014 - S.W.3d - 2014 WL 1782818

City employee brought a declaratory judgment suit against city to recover money from the city legal expense fund on an underlying negligence judgment against a co-employee. Both parties filed motions for summary judgment. The Circuit Court granted city summary judgment, and denied employee summary judgment. Employee appealed.

The Court of Appeals held that:

- City legal expense fund ordinance required city to pay and indemnify co-employee on employee's negligence judgment, and
- Release that employee signed when he closed out his workers' compensation claim did not constitute a general release of city's liability to indemnity co-employee on employee's negligence judgment.

City legal expense fund ordinance established duty on city's part, wholly independent of its duty to injured employee under Workers' Compensation Act, to pay and indemnify co-employee tortfeasor on employee's negligence judgment, and ordinance did not improperly broaden city's liability; rather, fund was merely a voluntary assumption of defense and payment of judgments or claims against state employees sued for their conduct arising out of and performed in connection with official duties on behalf of the state.

Settlement release signed by injured employee to close out his workers' compensation claim did not constitute a general release of city's liability to indemnity co-employee tortfeasor on employee's negligence judgment, as required to bar employee, under doctrine of accord and satisfaction, from enforcing co-employee's right to indemnity. To extent release contained "general release" language, that language was used in subordination to language preceding it, i.e., that employee was forever closing out claim under Workers' Compensation Law, release was boiler-plate language, which indicated parties' intent not to enter into general release, and not broad enough to release any claim employee may have had against a third party such as co-employee.

LIABILITY - NEW YORK

Ewadi v. City of New York

Supreme Court, Appellate Division, First Department, New York - May 6, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 03199

Plaintiff brought action against city and city fire department to recover for personal injuries sustained in fire. The Supreme Court, Bronx County, entered summary judgment in defendants' favor, and plaintiff appealed.

The Supreme Court, Appellate Division, held that firefighters did not assume voluntary duty to plaintiff beyond that owed to general public.

Statement by firefighters for resident trapped in burning building to "Hold on" was too vague to manifest assumption by firefighters of voluntary duty to resident beyond that owed to general public, and thus did not create duty of care required to establish negligence claim against city.

DISABILITY - NEW YORK

Heinichen v. Kelly

Supreme Court, Appellate Division, First Department, New York - May 6, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 03203

Police officer commenced Article 78 proceeding challenging denial of his application for accident disability retirement benefits. The Supreme Court, New York County, denied petition, and officer appealed.

The Supreme Court, Appellate Division, held that officer's injury to his thumb while forcibly

attempting to close stuck drawer was foreseeable and intended result of his own conduct, rather than accident, and thus did not entitle officer to accident disability retirement benefits.

LIABILITY - NEW YORK

Lupa v. City of Oswego

Supreme Court, Appellate Division, Fourth Department, New York - May 2, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 03055

Pedestrian brought action against city, seeking to recover damages for injuries allegedly sustained when she tripped and fell on elevated edge of parking space maintained by city. The Supreme Court, Oswego County, denied summary judgment for city. City appealed.

The Supreme Court, Appellate Division, held that city failed to meet its initial burden of establishing space's defect was trivial and nonactionable.

Pedestrian's deposition testimony and photographs, particularly photographs depicting area closest to pedestrian's vehicle, suggested a measurable edge in pavement that could pose a tripping hazard.

LIABILITY - NEW YORK

Dodds v. Town of Hamburg

Supreme Court, Appellate Division, Fourth Department, New York - May 2, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 03060

Executor of estates of motorist and his passenger who were killed in collision with unmarked police vehicle filed negligence action against city. The Supreme Court, Erie County, denied both parties summary judgment. Defendant appealed.

The Supreme Court, Appellate Division held that:

- Reckless disregard standard of liability, rather than ordinary negligence standard, applied to officer's conduct, and
- Officer's conduct did not rise to the level of reckless disregard for the safety of others.

City police officer was subject to reckless disregard standard of liability contained in statute governing authorized emergency vehicles, rather than ordinary negligence standard of liability, in action to recover damages for wrongful death of motorist and passenger who had been killed in collision when officer executed a U-turn to stop another vehicle, since officer was the driver of an authorized emergency vehicle involved in an emergency operation, and as such, was permitted to disregard regulations governing directions of movement or turning in specified directions.

City police officer who, while executing a U-turn to stop one driver, struck second vehicle, killing its driver and his passenger, acted under the mistaken belief that the vehicle he struck was sufficiently behind him and that it was, at that moment, safe to execute the U-turn, thus, his actions constituted a momentary lapse in judgment not rising to the level of reckless disregard for the safety of others. Although officer did not activate his vehicle's emergency lights or siren, he looked in his rear-view

mirror, observed a couple of vehicles that he believed were sufficiently behind him, looked to his left, and braked before starting to make the U-turn.

IMMUNITY - NEW YORK

Mosey v. County of Erie

Supreme Court, Appellate Division, Fourth Department, New York - May 2, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 03041

Following the death of plaintiff's decedent, who was tortured and killed at the hands of her mother and half-brother, plaintiff filed two notices of claim with county, for wrongful death and tort, respectively, and thereafter commenced actions against county and sheriff. In action against county, plaintiff moved to strike county's answer for its discovery-related conduct. County and sheriff moved to dismiss the respective complaints against them. The Supreme Court, Erie County, entered orders denying plaintiff's motion to strike and granting county's motion to dismiss, and granting sheriff's motion to dismiss. Plaintiff appealed.

The Supreme Court, Appellate Division, held that:

- The court did not abuse its discretion in denying plaintiff's motion to strike county's answer;
- The court erred in granting defendants' dismissal motions based on governmental immunity;
- The court properly granted defendants' respective motions insofar as defendants asserted that they were not vicariously liable for conduct of deputy sheriff;
- Plaintiff's notices of claim were sufficient to notify county that the qualifications, knowledge, training, experience, abilities, and supervision of its employees involved with decedent were at issue; and
- Plaintiff was not required to file a notice of claim naming sheriff in his official capacity.

PUBLIC PRAYER - NEW YORK

Town of Greece, N.Y. v. Galloway

Supreme Court of the United States - May 5, 2014 - S.Ct. - 2014 WL 1757828

Residents brought civil rights action against town, alleging town's practice of opening town board meetings with prayer violated First Amendment's Establishment Clause. The District Court granted summary judgment for town. Residents appealed. The Court of Appeals for the Second Circuit reversed. Certiorari was granted.

The Supreme Court, held that:

- Prayer opening town board meetings did not have to be nonsectarian to comply with the Establishment Clause, abrogating *County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573, 109 S.Ct. 3086, 106 L.Ed.2d 472;
- Town did not violate First Amendment by opening town board meetings with prayer that

comported with tradition of the United States; and
- Prayer at opening of town board meetings did not compel its citizens to engage in a religious observance, in violation of the Establishment Clause.

INVERSE CONDEMNATION - NORTH CAROLINA

Bell v. City of New Bern

Court of Appeals of North Carolina - May 6, 2014 - Slip Copy - 2014 WL 1795136

Landowners sued the Town of Trent Woods for inverse condemnation, negligence, nuisance, trespass, and a permanent injunction, arising out of flooding damage allegedly caused by the construction of a sewer pump station on an intense watershed overflow lot and inadequate storm drain pipes.

Trent Woods' claimed that it was entitled to governmental immunity

The Court of Appeals held that a review of plaintiffs' complaint established that the actions giving rise to plaintiffs' claims involved the negligent maintenance of Trent Woods' storm drainage system. Because it is well established that municipalities are not performing governmental acts when maintaining storm drains, governmental immunity does not apply, and the trial court properly denied the motion to dismiss based on governmental immunity.

ANNEXATION - NORTH CAROLINA

Roanoke Country Club, Inc. v. Town of Williamston

Court of Appeals of North Carolina - May 6, 2014 - Slip Copy - 2014 WL 1794896

Petitioners challenged the annexation of their property, alleging that the annexation, a) violated N.C. Gen.Stat. § 160A–49, which requires that the annexation report be made available to the public at the office of the municipal clerk; and b) violated N.C. Gen.Stat. § 160A–48, which requires that a municipal governing board use recorded property lines and streets as boundaries when fixing new municipal boundaries.

The court rejected the first argument, finding that N.C. Gen.Stat. § 160A–49(c) does not require that a complete copy of the annexation report be made available for distribution to the public. Instead, the statute only requires that the complete report be made *available* to the public at the office of the municipal clerk.

The court then rejected Petitioners' argument that annexation boundaries which cross over streets are not permitted by N.C. Gen.Stat. § 160A–48(e), finding that the statute simply requires the use of streets as boundaries. It does not specify that the boundary must continuously follow a particular side of a street.

The court also rejected Petitioners' argument that the use of a private street as a boundary was not

permitted by N.C. Gen.Stat. § 160A–48(e), finding that the statute merely requires the use of a”“street” as a boundary; there is no requirement that the street be designated as public.

BALLOT INITIATIVE - OKLAHOMA

In re Initiative Petition No. 397, State Question No. 767

Supreme Court of Oklahoma - April 1, 2014 - P.3d - 2014 OK 23

Proponents of initiative to amend state constitution appealed ballot title prepared by the Attorney General regarding proposal to fund storm shelters and campus security for local school districts and career technology districts.

The Supreme Court held that:

- Proponents were required to file or submit a copy of the petition and a copy of the ballot title to the Attorney General when filing them with the Secretary of State;
- Attorney General had five business days to file response to ballot title after filing with Secretary of State;
- Attorney General’s late response was statutorily effective;
- Proponents bore burden to show that the title was clearly contrary to either statutory law or the Oklahoma Constitution;
- Attorney General’s ballot title complied with statutory requirements of impartiality and correctness;
- Ninety-day period of time to collect signatures commences when the ballot title appeal is final.

Initiative proponents challenging ballot title prepared by Attorney General bore burden to show that the title was clearly contrary to either statutory law or the Oklahoma Constitution, was incorrect, was not impartial, or failed to accurately reflect the effects of the initiative for proposed amendment to the state constitution.

Attorney General’s ballot title for initiative to amend state constitution to fund storm shelters and campus security for local school districts and career technology districts complied with statutory requirements of impartiality and correctness. The title informed the electorate that the proposal would fund the construction of storm shelters by using franchise tax revenues, bonds, and other resources within the discretion of the legislature, and Attorney General’s one additional reference to the franchise tax and definition of the general revenue fund were not argumentative and did not display partiality.

STANDING - TEXAS

Galveston Open Government Project v. U.S. Dept. of Housing and Urban Development

United States District Court, S.D. Texas, Galveston Division - April 30, 2014 - F.Supp.2d - 2014 WL 1760930

The Galveston Open Government Project (GOGP), an organization that "was organized to examine and critique local government and suggest ways to 'improve its accountability to the voters," filed suit to enjoin the rebuilding of public housing projects that had been destroyed by Hurricane Ike. GOGP's primary argument was that rebuilding housing projects would perpetuate racial segregation.

"A group like GOGP that serves as a watchdog over local public officials strengthens our system of self-government. But that system of self-government would suffer if anyone had standing file a lawsuit challenging a policy merely on the basis that they disagreed with the policy choices enacted after vigorous public debate. Because it has not suffered a concrete injury from the plan to rebuild Galveston public housing that differentiates it from the numerous people in the Galveston area who have strong views on this issue, GOGP is dismissed from this case for lack of standing."

However, the court concluded that an individual plaintiff had made a sufficient showing at the pleading stage to allow her claim to go forward on the basis of "neighborhood standing." "But—as in those Supreme Court cases—whether she will suffer a concrete injury in terms of living in a more segregated neighborhood as a result of the rebuilt public housing is an issue that will remain in the case pending further factual development."

IMMUNITY - TEXAS

City of New Braunfels v. Carowest Land, Ltd.

Court of Appeals of Texas, Austin - April 30, 2014 - S.W.3d - 2014 WL 1774535

City undertook the "South Tributary Regional Flood Control Project," which entailed the construction of a large drainage channel to divert run-off waters into the Guadalupe River. To provide a portion of the drainage channel's route, Carowest voluntarily conveyed to the City a strip of land that traversed a tract of approximately 240 acres Carowest owned in the area. But there followed a succession of disputes between Carowest and the City, leading to the underlying litigation.

Carowest filed an application for temporary restraining order (TRO) seeking to halt all work on the related North Tributary Project. Around the same time, the City filed a plea to the jurisdiction. Both sides presented evidence to the district court. The District Court denied both the plea to the jurisdiction and the TRO request by written order. The City appealed the District Court's order denying its plea to the jurisdiction.

The Court of Appeals:

- Reversed the District Court's order denying the City's plea to the jurisdiction as to Carowest's takings claim and rendered judgment dismissing that claim for want of subject-matter jurisdiction;
- Reversed the District Court's order as to Carowest's claims under Section 1983, and remanded the claims so that Carowest could have a reasonable opportunity to amend its pleadings, if possible, to assert a Section 1983 claim that is not subsumed within its takings claim;
- Affirmed the district court's order denying the City's plea as to Carowest's common-law tort claims, contract claims, and related attorney's-fees claims to the extent the court has jurisdiction (1) to adjudicate Carowest's breach-of-contract and related attorney's fees claims by virtue of the waiver of immunity in chapter 252 of the Local Government Code; and (2) alternatively and

independently, to adjudicate Carowest's entitlement to an offset against any recovery obtained by the City on its monetary counterclaim.
- Affirmed the district court's order denying the City's plea to the jurisdiction as to Carowest's declaratory claims.

GOVERNANCE - ALASKA

Alsworth v. Seybert

Supreme Court of Alaska - April 25, 2014 - P.3d - 2014 WL 1663391

Group of citizens brought action against two borough assembly members, alleging various violations of borough and state conflict of interest laws and common law conflict of interest doctrine. After the borough took official action facilitating the assembly members' defense, the citizens moved to enjoin the assembly members from using their official positions to defend the lawsuit or pursue personal financial gain.

The superior court granted a preliminary injunction under the balance of hardships standard, concluding that the citizens faced the possibility of irreparable harm if the injunction were not granted and that the assembly members were adequately protected by the injunction. The injunction barred the assembly members from taking various actions in their official capacities, including speaking about a local mining project.

The Supreme Court of Alaska held that:

- Trial court should have applied probable success on the merits standard, rather than balance of hardships standard, and
- Injunction barring borough assembly members from speaking about mining project was unconstitutional prior restraint on speech.

Preliminary injunction did not adequately protect assembly members, and therefore trial court should have applied probable success on the merits standard, rather than balance of hardships standard, in determining whether to grant injunction in action by citizens against assembly members alleging conflicts of interest. Enjoining assembly members from speaking about mining project, conducting official borough business, and accepting borough money for legal defense imposed serious harm on assembly members, and assembly members' injuries were not "relatively slight in comparison" to citizens' alleged injury in the absence of the injunction, nor could they be indemnified by a bond.

Preliminary injunction barring borough assembly members from taking various actions in their official capacities, including speaking about a local mining project, imposed an unconstitutional prior restraint on speech, where assembly members' enjoyed no less speech protections as elected officials than did private citizens under the federal and state constitutions.

TAX - ALASKA

State v. Schmidt

Supreme Court of Alaska - April 25, 2014 - P.3d - 2014 WL 1663367

Three same-sex couples filed an action against the state and a municipality alleging that municipal property tax exemption program for senior citizens or disabled veterans that discriminated between married and same-sex senior citizens or disabled veterans violated their rights to equal protection under the Alaska Constitution. The Superior Court entered summary judgment for couples. State and municipality appealed.

The Supreme Court of Alaska held that:

- Marriage Amendment did not preclude equal protection challenges by couples;
- Exemption program facially discriminated between same-sex couples and opposite-sex couples, in violation of equal protection clause;
- Program violated equal protection for same-sex couples in which eligible applicant had ownership interest in the residence;
- Program did not violate equal protection for same-sex couple in which eligible applicant had no ownership interest in the residence; and
- Trial court's findings were insufficient to permit meaningful appellate review of award of attorney fees.

EMINENT DOMAIN - ARKANSAS

Giles v. Ozark Mountain Regional Public Water Authority of State

Supreme Court of Arkansas - April 17, 2014 - Not Reported in S.W.3d - 2014 Ark. 171

After property owners were awarded increased compensation for property at issue in Regional Public Water Authority's action for condemnation and declaration of taking of owners' property for construction of water-treatment in-take facility, owners filed motion for attorney fees. The Circuit Court denied motion. Owners appealed. The Court of Appeals affirmed. Owners petitioned for review, and petition was granted.

The Supreme Court of Arkansas held that statute allowing for attorney fees was inapplicable.

Supreme Court of Arkansas holds that statute allowing for attorney fees in certain eminent-domain cases did not apply to condemnation action in which property owners were awarded increased compensation for property at issue in Regional Public Water Authority's action for condemnation and declaration of taking, since Water Authority brought action pursuant to statutory provisions governing municipal corporations' power to condemn, under which attorney fees were not available.

INVERSE CONDEMNATION - CALIFORNIA

Biron v. City of Redding

Court of Appeal, Third District, California - April 30, 2014 - Cal.Rptr.3d - 2014 WL 1691350

Owners of an apartment building in downtown Redding, California sued the City, alleging inverse condemnation and dangerous condition of public property after their property was damaged by flooding during two separate storm events.

The trial court ruled in favor of City on both causes of action. As to the inverse condemnation claim, it applied the rule of reasonableness to conclude that City's decision to defer upgrades to City's storm drainage system did not pose an unreasonable risk of harm to plaintiffs. As to the cause of action for dangerous condition of public property, the court concluded City's decision to defer upgrades to the storm drainage system did not create a substantial risk of injury to members of the general public, and that even if the storm drain system had been a dangerous condition, City's conduct was reasonable.

The Court of Appeal affirmed, holding that the trial court correctly applied a rule of reasonableness to the inverse condemnation cause of action, rather than strict liability.

MUNICIPAL ORDINANCE - CALIFORNIA

California Tow Truck Association v. City and County of San Francisco

Court of Appeal, First District, Division 4, California - April 23, 2014 - Cal.Rptr.3d - 14 Cal. Daily Op. Serv. 43262014 Daily Journal D.A.R. 5012

Towing company association brought action for declaratory and injunctive relief to challenge city's tow truck regulatory scheme. After removal to federal district court and remand of state claims, the Superior Court granted city's motion for judgment on the pleadings, and association appealed.

The Court of Appeal held that:

- City could regulate only those companies and drivers who maintained their principal place of business or employment in city, and
- City could collect fees to cover cost of tow truck regulation.

Statute permitting local authorities to license and regulate "the operation of tow truck service or tow truck drivers whose principal place of business or employment is within the jurisdiction of the local authority" did not allow city to regulate companies and drivers with substantial or consequential business within city, but rather allowed city to regulate only those companies and drivers who maintained their principal place of business or employment in that city.

Statute prohibiting a city from assessing "an excise or license tax of any kind, character, or description whatever upon the transportation business of any for-hire motor carrier of property" did not prohibit city from collecting fees to cover cost of tow truck regulation. Legislature had granted local authorities special permission to license and regulate towing businesses, and statute did not specifically address fees.

EMINENT DOMAIN - FLORIDA

In Re Order Directing Payment of $11,800.25

District Court of Appeal of Florida, Second District - April 23, 2014 - So.3d - 2014 WL 1613403

After eminent domain proceeding in which settlement was reached with regard to amount owed to landowner by city, purported assignee of promissory note and mortgage, on which landowner had owed money at time of settlement, moved to direct state chief financial officer to return funds to court. The Circuit Court denied motion. Purported assignee appealed.

The District Court of Appeal held that trial court did not have personal jurisdiction over chief financial officer and thus could not direct officer to return funds to court's registry.

FERAL CATS - ILLINOIS

County of Cook v. Village of Bridgeview

Appellate Court of Illinois, First District, Sixth Division - April 25, 2014 - N.E.3d - 2014 IL App (1st) 122164

This appeal involves two apparently conflicting ordinances that regulate feral cat colonies within Cook County. One of the ordinances was adopted by the county. The other ordinance was adopted by the Village of Bridgeview, a municipality located within Cook County.

The Cook County feral cat ordinance permits individuals living within Cook County, including those living in the Village of Bridgeview, to maintain feral cat colonies provided they participate in trap, neuter, and release (TNR) programs sponsored by approved humane societies.

The Village of Bridgeview is a home rule municipality located within Cook County. On April 1, 2009, Bridgeview adopted Ordinance No. 09–04. This ordinance prohibits Bridgeview residents from operating feral cat colonies within Bridgeview's corporate limits and imposes fines on those who fail to comply.

The County filed suit, alleging that the Bridgeview ordinance infringed upon its statutory authority to control and prevent the spread of rabies and control feral cats within Cook County. The County sought a declaration that Bridgeview lacked the statutory and home rule authority to enact its ordinance. The County also sought an injunction prohibiting Bridgeview from enforcing its ordinance.

The court determined that Bridgeview lacked the statutory and home rule authority to enact its ordinance. The court also enjoined Bridgeview from enforcing its ordinance.

ZONING - IOWA

Garr v. City of Ottumwa

Supreme Court of Iowa - May 2, 2014 - N.W.2d - 2014 WL 1765115

Landowners brought negligence action against city, alleging city's approval of a residential

development and golf course caused flooding to downstream property. Following jury trial, the District Court, Wapello County entered judgment in favor of landowners. City appealed.

The Supreme Court of Iowa held that city's negligence was not a cause in fact of any damages suffered by landowners from flooding, as no reasonable efforts by city to control upstream drainage, or other flood control measures, could have prevented the flooding at issue in light of fact extremely heavy, rare rainfall event which occurred.

LIABILITY - LOUISIANA

Hunter v. Christus Health Central Louisiana

Court of Appeal of Louisiana, Third Circuit - April 23, 2014 - So.3d - 2013-1057 (La.App. 3 Cir. 4/23/14)

Patient brought medical malpractice action against hospital arising out of patient's development of bed sore during stay in hospital. After hospital stipulated to liability, the District Court held bench trial and awarded damages. Hospital appealed.

The Court of Appeal held that:

- Damages award of a total of $85,000 for past pain and suffering and mental anguish was not excessive;
- Damages award of $5,000 for future pain and suffering was not excessive; and
- Trial court acted within its discretion in ordering hospital to pay costs of certain depositions relating to liability.
