
EMINENT DOMAIN - NEVADA

Buzz Stew, LLC v. City of North Las Vegas

Supreme Court of Nevada - October 10, 2014 - Slip Copy - 2014 WL 5144768

Buzz Stew, LLC, purchased a 20–acre parcel of land located in North Las Vegas in 2002. Around this same time, the City of North Las Vegas was preparing to construct a flood waters drainage system that would traverse Buzz Stew's property. The City offered to purchase an easement across Buzz Stew's land, but Buzz Stew refused the offer. In 2003, the City publicly announced its intent to condemn the portion of the land needed for the project. A condemnation action was not filed, however, because the City was unable to secure construction funding.

Notwithstanding its inability to proceed with the project, the City failed to publicly retract its prior public announcement of its intent to condemn the parcel. Buzz Stew subsequently sold the land in 2004 to a third party. In the seller's disclosures clause in the sale contract, Buzz Stew informed the purchaser of the City's demand for a drainage easement, and Buzz Stew retained the right to any proceeds resulting from a condemnation of the area proposed in the easement. That purchaser eventually resold the property to a party who thereafter granted the City an easement to accommodate the water drainage project.

Buzz Stew subsequently filed a complaint against the City for inverse condemnation and precondemnation damages. Buzz Stew argued that it had a property interest in the parcel because it reserved an easement over the project site in its land sale contract.

The Supreme Court of Nevada held that Buzz Stew did not retain a property interest following the sale of the parcel, and was therefore not entitled to bring an inverse condemnation action.

The plain language of the sales contract merely notified the purchaser that its title may be subject to a future drainage easement and reserved to Buzz Stew only the right to proceeds arising from a future condemnation action. It did not reserve a property interest to Buzz Stew.

SCHOOLS - NEW YORK

Gervais v. Board of Educ. of East Aurora Union Free School Dist.

Supreme Court, Appellate Division, Fourth Department, New York - September 26, 2014 - 120 A.D.3d 1556 - 992 N.Y.S.2d 593 - 2014 N.Y. Slip Op. 06414

Former teachers initiated Article 78 proceeding, seeking, inter alia, a judgment requiring school district to place them on the preferred eligibility list for their respective areas of tenure. The Supreme Court, Erie County, determined that denial of teachers' rights of placement on preferred eligibility list was arbitrary and capricious, and reinstated teachers to preferred eligibility list. School district appealed.

The Supreme Court, Appellate Division, held that:

- Teachers' claims accrued when school board terminated employment and determined that they would not be placed on preferred eligibility list, and
  School district was required to place teachers on preferred eligibility list.

School district was required to place teachers on preferred eligibility list for possible reemployment in a full-time position after reducing their full-time teaching positions to part-time positions. By reducing their full-time teaching positions to part-time positions, school district effectively abolished full-time positions and created new part-time positions, and teachers' rejection of part-time positions, which resulted in termination of their employment with school district, did not render teachers ineligible for placement on preferred eligibility list.

PUBLIC UTILITIES - OHIO

In re Application of Ohio Power Co.

Supreme Court of Ohio - October 7, 2014 - N.E.3d - 2014 -Ohio- 4271

Organization of industrial customers of electric utility appealed order of Public Utilities Commission order, permitting utility to recoup underrecovered transmission costs from all customers over three years on nonbypassable basis.

The Supreme Court of Ohio held that:

- Commission did not act outside its statutory authority, and
  Commission did not engage in unlawful retroactive ratemaking.

Public Utilities Commission's phase-in authority, under statute allowing Commission to authorize any just and reasonable phase-in of any electric distribution utility rate or price, included authority, in proceedings to review and adjust electric utility's transmission cost recovery rider, to allow utility to recover underrecovered transmission costs from all customers over three years on a nonbypassable basis. Statute did not limit exercise of Commission's authority to the proceedings that had set the rate or price, but instead allowed Commission to invoke its phase-in authority outside of standard service offer proceedings.

Public Utilities Commission did not engage in unlawful retroactive ratemaking, in proceedings to review and adjust electric utility's transmission cost recovery rider, by allowing utility to recover underrecovered transmission costs from all customers over three years on a nonbypassable basis. Even if the Commission's order did amount to retroactive ratemaking, it was not unlawful because Commission had statutory authority to phase in the collection of rates through a nonbypassable surcharge.

Revenue lost due to regulatory delay was not at issue in proceedings to review and adjust electric utility's transmission cost recovery rider, and thus Commission did not violate rule against retroactive ratemaking by allowing utility to recover underrecovered transmission costs from all customers over three years on a nonbypassable basis. Only issue was whether utility could recover costs from all customers or only from "non-shopping" customers who took generation service from the incumbent distribution utility instead of buying it on the market, and was not a case where Commission altered present rates to make up for dollars lost during the pendency of Commission proceedings.

EMPLOYMENT - OHIO

State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland

Supreme Court of Ohio - October 9, 2014 - N.E.3d - 2014 -Ohio- 4364

Union, on behalf of permanent city employee who was subject to discharge only for cause, sought a writ of mandamus to compel the city civil service commission to appoint a neutral referee to conduct a disciplinary hearing at which employee could challenge his discharge. The Court of Appeals and union appealed.

The Supreme Court of Ohio held that union was entitled to writ of mandamus.

Union, on behalf of permanent city employee who was subject to discharge only for cause, was entitled to writ of mandamus to compel the city civil service commission to appoint a neutral referee to conduct disciplinary hearing at which employee could challenge his discharge pursuant to civil service commission rules.

Employee had a clear legal right, as a nonprobationary employee, to disciplinary hearing, city was under a clear legal duty to appoint a referee to conduct disciplinary hearing, and employee had no adequate remedy at law because commission's decision to deny employee's request for a disciplinary hearing was not appealable, as commission's proceeding was not a quasi-judicial proceeding subject to administrative appeal.

MUNICIPAL ORDINANCE - WASHINGTON

Johnson v. City of Seattle

Court of Appeals of Washington, Division 1 - October 13, 2014 - P.3d - 2014 WL 5144611

After resident's citations issued by city for parking more than three vehicles on his single-family lot were affirmed by hearing examiner, resident filed petition against city under Land Use Petition Act (LUPA), contesting each of his citations, and filed claims for damages under § 1983, alleging violations of procedural due process. The Superior Court affirmed two of resident's citations, remanded one citation for mitigation hearing, and granted city summary judgment on § 1983 claims. Resident appealed.

The Court of Appeals held that:

- Resident was not in violation of municipal ordinance, and thus was not subject to citation, and
- City violated resident's right to procedural due process by preventing him from asserting nonconforming use as defense.

Resident, who had vested right to legal nonconforming use to park five additional cars on his single-family lot, was not in violation of municipal code for failing to limit number of vehicles parked on his lot to three, and thus was not subject to citation by city for such violation, even though resident had not established nonconforming use with Department of Planning and Development and did not have permit for nonconforming use. Establishment procedure did not create legal use, but rather procedure merely verified that legal use existed and had not been abandoned or discontinued at any intervening time.

City violated resident's right to procedural due process by preventing him from asserting his legal

nonconforming use to park five additional cars on his single family lot as defense to city's citations for violating municipal code by having more than three cars on his lot, such that resident had valid claim for damages under § 1983, since resident was denied meaningful opportunity to be heard. Resident had right to avoid erroneous monetary penalties and vested right to nonconforming use, which was property interest, risk of depravation of resident's interest was apparent, and no administrative burden would result from providing additional safeguards to ensure that resident would avoid penalties for legal use of his property.

LIABILITY - WASHINGTON

Lee v. Metro Parks Tacoma

Court of Appeals of Washington, Division 2 - October 7, 2014 - P.3d - 2014 WL 5011120

Park visitor brought personal injury action against municipal park agency after suffering injury at park. The Superior Court granted summary judgment to agency. Visitor appealed.

The Court of Appeals held that:

- Statutory waiting period of 60 days between presentment of claim and commencement of tort action against a local government entity is a procedural requirement for which substantial, rather than strict, compliance is required, but
  Visitor failed to substantially comply with such statute.

Court of Appeals holds that statutory waiting period of 60 days between presentment of claim and commencement of tort action against a local government entity is a procedural requirement for which substantial, rather than strict, compliance is required.

BANKRUPTCY - ALABAMA

Bennett v. Jefferson County, Ala.

United States District Court, N.D. Alabama, Southern Division - September 30, 2014 - B.R. - 2014 WL 4926261

County sewer ratepayers appealed Bankruptcy Court's confirmation of county's Chapter 9 plan, asserting the plan unconstitutionally gave the Bankruptcy Court the power to approve rate hikes and violated their constitutional right to avoid "overly burdensome debt" without due process. County moved for partial dismissal. Ratepayers moved to consolidate.

The District Court held that:

- Appeal was not constitutionally moot;
- Appellate review of ratepayers' challenge to confirmation order was not barred by statutory mootness rule;
- Equitable mootness doctrine did not apply to Chapter 9 proceeding;
- Even if District Court considered equitable mootness as appropriate in Chapter 9 proceeding, the Court would not dismiss ratepayers' appeal as equitably moot; and
- Consolidating ratepayers' appeals of confirmation order and other orders in related adversary proceedings was not appropriate.

EMINENT DOMAIN - ARKANSAS

City of Jacksonville v. Nixon

Court of Appeals of Arkansas - September 24, 2014 - S.W.3d - 2014 Ark. App. 485

Property owners challenged compensation awarded for portions of land condemned as part of highway construction project. The Circuit Court awarded $73,868.84 in damages. City appealed.

The Court of Appeals held that:

- Trees on condemned property acted as a living fence, whose removal caused compensable damage to property not taken;
- Evidence supported finding that $41,226.25 was the value of loss following removal of living fence;
- Market value of property was for the trial court as the finder of fact;
- Property owner was qualified to render an opinion regarding value of her property; and
- Evidence supported trial court's finding regarding just compensation for city's temporary-construction easements.

MUNICIPAL GOVERNANCE - CALIFORNIA

Golightly v. Molina

Court of Appeal, Second District, Division 3, California - September 25, 2014 - Cal.Rptr.3d - 2014 WL 4756948

Taxpayer brought action against county and board of supervisors for waste of public funds, violation of the Brown Act, declaratory relief for ultra vires acts, and conflicts of interest, alleging that procedure by which county enters into Social Program Agreements (SPAs) with social service organizations that provide social services to county residents is subject to the Brown Act's open meeting requirements. The Superior Court entered summary judgment for county and in separate judgment denied taxpayer's request for attorney's fees. Taxpayer appealed.

The Court of Appeal held that:

- Procedure by which county entered into SPAs did not involve collective deliberation and thus was not subject to the Brown Act's open meeting requirements;
- Government Code permitted county to delegate its authority to enter into SPAs;
- Board of supervisors retained control over fundamental policy decisions such that delegation of authority to enter into SPAs to county CEO was not unconstitutional;
- Approval process for SPAs had adequate safeguards; and
- Failure to appeal order denying attorney's fees precluded Court of Appeal from considering whether taxpayer was entitled to catalyst attorney's fees.

LIABILITY - DISTRICT OF COLUMBIA

Allen v. District of Columbia

District of Columbia Court of Appeals - September 25, 2014 - A.3d - 2014 WL 4746406

After prospective firefighter participated in required physical ability test (PAT), fell ill, and died, firefighter's parents filed wrongful death and survival action against District, alleging gross

negligence of emergency medical technician (EMT) in charge of evaluating firefighter candidates at PAT. The Superior Court granted District summary judgment. Parents appealed.

The Court of Appeals held that:

- As a matter of first impression, public duty doctrine was applicable;
- There was not direct and continuous contact between District and firefighter, as required for exception to doctrine to apply; and
- Firefighter did not justifiably rely on EMTs monitoring PAT, as required for exception to doctrine to apply.

Public duty doctrine was applicable in wrongful death and survival action against District of Columbia, stemming from death of prospective firefighter after he participated in physical ability test (PAT), with respect to conduct by emergency medical technicians (EMT) who were assigned to provide on-site vital-signs monitoring of firefighter candidates during administration of PAT. Any alleged acts or omissions of EMT in responding to prospective firefighter's health crisis after he completed PAT were not part of PAT program, but rather were part of District's provision of emergency services, such that any negligence of EMT in treating firefighter occurred once her role evolved from basic monitor to emergency responder.

LIABILITY - GEORGIA

Board of Regents of University System of Georgia v. Myers

Supreme Court of Georgia - October 6, 2014 - S.E.2d - 2014 WL 4959033

Visitor who injured her ankle when she stepped in an unrepaired pothole in college campus parking lot brought negligence action against the Board of Regents of the University System of Georgia, based on allegedly unsafe condition of parking lot. The Superior Court granted Board's motion to dismiss for lack of subject matter jurisdiction, based on plaintiff's failure to provide sufficient ante litem notice to the Board. Plaintiff appealed. The Court of Appeals reversed. Board appealed.

The Supreme Court of Georgia held that notice did not comply with ante litem provisions.

Ante litem notice did not sufficiently identify the "amount of loss claimed" so as to comply with ante litem notice statute, as required for recovery, where visitor did not include any dollar amount of claimed loss, even though extent of her knowledge and belief at time of notice included, at a minimum, medical expenses she had incurred thus far.

DEDICATION - GEORGIA

Unified Government of Athens-Clarke Co. v. Stiles Apartments, Inc.

Supreme Court of Georgia - October 6, 2014 - S.E.2d - 2014 WL 4958235

Apartment owner brought suit against city to assert ownership over parking lot that was built by agreement partly on apartment owner's property and partly on city's property, and city counterclaimed for declaratory judgment, ejectment, and breach of contract. The Superior Court granted apartment owner's request for interlocutory injunction prohibiting city from asserting ownership or control over parking lot. City appealed. The Supreme Court affirmed. The Superior Court then determined the agreement under which parking lot was built was not intended to create

or reserve public property rights in land owned by apartment owner. City appealed.

The Supreme Court of Georgia held that:

- 1954 agreement between city and apartment owner did not give to the general public unfettered access to the parking area;
- 1954 agreement did not constitute an unlawful dedication of public property to a purely private interest;
- 1954 agreement it was not subject to the statutory prohibition against binding successor councils;
- Apartment owner was not barred by laches or the statute of limitations when bringing its action in equity against city to establish rights in parking lot; and
- Apartment owner did not waive its right of control over the parking area.

MUNICIPAL ORDINANCE - GEORGIA

Trop, Inc. v. City of Brookhaven

Supreme Court of Georgia - October 6, 2014 - S.E.2d - 2014 WL 4958232

Sexually-oriented entertainment club brought action against city, claiming city's newly enacted sexually-oriented business code was unconstitutional, and that club was exempt from it based on a settlement with county. The trial court granted city's motion for judgment on the pleadings, and club appealed.

The Supreme Court of Georgia held that:

- Sexually-oriented entertainment club lacked standing to challenge city alcohol code based on a hypothetical denial of its liquor license;
- City's sexually-oriented business ordinance did not unconstitutionally infringe on club's free speech rights; and
- A settlement agreement between club and county did not create a vested right to continue operations as a nude dancing club that serves alcohol.

City's sexually-oriented business ordinance did not unconstitutionally infringe on sexually-oriented entertainment club's free speech rights. The ordinance was content-neutral in light of the city council's goal of combatting pernicious secondary effects coupled with a lack of evidence to establish improper motive on the part of city council. The ordinance furthered an important governmental interest of attempting to preserve the quality of urban life and reducing criminal activity which was unrelated to any desire to suppress speech, any incidental restriction on speech caused by the ordinance was no greater than essential to further the governmental interests. The ordinance's application was narrowly tailored to modes of expression implicated in the production of negative secondary effects, those establishments that provided alcohol and entertainment that required an adult entertainment license.

ANNEXATION - INDIANA

Certain Martinsville Annexation Territory Landowners v. City of Martinsville

Court of Appeals of Indiana - October 2, 2014 - N.E.3d - 2014 WL 4925679

On August 12, 2012, the City of Martinsville adopted Ordinance 2012–1667, amending the initial

proposal and reducing the amount of land to be annexed to 3,030 acres surrounding the City. Remonstrators – landowners in the annexed territory – filed a petition remonstrating against the proposed annexation. A trial was conducted, and after hearing evidence and arguments, the trial court entered its judgment on January 15, 2014 against the Remonstrators and upholding the annexation. The Remonstrators appealed.

On appeal, the Remonstrators argued that the trial court erred in denying their challenge to the proposed annexation by the City. The City, however, contended that the Remonstrators' appeal should be dismissed as moot because the annexation had become final, and therefore, there was no effective relief that the court could render to the Remonstrators.

The Court of Appeals held that challenges to the annexation of land will become moot when the annexation becomes effective unless the remonstrators request an injunction or a stay ordering the municipality to not proceed with the proposed annexation pending appeal.

Therefore, absent an injunction or a stay of the annexation procedure, if an annexation becomes final before a review of the matter can be completed, any challenge to a proposed annexation will become moot.

MUNICIPAL ORDINANCE - INDIANA

Citizens Action Coalition of Indiana, Inc. v. Town of Yorktown, Ind.

United States District Court, S.D. Indiana, Indianapolis Division - September 30, 2014 - Slip Copy - 2014 WL 4908098

At issue was whether municipal ordinance prohibiting of door-to-door canvassing and solicitation after the hour of 9:00 p.m. or sunset, whichever is earlier, comported with the First Amendment.

The District Court held that the ordinance was neither narrowly tailored to the Town's legitimate government interests, nor did it provide ample alternative methods for communication. Accordingly, the Ordinance cannot survive constitutional scrutiny on its face or as applied.

LIABILITY - MARYLAND

Francis v. Johnson

Court of Special Appeals of Maryland - October 6, 2014 - A.3d - 2014 WL 4976170

Minor, through his parents, filed action against three police officers, alleging violation of Maryland Declaration of Rights, false imprisonment, battery, and assault. Following jury award of $465,000 in compensatory damages and $35,000 in punitive damages, the Circuit Court granted, in part, officers' motion for judgment notwithstanding the verdict (JNOV), striking jury's $1,000 punitive damages award against one officer and finding the award of compensatory damages to be excessive. Minor agreed to remittitur, and officers appealed.

The Court of Special Appeals held that:

- Evidence of similar prior incident was relevant and its probative value outweighed the danger of unfair prejudice;
- Damages cap under Local Government Tort Claims Act (LGTCA) did not apply as officers were

found to have acted with malice;
- Compensatory damages awards for tort and constitutional claims constituted impermissible duplicative recovery;
- Trial court acted within its discretion in reducing compensatory damages award; and
- Overwhelming evidence supported finding that officers acted with malice, as was required to support punitive damages award.

EMINENT DOMAIN - MASSACHUSETTS

Rodman v. Com.

Appeals Court of Massachusetts, Norfolk - October 7, 2014 - N.E.3d - 2014 WL 4975948

Condemnees brought action against state, seeking to recover greater damages than pro tanto award. The Superior Court entered judgment requiring condemnees to repay difference between pro tanto award and lesser amount that was awarded by jury and issued order denying condemnees' motion for new trial. Condemnees appealed.

The Appeals Court held that:

- Evidence as to property's potential uses, which included hotel, manufacturing, and warehouse uses, was admissible;
- Trial court's error of excluding evidence as to property's potential uses was not harmless;
- Proper measure of damages was whole subdivision approach, not individual lot method; and
- Pro tanto award was inadmissible.

While a judge in an eminent domain proceeding may infer that a property owner's failure to develop the property in accordance with what the property owner now claims to be its best and highest use suggests that the potential use was not reasonably likely, a judge is not bound to that inference where other evidence suggests that a reasonable buyer would recognize the reasonable likelihood of the potential use.

That a potential use of property is prohibited or restricted by law at the time of the taking of the property does not preclude its consideration in awarding damages in an eminent domain proceeding if there was a reasonable prospect of rezoning or acquiring a special permit.

Judge has a range of discretion in an eminent domain proceeding in deciding whether to admit evidence that a potential use of the property is reasonably likely in the foreseeable future, particularly when that determination turns on whether the grant of a special permit is reasonably likely.

Task for the judge in an eminent domain proceeding is to avoid unreasonably restricting the efforts of the property owner fairly to show the effect of the taking upon the market value of the affected property at the time of the taking without permitting damages to be inflated by unduly detailed and confusing proof of speculative future uses of property having no very direct relationship to market values at the time of the taking.

Trial court's error of excluding evidence as to property's potential uses, which included hotel, manufacturing, and warehouse uses, was not harmless in condemnees' action to recover greater damages than pro tanto award. Condemnees were unfairly precluded from giving testimony bearing upon relevant aspects of value, and excluded testimony impacted credibility of testimony of condemnees' engineering and appraisal experts.

Pro tanto award regarding taking of property by state Department of Highways was inadmissible in condemnees' action to recover greater damages than pro tanto award, as the award was in essence a settlement offer.

ZONING - MINNESOTA

500, LLC v. City of Minneapolis

Supreme Court of Minnesota - September 25, 2013 - 837 N.W.2d 287

Applicant brought declaratory judgment action seeking determination that application to heritage-preservation commission for a certificate of appropriateness was a written request related to zoning, such that city had only 60 days to approve or deny application. The District Court granted summary judgment in favor of city. Applicant appealed.

The Supreme Court of Minnesota held that:

- Trial court had subject matter jurisdiction;
- Written request relating to zoning referred to written request that had a connection, association, or logical relationship to the regulation of building development or the uses of property; and
- Application to heritage-preservation commission for certificate of appropriateness was written request relating to zoning.

PUBLIC UTILITIES - MINNESOTA

Minnesota Energy Resources Corp. v. Commissioner of Revenue

Minnesota Tax Court, Regular Division, Ramsey County - September 29, 2014 - 2014 WL 4953754

Minnesota Energy Resources Corporation ("MERC") is a gas pipeline distribution system located in Minnesota.

MERC's real property is assessed by the county, city or district in which the property is located; however, its personal property is centrally assessed by the state Commissioner of Revenue.

Here, the parties disagreed about what type of pipeline property is taxable "personal property." MERC argued that personal property is limited to tangible personal property, whereas the Commissioner argued that personal property includes both tangible and intangible personal property.

The Tax Court held that the phrase "personal property" in Minn.Stat. §§ 272.02, subd. 9(a), and 272.03, subd. 2(5), means tangible personal property.

SECURITIES REGULATION - DISTRICT OF COLUMBIA

New York Republican State Committee v. Securities and Exchange Commission

United States District Court, District of Columbia - September 30, 2014 - F.Supp.3d - 2014 WL 4852030

The New York Republican State Committee and the Tennessee Republican Party sought declaratory and injunctive relief invalidating and enjoining the Securities and Exchange Commission, from enforcing the SEC's pay-to-play rules for investment advisors, which was adopted over four years ago and codified at 17 C.F.R. § 275.206(4)–5.

The SEC countered that this case "was filed in the wrong court at the wrong time by the wrong plaintiff," and should be dismissed for lack of subject matter jurisdiction.

The District Court agreed with the Commission, holding that the plaintiffs had failed to meet their burden in establishing subject matter jurisdiction because this Court was not the proper forum for their challenge.

AUCTION RATE SECURITIES - NEW YORK

In re JP Morgan Auction Rate Securities (ARS) Marketing Litigation

United States District Court, S.D. New York - September 30, 2014 - Slip Copy - 2014 WL 4953554

Cellular South, Inc., an investor in auction rate securities ("ARS"), brought the standard-issue ARS-related securities action against J.P. Morgan Securities, Inc. ("JP Morgan"), a securities broker-dealer that underwrote, marketed, and sold ARS and conducted the auctions at which the securities' interest rates were set.

Plaintiff claims that Defendant profited by knowingly misrepresenting and omitting material information concerning the liquidity of its ARS products, and by manipulating the ARS market through the regular placement of support bids in its own auctions.

JP Morgan moved to dismiss the Complaint for failure to state a claim.

The District Court granted Defendant's motion to dismiss, finding that Plaintiff had not pled facts sufficient to show that JP Morgan had the scienter necessary to engage in fraud, either through market manipulation or through misrepresentations and omissions.

LIABILITY - NEW YORK

Lyles v. New York City Health and Hospitals Corp.

Supreme Court, Appellate Division, Second Department, New York - October 1, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 06561

Infant brought personal injury action against city health and hospitals corporation. The Supreme Court, Queens County, denied infant's motion for leave to serve late notice of claim or to deem late notice timely served nunc pro tunc. Infant appealed.

The Supreme Court, Appellate Division, held that:

- Infant's mother did not provide reasonable excuse for failing to timely serve the notice of claim;
- Nexus between plaintiff's infancy and delays in serving notice was not shown; and
- Motion to renew was properly denied.

MUNICIPAL GOVERNANCE - OHIO

State ex rel. Ebersole v. Powell

Supreme Court of Ohio - September 29, 2014 - N.E.3d - 2014 -Ohio- 4283

Residents sought writ of mandamus to compel city council and city clerk to place proposed amendment to city charter on election ballot. The Supreme Court held that proposed amendment was an unlawful delegation of legislative power, and that city properly refused to place the matter on the ballot.

On reconsideration, the Supreme Court of Ohio held that city council was without authority to review the substance of a proposed ballot measure to amend city charter, and thus, acted unlawfully when it failed to pass ordinance to place amendment before the voters.

PUBLIC UTILITIES - OREGON

Gearhart v. Public Utility Com'n of Oregon

Supreme Court of Oregon, En Banc - October 2, 2014 - P.3d - 2014 WL 4924311

On remand following judicial review of rates approved for electric utility to recover its capital investment in nuclear generating facility after that facility was retired from service, the Public Utilities Commission (PUC) found the rates just and reasonable, awarded utility interest on unamortized balance, and ordered utility to issue refunds. Ratepayers and ratepayers' advocacy organization appealed. The Court of Appeals affirmed. Ratepayers and organization petitioned for review.

The Supreme Court of Oregon held that:

- PUC did not exceed scope of remand;
- PUC did not engage in impermissible retroactive ratemaking;
- PUC had authority to order refunds;
- PUC could allow utility to recover interest; and
- Substantial evidence supported PUC's order.

In proceedings to determine whether electric utility could recover capital investment in nuclear generating facility after the facility had been retired from service, Public Utilities Commission (PUC) did not exceed scope of remand, after reversal by Court of Appeals, by reexamining rates from previous five-year period to determine whether to order refund of rates paid in subsequent period. Although Court had held that PUC had made a legal error in allowing utility to recover a return on its investment in rates, Court did not direct PUC to take any particular action in remand.

Public Utilities Commission (PUC) did not engage in impermissible retroactive ratemaking, on remand after reversal by Court of Appeals in proceedings to determine whether electric utility could recover capital investment in nuclear generating facility after the facility had been retired from service, by reexamining rates from previous five-year period to determine whether to order refund of rates paid in subsequent period. After Court determined that PUC had erroneously allowed utility to recover a return on its investment, PUC properly used ratemaking principles to calculate rates that it would have authorized if the return on investment had not been included, and PUC's authority on remand included the authority to reconsider all aspects of the decision affected by the error.

Public Utilities Commission (PUC) had authority to order that electric utility provide refunds to ratepayers, on remand after reversal by Court of Appeals in proceedings to determine whether electric utility could recover capital investment in nuclear generating facility after the facility had been retired from service, after Court determined that PUC had erroneously allowed utility to recover a return on its investment. PUC had broad statutory authority to remedy errors in ratemaking orders, and authority to order a refund reasonably could be implied from remand order from the Court of Appeals.

Public Utilities Commission (PUC) did not exceed scope of remand, after reversal by Court of Appeals in proceedings to determine whether electric utility could recover capital investment in nuclear generating facility after the facility had been retired from service, by allowing utility to recover interest, although Court had determined that PUC had erroneously allowed utility to recover a return on its investment. PUC was careful not to recalculate rates using a factor that would allow utility to recover a profit on its investment, instead relying on lower Treasury bond rates to account only for the time value of money.

TAX - PENNSYLVANIA

Fish v. Township of Lower Merion

Commonwealth Court of Pennsylvania - September 19, 2014 - A.3d - 2014 WL 4656577

Taxpayers sought declaratory judgment, challenging township's imposition of its business privilege tax (BPT) on taxpayers' lease revenue and application of registration requirements for any "business, trade, occupation or profession." The Court of Common Pleas found in favor of the Township and against taxpayers. Taxpayers appealed.

The Commonwealth Court held that:

- Imposition of BPT to taxpayers' gross receipts from leases violated statutory exclusion from township's taxing authority under Local Tax Enabling Act (LTEA), and
- Taxpayers' real estate rental activities were subject to ordinance provision imposing registration requirements and related fees.

SCHOOLS - PENNSYLVANIA

In re Wilkinsburg School Dist.

Commonwealth Court of Pennsylvania - October 8, 2014 - A.3d - 2014 WL 5017871

Association, residents and taxpayers (collectively "Objectors") who reside within the Borough of Wilkinsburg School District and the Borough of Wilkinsburg appealed from the order of the Court of Common Pleas which approved the School District's sale of vacant land, known as "Green Street Park" pursuant to Section 707(3) of the Public School Code.

Objectors asserted that the trial court erred when it approved the sale of the Property because: (1) the School District failed to demonstrate that it determined, either by motion or resolution, that the Property was both "unused and unnecessary;" and (2) the Public School Code does not require that the property be "unused and unnecessary" *for school purposes*.

The Commonwealth Court held that:

- There exists no requirement that a school board's determination that a property is "unused and unnecessary" must be made by formal vote on a resolution or motion; and
- The correct interpretation of Section 707 of the Public School Code is that the real estate must be "unused and unnecessary" for purposes of the school district which owns the land, not for school purposes in general.

TAX - PENNSYLVANIA

Friends of Pennsylvania Leadership Charter School v. Chester County Bd. of Assessment Appeals

Supreme Court of Pennsylvania - September 24, 2014 - A.3d - 2014 WL 4745702

Friends of Pennsylvania Leadership Charter School appealed from the order of the Commonwealth Court which held that the retroactive real estate tax exemption provided in Section 1722–A(e)(3) of the Public School Code, 24 P.S. 17–1722–A(e)(3), was unconstitutional.

The Supreme Court of Pennsylvania affirmed the Commonwealth Court, albeit employing different reasoning, concluding that retroactive application of the real estate tax exemption of Section 1722–A(e)(3) is unconstitutional under the Pennsylvania Constitution because it violates the separation of powers doctrine.

LIABILITY - ALABAMA

Alabama Mun. Ins. Corp. v. Allen

Supreme Court of Alabama - September 26, 2014 - So.3d - 2014 WL 4798918

Passenger and driver brought action against police officer in his individual capacity for injuries they sustained in automobile accident with officer, who was on his way to work. Following judgment in favor of plaintiffs, city and city's insurer moved to intervene and sought to limit judgment pursuant to $100,000 municipal damages cap. The Circuit Court entered judgment in favor of plaintiffs. City and insurer appealed.

The Supreme Court of Alabama held that:

- Municipal damages cap did not apply in action against police officer in his individual capacity for negligence that occurred outside his employment;
- City was not obligated to indemnify police officer for negligent actions that occurred outside the performance of his official duties; and
- City was not considered the real party in interest in the action.

IMMUNITY - ALABAMA

In re D.C. Pruett Contracting Co., Inc. v. Jackson County Bd. of Educ.

Supreme Court of Alabama - September 26, 2014 - So.3d - 2014 WL 4798755

Contractor brought action against county board of education, alleging that board had breached a contract for renovation of high school gymnasium. The Circuit Court denied board's motion to dismiss on ground of sovereign immunity. Board petitioned for writ of mandamus.

The Supreme Court of Alabama held that:

- Board was entitled to sovereign immunity from suit, and
- Trial court lacked subject matter jurisdiction to consider motion to amend complaint.

TAX - DISTRICT OF COLUMBIA

Coleman through Bunn v. District of Columbia

United States District Court, District of Columbia - September 30, 2014 - F.Supp.3d - 2014 WL 4819092

In D.C., the tax-sale process begins with the sale at auction of a tax lien on the property to a third party. The homeowner may satisfy that lien by paying his delinquent tax bill, but the purchaser of the lien is able to add on top of that bill various costs, including attorney's fees. In Mr. Coleman's case, that caused what began as a $133.88 tax bill to become a total of over $5,000, all of which needed to be paid before the lien would be satisfied.

Once the lien is sold to the third party, a six-month waiting period begins, during which the homeowner may redeem his home by paying the taxes, along with any penalties, costs, and interest that are owed. If the entire bill is not paid upon expiration of the waiting period, the tax-lien purchaser may initiate proceedings in the Superior Court of the District of Columbia to foreclose. The Superior Court is empowered to enter a judgment vesting a fee simple title in the property in the tax-lien purchaser. In this way, a small sum paid to purchase the lien becomes full title to a property worth hundreds of thousands of dollars (in this case, approximately $200,000). The key detail in this case is that D.C. law provides that any surplus equity the homeowner has in his home is irrevocably lost, no matter how small the tax bill nor how valuable the equity.

Mr. Coleman brought a limited challenge to this law. He does not seek to regain his home, does not dispute that the District may use tax sales to satisfy delinquent property taxes, and agrees with the District that he owed $133.88 in property taxes, plus penalties, costs, and interest. Mr. Coleman's claim is against the District's taking of the entire equity in his home. The District, he asserts, has provided him no compensation for the loss of that equity, even though its value far exceeds the taxes, penalties, costs, and interest he owed.

Mr. Coleman claimed that such a practice is forbidden by the Takings Clause of the Fifth Amendment to the United States Constitution. Accordingly, he filed suit seeking an award of "just compensation," as well as a declaration from the Court that the District's statute is unconstitutional.

The District moved to dismiss Mr. Coleman's Complaint, arguing that Supreme Court precedent holds that the District's actions do not violate the Takings Clause.

The Court rejected the District's argument that prior Supreme Court precedent had foreclosed Mr. Coleman's claim under the Takings Clause, denying the District's motion and stating that Mr. Coleman had stated a valid claim for violation of the Takings Clause.

ANNEXATION - ILLINOIS

Merchant v. Regional Bd. of School Trustees of Lake County

Appellate Court of Illinois, Second District - September 30, 2014 - N.E.3d - 2014 IL App

(2d) 131277

Petitioners, a "Committee of 10" pursuant to section 7–6(c) of the Illinois School Code, sought to detach their territory from the boundaries of Woodland Community Consolidated School District 50 (Woodland) and Warren Township High School District 121 (Warren) and annex it into the boundaries of Oak Grove School District 68 (Oak Grove) and Libertyville Community High School District 128 (Libertyville). Petitioners filed a petition with the Regional Board of School Trustees of Lake County (Regional Board). The Regional Board conducted a hearing and denied the petition.

On administrative review, the trial court reversed the Regional Board's decision. The school districts appealed, arguing that the Regional Board correctly denied the petition.

The appeals court affirmed the trial court's order reversing the Regional Board's decision.

"Based on our holdings as to the travel times and distances to the schools at issue, the "community of interest" and "whole child" factors, and property values, plus the fact that the evidence on petitioners' preferences was uncontroverted, and despite the fact that we uphold the finding against petitioners on the educational advantage factor, we conclude that the evidence showed that granting the petition will provide some educational benefit to the Lancaster students. The Regional Board erred in finding otherwise and denying the petition."

EMINENT DOMAIN - ILLINOIS

City of Joliet v. Mid-City National Bank of Chicago

United States District Court, N.D. Illinois, Eastern Division - September 17, 2014 - Not Reported in F.Supp.3d - 2014 WL 4667254

The City of Joliet moved to acquire two large, blighted apartment buildings via eminent domain.

Seven years of litigation, a 100-day trial, and a 19,000 page transcript later…

The District Court found that Joliet had a valid public purpose to use its power of eminent domain. In addition, the court found no discriminatory purpose or effect in the taking.

"an overwhelming smell of urine in the stairwells and hallways."

EMPLOYMENT - INDIANA

Hauck v. City of Indianapolis

Court of Appeals of Indiana - September 24, 2014 - N.E.3d - 2014 WL 4743406

Two former sheriff's deputies brought action against city, alleging that police department breached their employment contract by passing them over for promotion in violation of city ordinance regarding department's merger with county sheriff's office. The Superior Court granted summary judgment in favor of city. Plaintiffs appealed.

The Court of Appeals held that:

- Ordinance did not require city to promote plaintiffs, and
- Plaintiffs could not establish damages.

Ordinance stating that city "shall endeavor" to promote police department members in a manner to ensure proportional representation of former police officers and sheriff's deputies, following department's merger with sheriff's office, did not require city to promote the two former deputies with the highest scores on promotional assessment to captain. The former deputies only had the tenth and 13th highest assessment scores overall, and the scores were based on several objective criteria that provided equal opportunity for advancement for both the former officers and deputies.

ELECTIONS - LOUISIANA

Russo v. Burns

Supreme Court of Louisiana - September 24, 2014 - So.3d - 2014-1963 (La. 9/24/14)

Objector brought action against candidate for office of parish district attorney, asserting that candidate had falsely certified having filed his state income tax returns.

The Supreme Court of Louisiana held that candidate falsely certified having filed his state individual income tax returns for four most recent tax years, and thus candidate was disqualified.

Although candidate's tax preparer stated that tax preparer drove her employee to post office to mail returns, and although tax preparer had a certificate of mailing, Louisiana Department of Revenue (LDR) had no tax returns on file for candidate for relevant tax years, and LDR regulation provided that returns which had not been delivered to LDR by the United States Postal Service had not been filed.

LIABILITY - NEW JERSEY

Henebema v. South Jersey Transp. Authority

Supreme Court of New Jersey - September 29, 2014 - A.3d - 2014 WL 4798879

Motorist who was injured in a multi-vehicle accident on a highway during a heavy snowstorm brought negligence claims against drivers and owners of vehicles involved in the accident and, under the New Jersey Tort Claims Act (TCA), against New Jersey State Police and South Jersey Transportation Authority. A jury found that the individual defendants were not negligent, apportioned 20 percent negligence to state police and 80 percent negligence to authority, and awarded motorist $8,748,311. State police and authority filed a motion for judgment notwithstanding the verdict (JNOV) or, in the alternative, for a remittitur or new trial.

Motorist moved for prejudgment interest. The Superior Court denied both motions. State police and authority appealed, and motorist cross appealed. The Superior Court affirmed in part, reversed in part, and remanded for a new trial on liability of state police and authority. State police and authority petitioned for certification, which the Supreme Court granted.

The Supreme Court of New Jersey held that retrial on liability of state police and authority did not also require retrial on liability of drivers and owners or comparative negligence of motorist.

Issues involved in determining liability of state police and transportation authority under the New Jersey Tort Claims Act (TCA) for injuries suffered by motorist during a multi-vehicle accident on a highway were not intertwined with issues involved in determining liability of drivers and owners of vehicles involved in the accident or comparative negligence of motorist, and thus retrial on liability

of state police and authority following reversal for instructional error did not also require retrial on liability of drivers and owners or comparative negligence of motorist.

Instructional error related only to liability of state police and authority, and motorist's case against drivers and owners and comparative-negligence claim against motorist were based on a different theory of negligence than the theory posited against state police and authority.

LIABILITY - NEW YORK

Michaels v. Drake

Supreme Court, Appellate Division, Fourth Department, New York - September 26, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 06450

Motorist brought action against city and police officer to recover for personal injuries he sustained when his vehicle collided with police car. The Supreme Court, Monroe County, entered judgment in defendants' favor, and plaintiff appealed.

The Supreme Court, Appellate Division, held that police officer did not drive with reckless disregard for safety of others when he exceeded speed limit while responding to dispatch call concerning domestic dispute, and thus officer and city were not liable for personal injuries sustained by plaintiff when officer's car struck his vehicle.

LIABILITY - NEW YORK

Fleisher v. City of New York

Supreme Court, Appellate Division, Second Department, New York - September 24, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 06297

Pedestrian, and her husband suing derivatively, commenced action against city to recover damages for injuries allegedly sustained when she fell on sidewalk. The Supreme Court, Kings County, entered judgment as matter of law in city's favor, and plaintiffs appealed.

The Supreme Court, Appellate Division, held that:

- Map prepared by Big Apple Pothole and Sidewalk Protection Committee, Inc. and filed with New York City Department of Transportation (DOT) was admissible to show city's prior notice of alleged defect, and
- Court improvidently exercised its discretion in precluding plaintiffs from presenting evidence that injured plaintiff acquired "C-difficile" infection, her pre-existing Crohn's disease was exacerbated, and she suffered psychological injury.

Map prepared by Big Apple Pothole and Sidewalk Protection Committee, Inc. and filed with New York City Department of Transportation (DOT) was relevant to issue of whether city had prior written notice of claimed defect in sidewalk that allegedly caused injured plaintiff to fall, and thus was admissible in personal injury action against city, where plaintiffs sought to admit map for nonhearsay purpose of establishing that city had notice of alleged defect at least 15 days prior to injured plaintiff's accident.

Trial court improvidently exercised its discretion in personal injury action in precluding plaintiffs

from presenting evidence that, as result of accident, injured plaintiff acquired “C-difficile” infection, her pre-existing Crohn’s disease was exacerbated, and she suffered psychological injury on ground that plaintiffs’ expert disclosure failed to include substance of facts and opinions upon which he was expected to testify, where expert did state basis of his opinions, albeit tersely.

ELECTIONS - OHIO

State ex rel. Dawson v. Cuyahoga Cty. Bd. of Elections

Supreme Court of Ohio - September 22, 2014 - N.E.3d - 2014 WL 4746683

Citizen filed petition for writ of prohibition to prevent special election to recall city mayor.

The Supreme Court of Ohio held that:

- City charter provision that president of city council shall succeed as mayor if office of mayor becomes vacant after first day of April following last regular municipal election did not implicate First Amendment right to vote;
- Any possible burden of citizen’s right to vote for mayor based on “automatic succession” provision of city charter was outweighed by city’s legitimate interests in filling vacancy promptly and in ensuring that government process were not disrupted by vacancy;
- Petition for special election to recall city mayor and to fill vacancy pursuant to city charter was “demand” for mayor’s “removal” in accordance with city charter provision and statute; and
- Petition to recall mayor was not misleading for failure to identify sitting president of city council who would automatically fill mayor’s vacancy.

BONDS - OKLAHOMA

Tulsa Indus. Authority v. City of Tulsa, Oklahoma

Supreme Court of Oklahoma - September 30, 2014 - P.3d - 2014 OK 81

City industrial authority brought declaratory judgment proceeding to validate authority’s expenditure of public funds. Taxpayer moved to intervene. The District Court denied the motion. Taxpayer filed writ of certiorari to the Court of Appeals. The Supreme Court affirmed in part, reversed in part, and remanded. On remand, the District Court dismissed taxpayer’s petition with prejudice on the basis that taxpayer did not provide notice to bondholders as necessary parties to the lawsuit. Taxpayer filed application to assume original jurisdiction and petition for writ of prohibition and mandamus.

The Supreme Court of Oklahoma held that:

- Bondholders who purchased bonds to finance underlying transaction were necessary parties;
- It was not determined in prior appeal that bondholders were not necessary parties; and
- Taxpayer’s refusal to give notice to bondholders or service notice to join bondholders warranted dismissal with prejudice.

EMINENT DOMAIN - OREGON

State, ex rel. Dept. of Transp. v. Alderwoods (Oregon), Inc.

Court of Appeals of Oregon, En Banc. - September 17, 2014 - P.3d - 2014 WL 4823607

In connection with highway project the Oregon Department of Transportation brought a condemnation action against landowner to acquire land that abutted the highway. The project involved the reconstruction of the sidewalk and the elimination of curb cuts and driveways that had allowed vehicular access from property to the highway.

Before trial, the trial court granted the state's motion *in limine* to exclude evidence of the diminution in the value of the land as a result of its loss of access to the highway. The court thereafter entered a general judgment awarding defendant just compensation of $11,792. Defendant appealed the judgment and assigned error to the order granting the state's motion *in limine*.

The appeals court affirmed, holding that the denial of access resulting from the elimination of the curb cuts and driveways constituted a denial of access to promote the efficient and safe use of the highway, that is, a regulatory restriction on access to the highway to promote its use as a highway and, consequently, that the denial of access as a result of those restrictions did not constitute a taking of the access for which compensation would be due.

"In summary, the state condemned defendant's access rights in the context of a project that would—and did—result in a regulatory denial of access to Highway 99W to promote the safe and efficient use of the highway as a highway. Whatever the measure of damages could be in those circumstances, it is not the diminished value of the land resulting from the loss of access to Highway 99W because, as a result of the regulatory elimination of the curb cuts and driveways, the property has no lawful access to Highway 99W irrespective of the condemnation of the access to the highway. As the trial court correctly concluded, evidence addressed to a measure of damages based on the loss of access was irrelevant. I conclude, therefore, that the trial court's judgment should be affirmed."

ZONING - PENNSYLVANIA

Newtown Square East, L.P. v. Township of Newtown

Supreme Court of Pennsylvania - September 24, 2014 - A.3d - 2014 WL 4745695

Adjoining landowner challenged the validity of a planned residential development (PRD) ordinance. Township zoning hearing board upheld the validity of the ordinance, and landowner appealed. Landowner also appealed an approval of developer's tentative PRD plan by township board of supervisors. The Court of Common Pleas affirmed. Landowner appealed. The Commonwealth Court upheld the validity of the PRD ordinance and the approval of the PRD plan. Landowner filed petitions for allowance of appeal, which the Supreme Court granted as to three issues.

The Supreme Court of Pennsylvania held that:

- PRD ordinance was consistent with Municipalities Planning Code (MPC) provisions on approval of and potential public hearings on applications for final plan approval;
- PRD ordinance provisions allowing certain changes between approval of a tentative plan and submission or approval of the final plan was consistent with the MPC; and
- Landowner's procedural due process rights were not implicated by developer's designation of several possible categories of uses for buildings.

MUNICIPAL ORDINANCE - GEORGIA

Advanced Disposal Services Middle Georgia, LLC v. Deep South Sanitation, LLC

Supreme Court of Georgia - September 22, 2014 - S.E.2d - 2014 WL 4667471

County and its exclusive provider of solid waste collection services sought injunctions prohibiting non-exclusive solid waste collector from providing collection and disposal services in violation of a newly enacted county ordinance.

The Supreme Court of Georgia held that:

- Enforcement of ordinance would not violate non-exclusive collector's due process rights, and
- County's alleged anticompetitive conduct was exempt from Sherman Anti-Trust Act.

Enforcement of county's solid waste ordinance, pursuant to which county commissioners authorized an exclusive franchise for the collection and disposal of solid waste from residents of unincorporated county, would not violate non-exclusive waste collector's due process rights to continue its existing business, where ordinance's authorization of an exclusive franchise was reasonably related to county's goal of providing complete, uniform, and affordable solid waste collection services to county residents.

MUNICIPAL ORDINANCE - HAWAII

State v. Abel

Supreme Court of Hawai'i - September 24, 2014 - P.3d - 2014 WL 4745807

Defendant was convicted in the District Court, First Circuit, of solicitation with animals in violation of city ordinance. The Court of Appeals affirmed. Defendant's application for certiorari review was granted.

The Supreme Court of Hawaii held that:

- Ordinance under which defendant was convicted of solicitation with animals required State to prove that an actual request or demand for money or gifts occurred, and
- Evidence was insufficient to establish that defendant made actual requests or demands for money or gifts.

LIABILITY - MINNESOTA

State Farm Mut. Auto. Ins. Co.

Court of Appeals of Minnesota - September 22, 2014 - N.W.2d - 2014 WL 4672348

Three actions were brought in which passengers injured on Metropolitan Council buses and having no automobile insurance of their own sought basic-economic-loss benefits from Met Council under the Minnesota No–Fault Automobile Insurance Act. The District Court entered summary judgment in favor of passengers. Met Council appealed.

The Court of Appeals held that buses operated by the Met Council are "motor vehicles" for purposes

of the No–Fault Automobile Insurance Act.

BONDS - MISSOURI

Cromeans v. Morgan Keegan & Co., Inc.

United States District Court, W.D. Missouri, Central Division - September 23, 2014 - F.R.D. - 2014 WL 4722217

After City Industrial Development Authority project failed, Bondholders brought putative class action against bond underwriter – Morgan Keegan – and underwriter's counsel – Armstrong Teasdale.

The Bondholders' claims are based in substantial part on alleged material misrepresentations and omissions contained in the Official Offering Statement, and the underwriter's alleged failure to conduct a due-diligence investigation concerning the accuracy of the representations in the statement.

Bondholders brought a Motion for Class Certification as to all claims contained in the first amended complaint, including negligent underwriting, negligent misrepresentation, fraudulent misrepresentation, Missouri Blue Sky law violations, and unjust enrichment.

The District Court granted the Motion for Class Certification as to Plaintiffs' claims for violation of the Missouri Blue Sky law and negligent underwriting.

The Court concluded that individualized proof of reliance made class certification inappropriate for Plaintiffs' negligent and fraudulent misrepresentation claims, rejecting Plaintiffs' "fraud created the market" theory.

ZONING - NEW JERSEY

R. Neumann & Co. v. City of Hoboken

Superior Court of New Jersey, Appellate Division - September 23, 2014 - A.3d - 2014 WL 4686556

Property owner brought action against city and city officials, alleging claims in lieu of prerogative writs, challenging city council's resolution designating area including owner's property as an area in need of rehabilitation pursuant to the Local Redevelopment and Housing Law (LRHL). The Superior Court dismissed the claims, and owner appealed.

The Superior Court, Appellate Division, held that resolution was insufficient to allow determination of whether city had complied with statutory standards for designation of area as in need of rehabilitation.

Resolution of city council designating certain area to be in need of rehabilitation pursuant to the Local Redevelopment and Housing Law (LRHL), stating that council had relied on reports indicating that water and sewer lines in area were at least 50 years old "or" were in need of substantial maintenance, was insufficient to allow determination of whether city had complied with statutory standard requiring majority of water and sewer infrastructure in delineated area be at least 50 years old "and" in need of repair or substantial maintenance, and thus vacation of resolution was warranted for city to reconsider designation.

NEGLIGENCE - NEW YORK

Warshefskie v. New York City Housing Authority

Supreme Court, Appellate Division, Second Department, New York - September 17, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 06200

Police officer brought statutory and common-law negligence claims against a housing authority, claiming that the housing authority failed to properly maintain a fire door, which caused injury to the officer during his pursuit of a suspect. The Supreme Court, Richmond County, granted partial summary judgment to the housing authority. Both parties appealed.

The Supreme Court, Appellate Division, held that:

- Issue of fact as to whether the housing authority was negligent in maintaining the fire door precluded summary judgment on the common-law negligence claim;
- The police officer's failure to demonstrate that the fire door failed to comply with the building code precluded statutory negligence claim; and
- The trial court did not abuse its discretion in denying a plaintiff leave to amend his complaint and bill of particulars.

IMMUNITY - NEW YORK

Tara N.P. (Anonymous) v. Western Suffolk Bd. of Co-op. Educational Services

Supreme Court, Appellate Division, Second Department, New York - September 17, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 06189

Student in GED course at county facility leased by non-profit organization brought action against county, county's social services department, and county's department of labor, seeking to recover damages for personal injuries sustained when she was sexually assaulted by maintenance worker whom defendants had referred to organization for hire at facility, despite worker's designation as level three sex offender. The Supreme Court, Suffolk County, denied defendants' summary judgment motion. Defendants appealed.

The Supreme Court, Appellate Division, held that:

- Defendants did not voluntarily assume any special duty to student, precluding tort liability, and
- Fact issue existed as to whether defendants breached duty of care to organization.

TAX - NEW YORK

Westchester Joint Water Works v. Assessor of City of Rye

Supreme Court, Appellate Division, Second Department, New York - September 17, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 06208

Taxpayer commenced tax certiorari proceeding challenging real property tax assessments on parcels. School district intervened. The Supreme Court, Westchester County, denied assessor's motion to dismiss proceedings on ground that notices of petition and petitions were not served upon school district's superintendent, but granted school district's motion to dismiss on same ground. Taxpayer appealed, and assessor cross-appealed.

The Supreme Court, Appellate Division, held that:

- City had standing, in tax certiorari proceeding challenging real property tax assessments, to seek dismissal based on taxpayer's failure to give notice of proceedings to superintendent of school district where parcel was located; and
- Tax certiorari proceeding challenging real property tax assessments was subject to dismissal based on taxpayer's failure, without good cause, to give notice of proceedings to superintendent of school district where parcel was located.

ZONING - OHIO

State ex rel. Ebersole v. Powell

Supreme Court of Ohio - September 19, 2014 - N.E.3d - 2014 -Ohio- 4078

Residents sought writ of mandamus to compel city council and city clerk to place proposed amendment to city charter on election ballot.

The Supreme Court of Ohio held that proposed amendment to city charter, which would have rendered a commission composed of five private citizens responsible for recommending a new comprehensive zoning and development plan to city council, was an unlawful delegation of legislative power, where city council would have been required to consider commission's recommendation and to adopt a final plan, final plan could make adjustments to commission recommendation only to extent that adjustments were consistent with commission's findings, and amendment did not set forth any standards to govern those findings.

RECORDS - OHIO

Mayfield Hts. v. M.T.S.

Court of Appeals of Ohio, Eighth District, Cuyahoga County - September 18, 2014 - N.E.3d - 2014 -Ohio- 4088

Homeowner filed a motion to seal the city's nuisance complaint and city's motion to compel inspection because they referred to homeowner's expunged convictions, and he also sought sanctions against the city for the release of his sealed criminal records. The Court of Common Pleas denied motion, and homeowner appealed.

The Court of Appeals held that trial court abused its discretion when it denied homeowner's motion to seal city's nuisance complaint and city's motion to compel inspection without holding a hearing or conducting an in camera inspection.

PUBLIC UTILITIES - PENNSYLVANIA

Metropolitan Edison Co. v. Pennsylvania Public Utility Com'n

United States Court of Appeals, Third Circuit - September 16, 2014 - F.3d - 2014 WL 4548859

Electric utility companies commenced action against Pennsylvania Public Utility Commission (PUC) and its commissioners in their official capacities, alleging violation of filed rate doctrine under

Federal Power Act (FPA), confiscatory taking under Fourteenth Amendment, and federal pre-emption of Pennsylvania Electric Competition Act (ECA), and seeking declaratory judgment and injunctive relief to recoup from their customers more than $250 million in costs associated with "line losses," i.e., energy that was lost when electricity travels over power lines, and interest related to those costs.

The District Court held that companies' unsuccessful pursuit of relief in state proceeding precluded their effort to claim relief in federal court. Companies appealed.

The Court of Appeals held that:

- Companies waived issue for consideration on appeal of whether ECA as applied to them was pre-empted;
- Issue preclusion applied to bar claim alleging confiscatory taking;
- Prior review of PUC decision by Commonwealth Court of Pennsylvania regarding classification of line-loss costs for retail billing purposes was judicial in nature;
- Companies could not avoid application of issue preclusion bar on basis of application of alleged incorrect standard of review by Commonwealth Court in prior review of public utilities commission order;
- Congress did not divest state utility agencies or state courts of jurisdiction to hear cases requiring adjudication of scope filed rate doctrine;
- PUC in its classification of line-loss costs for retail billing purposes, and Commonwealth Court in its affirmation of that decision, had arguable basis for jurisdiction; and
- PUC in its classification of electricity line-loss costs for retail billing purposes, and Commonwealth Court in its affirmation of that decision, was not collateral attack on decision by Federal Energy Regulatory Commission.

EMINENT DOMAIN - PENNSYLVANIA

Reading Area Water Authority v. Schuylkill River Greenway Assn.

Supreme Court of Pennsylvania - September 24, 2014 - A.3d - 2014 WL 4745698

Water authority filed a declaration of taking to condemn drainage easement across landowners' property. The Court of Common Pleas sustained landowners' preliminary objections and dismissed the declaration of taking, and water authority appealed. The Commonwealth Court reversed and remanded. Landowners appealed.

The Supreme Court of Pennsylvania held that drainage easement was not for public use and thus could not be subject of taking by water authority.

Drainage easement across landowners' property was not for public use and thus, pursuant to Property Rights Protection Act (PRPA), could not be subject of taking by water authority, even though easement was to be located side-by-side with water easement and was intended for use by prospective purchasers of developer's adult-community residential development. Easement was to be acquired at developer's behest for sole use of developer, and at developer's sole cost, and there was no suggestion that easement was meant to be used for any purpose broader than servicing development.

MUNICIPAL CORPORATIONS - PENNSYLVANIA

Southeastern Pennsylvania Transp. Authority v. City of Philadelphia

Supreme Court of Pennsylvania - September 24, 2014 - A.3d - 2014 WL 4745777

Southeastern Pennsylvania Transportation Authority (SEPTA) brought action against city and city commission on human relations, seeking injunctive and declaratory relief, alleging that commission was prohibited from exercising jurisdiction over SEPTA under city fair practices ordinance.

The Supreme Court of Pennsylvania held that:

- Whether SEPTA was a Commonwealth agency was not determinative of whether it was subject to jurisdiction of city, and
- SEPTA was not required to exhaust administrative remedies prior to initiating suit.

Whether Southeastern Pennsylvania Transportation Authority (SEPTA) was an agency of the Commonwealth was not determinative of whether SEPTA was subject to municipality's authority, and thus subject to city's fair practices ordinances and jurisdiction of city human relations commission, rather, because the legislature authorized the creation of both entities, and set the limits of each entity's authority, the court's task was to determine, through an examination of the relevant statutes, which entity the legislature intended to have preeminent powers.

IMMUNITY - TEXAS

San Antonio Water System v. Smith

Court of Appeals of Texas, San Antonio - September 24, 2014 - S.W.3d - 2014 WL 4723123

Beatriz Smith sued the San Antonio Water System (SAWS) for injuries she sustained when she fell into a hole on a sidewalk. SAWS filed a plea to the jurisdiction, asserting it did not receive notice of the claim against it as required by the Texas Tort Claims Act. The trial court denied the plea.

The Court of Appeals affirmed, holding that:

- SAWS is not a "governmental unit" entitled to notice under the Act separate and apart from notice to the City of San Antonio; and
- Smith presented sufficient evidence to raise a fact question as to whether the City of San Antonio had actual notice of Smith's injury claim.

PENSION FUNDING - ALABAMA

Taylor v. City of Gadsden

United States Court of Appeals, Eleventh Circuit - September 16, 2014 - F.3d - 2014 WL 4548614

Recognizing that its pension system was underfunded, City raised its employees' pension contributions by 2.5% of their total compensation. It did so pursuant to an Act passed by the Alabama legislature mandating such an increase for state employees and permitting, but not requiring, localities to do the same.

In response, a class of City firefighters — whose contribution rate was raised from 6% to 8.5% — brought this lawsuit. They alleged that the City's actions impaired the terms of their employment contracts, in violation of both the United States Constitution and the Alabama Constitution.

The Court of Appeals held that plaintiffs had no contractual right to a static, inviolable 6% contribution rate and thus the City was free to amend the employee contribution rate without constitutional consequence.

INVERSE CONDEMNATION - ALASKA

Briggs v. City of Palmer

Supreme Court of Alaska - September 12, 2014 - P.3d - 2014 WL 4494272

Property owner brought action against city for inverse condemnation, claiming airport operation diminished his property value. The Superior Court entered summary judgment for city, and property owner appealed.

The Supreme Court of Alaska held that property owner should have been permitted to testify as to the market value of his property both before and after an alleged taking, based on the premise, that, as an owner, he was informed about the property's value, both before and after the event that purportedly diminished its value.

CEQA - CALIFORNIA

Coalition for Adequate Review v. City and County of San Francisco

Court of Appeal, First District, Division 1, California - September 15, 2014 - Cal.Rptr.3d - 2014 WL 4537020

Objectors petitioned for writ of mandate challenging city's land use plans. The Superior Court denied petition. Objectors appealed, and the Court of Appeal affirmed. The Superior Court granted objectors' motion to tax costs and denied all costs to city. City appealed.

The Court of Appeal held that:

- Trial court was required to award costs to city for its preparation of a supplemental record, but
- Labor costs to review objectors' record of proceedings "for completeness" were not recoverable.

When a petitioner elects to prepare the record for a California Environmental Quality Act (CEQA) action against a public agency but the record is incomplete, and an agency is put to the task of supplementation to ensure completeness, the language of CEQA's record preparation provision allows, and the purpose of the provision to protect public monies counsels, that the agency recoup the costs of preparing the supplemental record.

Trial court was required to award costs to city for its preparation of a supplemental record under California Environmental Quality Act's (CEQA) record preparation statute, after city prevailed in objectors' mandamus action, even though objectors elected to prepare the record, where the city obtained leave from the trial court to prepare the supplemental record, objectors rejected city's offer to defer supplementation of the record until it filed its opposition to the writ petition, and city's preparation of a supplemental record did not violate the city's obligation to minimize record

preparation costs.

When a petitioner elects to prepare the record for a California Environmental Quality Act (CEQA) action against a public agency, the agency's labor costs to review the petitioner-prepared record of proceedings "for completeness" in connection with certification are not recoverable record preparation costs under CEQA's record preparation provision.

BENEFITS - DISTRICT OF COLUMBIA

Rivera v. Lew

District of Columbia Court of Appeals - September 11, 2014 - A.3d - 2014 WL 4450507

Former spouse of police officer sought judicial review of District of Columbia Retirement Board's (DCRB) denial of spouse's request for a survivor annuity following officer's death. The District Court granted summary judgment in favor of DCRB. Spouse appealed.

The Court of Appeals held that mayor was not required to comply with posthumous nunc pro tunc order amending divorce settlement.

Mayor was not required to comply with a posthumously-issued nunc pro tunc court order that on its face related back to a date before police officer's death and retroactively amended a divorce settlement agreement to provide the officer's former spouse with entitlement survivor annuity in a way that was inconsistent with the last benefits election executed by the officer prior to his death, where order had not been issued prior to officer's retirement, as officer's death prior to retirement precluded retirement.

LIABILITY - ILLINOIS

Bruns v. City of Centralia

Supreme Court of Illinois - September 18, 2014 - N.E.3d - 2014 IL 116998

Pedestrian brought negligence action against city, alleging that she tripped and fell on an uneven sidewalk. The Circuit Court entered summary judgment in favor of city. Pedestrian appealed. The Appellate Court reversed and remanded. City sought review.

The Supreme Court of Illinois held that:

- Mere fact that pedestrian was looking at the door and steps of eye clinic which was her destination did not constitute a distraction, and
- City had no duty to protect pedestrian from open and obvious sidewalk defect.

Mere fact that pedestrian was looking at the door and steps of eye clinic which was her destination did not constitute a "distraction" that would serve as an exception to the open and obvious rule in negligence action against city on the basis of sidewalk defect, where pedestrian failed to identify any circumstance, much less a circumstance that was reasonably foreseeable by the city, which required her to divert her attention from the open and obvious sidewalk defect, or otherwise prevented her from avoiding the sidewalk defect.

EASEMENTS - ILLINOIS

Nationwide Financial, LP v. Pobuda

Supreme Court of Illinois - September 18, 2014 - N.E.3d - 2014 IL 116717

Eastern landowner brought action against western landowners for declaratory judgment of trespass. Western landowners brought counterclaims for declaratory judgment of prescriptive easement, interference with an express easement, and a declaratory judgment regarding certain developmental modifications in order to prevent flooding on their property. The Circuit Court entered summary judgment in favor of eastern landowner. Western landowners appealed.

The Supreme Court of Illiniois held that:

- Prescriptive easement claim does not require that the claimant prove that the titleholder was altogether deprived of possession and/or use of the property during the 20–year period, overruling Catholic Bishop of Chicago v. Chicago Title and Trust Co., 2011 IL App (1st) 102389, 954 N.E.2d 797; Chicago Steel Rule Die & Fabricators Co. v. Malan Const. Co., 200 Ill.App.3d 701, 558 N.E.2d 341, and City of Des Plaines v. Redella, 365 Ill.App.3d 68, 847 N.E.2d 732;
- There was a presumption that an easement was granted by predecessor in title of eastern landowner; and
- Western landowners were not required to orally communicate their claim of right to the owners of the eastern property.

EMPLOYMENT - MASSACHUSETTS

Hull Retirement Bd. v. Contributory Retirement Appeal Bd.

Appeals Court of Massachusetts - September 16, 2014 - N.E.3d - 2014 WL 4546047

Police officer brought action against town after he was removed from paid injury leave status and placed on an unpaid leave of absence. Officer and town reached a settlement agreement under which town placed in escrow approximately $44,400 in accidental injury leave pay. Officer appealed retirement board's refusal to recalculate his retirement benefits on the basis of the additional funds. The division of administrative law appeals ordered a correction of the retirement date. Town appealed. The Contributory Retirement Appeal Board affirmed. Town appealed.

The Appeals Court held that funds were regular compensation received by officer for purposes of calculating his retirement benefits.

TAX - NEW HAMPSHIRE

Duncan v. State

Supreme Court of New Hampshire - August 28, 2014 - A.3d - 2014 WL 4241774

Taxpayers and LLC filed petition seeking declaratory judgment that Education Tax Credit Program, which provided tax credit to business organizations and enterprises that contributed to scholarship organizations to provide scholarships to students, violated provision of New Hampshire Constitution prohibiting grant of tax dollars for use by schools or institutions of any religious sect or denomination. Citizens who wished their children to receive scholarship funds under program, and

non-profit organization intervened. The Superior Court ruled in plaintiffs' favor. State and intervenors appealed.

The Supreme Court of New Hampshire held that:

- Amended statute conferring taxpayers with standing to challenge action of taxing district without having to demonstrate impairment of or prejudice to personal right violated New Hampshire Constitution's prohibition against rendering of advisory opinions;
- Taxpayers lacked standing to seek declaratory judgment that Education Tax Credit Program violated New Hampshire Constitution's prohibition against tax dollars being granted to or used by schools or institutions of any religious sect or denomination; and
- LLC's assertion that it paid business enterprise taxes or business profit taxes, by itself, did not allege personal injury from implementation of Education Tax Credit Program, as required to have standing to challenge constitutionality of program.

LIABILITY - NEW YORK

Granata v. City of White Plains

Supreme Court, Appellate Division, Second Department, New York - September 10, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 06053

Action was brought against city to recover damages for negligence and wrongful death of customer who was attacked and killed in city's parking garage. The Supreme Court, Westchester County, denied city's motion for summary judgment on cause of action alleging that city failed to maintain premises in reasonably safe condition. City appealed.

The Supreme Court, Appellate Division, held that:

- City acted in its proprietary capacity, and
- There was triable issue of fact as to foreseeability of attack.

City acted in proprietary, rather than governmental, capacity in owning and operating parking garage, for which it was alleged to have failed to provide adequate security, and, in that capacity, city, like any landlord, had duty to take minimal precautions to protect customer from foreseeable harm.

LIABILITY - NEW YORK

Gugel v. County of Suffolk

Supreme Court, Appellate Division, Second Department, New York - September 10, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 06054

Plaintiffs brought action against county to recover for damages they sustained as result of sewage backup. The Supreme Court, Suffolk County, entered summary judgment in county's favor, and plaintiffs appealed.

The Supreme Court, Appellate Division, held that county's proof regarding its regular inspection and maintenance of its sewer system failed to demonstrate its prima facie entitlement to judgment as matter of law.

County's proof regarding its regular inspection and maintenance of its sewer system failed to demonstrate its prima facie entitlement to judgment as matter of law in action to recover damages sustained as result of sewage backup, even though county did not have prior notice of dangerous condition in subject sewer system, where records that county submitted in support of its motion for summary judgment were confusing, internally inconsistent, and did not support conclusion made in accompanying affidavit of county department of public works employee, who stated that subject sewer line was annually "jetted" to clear blockages.

EMPLOYMENT - NEW YORK

Iasillo v. Pilla

Supreme Court, Appellate Division, Second Department, New York - September 10, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 06056

Former mayors and members of Board of Trustees of village brought action against village, mayor, and trustees of Board, seeking declaration that resolution of Board, which terminated former mayors' and Board members' post-retirement healthcare benefits, was null and void and without legal effect. The Supreme Court, Westchester County granted defendants' converted motion for summary judgment. Former mayors and Board members appealed.

The Supreme Court, Appellate Division, held that prior Board resolutions that granted post-retirement healthcare benefits did not establish vested interest in those benefits.

LIABILITY - NEW YORK

Lepore v. Town of Greenburgh

Supreme Court, Appellate Division, Second Department, New York - September 10, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 06063

Plaintiffs brought action against town and police officers to recover damages for civil rights violations pursuant to § 1983. The Supreme Court, Westchester County, denied defendants' motions for summary judgment and to dismiss the complaint. Defendants appealed.

The Supreme Court, Appellate Division, held that:

- Town was entitled to summary judgment on plaintiffs' cause of action seeking to impose liability on town pursuant to § 1983 solely for the actions of police officer, and
- Trial court erred in denying town's motion to dismiss complaint insofar as asserted against John Doe officers.

ZONING - NEW YORK

Quintana v. Board of Zoning Appeals of Inc. Village of Muttontown

Supreme Court, Appellate Division, Second Department, New York - September 10, 2014 -

N.Y.S.2d - 2014 N.Y. Slip Op. 06092

Applicants initiated article 78 proceeding to review determination of board of zoning appeals denying application for lot-depth variance. The Supreme Court, Nassau County, annulled determination. Board appealed.

The Supreme Court, Appellate Division, held that there was no evidence that granting variance would produce undesirable change in character of neighborhood, adversely impact on physical and environmental conditions, or otherwise result in detriment to health, safety, and welfare of neighborhood or community.

Lot-depth variance should have been granted, absent evidence that granting variance would produce undesirable change in character of neighborhood, adversely impact on physical and environmental conditions, or otherwise result in detriment to health, safety, and welfare of neighborhood or community; subjective considerations of general community opposition was not rational basis for denial of variance.

TAX - PENNSYLVANIA

Four Quarters Interfaith Sanctuary of Earth Religion v. Bedford County Bd. of Assessment and Revision of Taxes

Commonwealth Court of Pennsylvania - September 16, 2014 - A.3d - 2014 WL 4547841

Taxpayer, a religious organization that owned 90 acres of real property where members performed religious rituals, appealed decision of county board of assessment and revision, denying taxpayer's request for tax exemption for places of religious worship.

The Commonwealth Court held that:

- Cliffs and other areas of property were not entitled to tax exemption as places of regularly stated religious worship; but
- Portions of unwalkable areas of property that provided members' privacy were entitled to tax exemption as places necessary for the occupancy and enjoyment of religious practice; and
- Campsites and dormitory were entitled to tax exemption as places necessary for the occupancy and enjoyment of religious practice.

LIABILITY - SOUTH CAROLINA

Major v. City of Hartsville

Supreme Court of South Carolina - September 17, 2014 - S.E.2d - 2014 WL 4629587

Pedestrian, who allegedly fell while walking across unpaved area of intersection, brought personal-injury action against city, asserting claims for negligence, gross negligence, and willful and wanton conduct. The Circuit Court granted city's motion for summary judgment. Pedestrian appealed.

The Supreme Court of South Carolina held that genuine issues of material fact as to whether city should be charged with constructive notice of rut on basis that rut existed for such a period of time that city should have discovered it and as to whether recurring nature of defect created continual condition giving rise to constructive notice precluded summary judgment.

PUBLIC RECORDS - WISCONSIN

Wisconsin Professional Police Assn., Inc. v. Wisconsin Counties Assn.

Court of Appeals of Wisconsin - September 18, 2014 - Slip Copy - 2014 WL 4637474

Wisconsin Professional Police Association sought a declaration that the Wisconsin Counties Association was subject to Wisconsin's public records law, that the Wisconsin Counties Association violated that law, and a mandamus order directing the Counties Association to produce records requested by the Police Association pursuant to that law.

The Circuit Court dismissed the complaint on the ground that the public records law imposed record inspection and production duties only on an "authority," as defined in WIS. STAT. § 19.32(1), and the Counties Association, as an unincorporated association, "quite clearly does not fall within" that definition. The Court of Appeals affirmed.

LIABILITY - CALIFORNIA

Suarez v. City of Corona

Court of Appeal, Fourth District, Division 1, California - August 29, 2014 - Cal.Rptr.3d - 2014 WL 4254312

Van passenger brought action against city for dangerous condition of public property. The Superior Court granted summary judgment for city and awarded attorney fees and costs against passenger and his attorneys. Passenger and his attorneys appealed.

The Court of Appeal held that:

- Costs statute does not authorize an award against a party's counsel;
- Court commissioner had jurisdiction to hear city's costs motion;
- Passenger maintained his action against city without reasonable cause; and
- Timing of city's costs motion did not violate due process.

Van passenger's action against city for dangerous condition of public property, based on incident in which the compressed natural gas tank in the van exploded while being filled at a fueling station owned by the city, was maintained without reasonable cause, thus supporting sanctions under the statute providing public entities and other specified defendants with a way to recover the costs of defending against unmeritorious and frivolous litigation, where passenger had information from other sources that showed the accident was not caused by a dangerous condition on the city's property, the city made numerous demands to dismiss the case against the city or provide a viable theory of liability, and passenger ignored those demands and let the case languish for approximately one year.

BONDS - FLORIDA

S.E.C. v. City of Miami

United States Court of Appeals, Eleventh Circuit - September 5, 2014 - Fed.Appx. - 2014 WL 4377831

The SEC instituted a civil enforcement action alleging that the City of Miami and its Budget Director, Michael Boudreaux committed securities fraud, and that the City violated a 2003 SEC cease-and-desist order, imposed after the City violated the anti-fraud provisions of the federal securities laws in connection with the issuance of municipal bonds in 1995.

The crux of the SEC's allegations concerned alleged material misrepresentations and omissions reflected in 2007 and 2008 fiscal year-end City financial documents that were incorporated by reference into the City's bond offerings in 2009.

As relief, the SEC requested that the district court: (1) grant injunctive relief that would permanently enjoin the defendants from further violations of federal securities law; (2) order the City to comply with the 2003 cease-and-desist order; and (3) impose civil monetary penalties on the defendants.

Boudreaux moved to dismiss the claims against him based on the doctrine of qualified immunity because he was acting within the scope of his official responsibilities as City Budget Director when the alleged misconduct occurred. The District Court denied the motion and Boudreaux appealed.

The Court of Appeals noted that the issue of whether municipal officials are entitled to qualified immunity in a SEC enforcement action under the federal securities laws appeared to be a matter of first impression.

The Court of Appeals affirmed, holding that qualified immunity was unavailable to Boudreaux as a defense against the SEC's civil enforcement action.

LIABILITY - ILLINOIS

Pattullo-Banks v. City of Park

Appellate Court of IllinoisFirst District, Fourth Division - September 4, 2014 - N.E.3d - 2014 IL App (1st) 132856

Pedestrian who had been hit by car while crossing street brought action against city, alleging that she had been forced to cross street at a point where there was no crosswalk because the city had breached its duty to maintain its property in a reasonably safe condition by unreasonably piling snow on the sidewalk so as to make it impassable. The Circuit Court entered summary judgment in favor of city, and pedestrian appealed.

The Appellate Court held that whether pedestrian was an intended user of street in location where she was hit by a car was irrelevant to determination of whether city breached its duty maintain its property in a reasonably safe condition by unreasonably piling snow on the sidewalk so as to make it impassable, for purposes of determining whether city was immune from liability for pedestrian's injuries under Local Governmental and Governmental Employees Tort Immunity Act. Issue of whether pedestrian was an intended and permitted user was to be determined based upon the property for which the city was alleged to have breached its duty rather than the place where the injury occurred.

IMMUNITY - ILLINOIS

Bowman v. Chicago Park Dist.

Appellate Court of Illinois, First District, Fifth Division - September 5, 2014 - N.E.3d - 2014 IL App (1st) 132122

Mother brought action against city park district on behalf of her 13-year-old child following child's ankle injury while using a damaged slide, alleging that city's failure to repair slide after having been informed of its condition nearly one year earlier was willful and wanton. The Circuit Court entered summary judgment in favor of city. Mother appealed.

The Appellate Court held that thirteen-year-old child was a permitted and intended user of playground on city park on which she was injured while using slide that city park district had notice was damaged for nearly one year but failed to replace, and thus city owed child duty of care under the Local Governmental and Governmental Employees Tort Immunity Act, even though ordinance prohibited use of playground equipment designed for children under 12 years old.

Ordinance did not identify which parks were designated for certain age groups and did not state that playground or slide at issue were designed for such children, park website mentioned no age range, there were no signs at playground or any other indication that it was designed or designated for such children, and city did not take any measures to prevent children who were 12 years and older from using park.

ELECTIONS - LOUISIANA

Thebeau v. Smith

Court of Appeal of Louisiana, Second Circuit - September 8, 2014 - So.3d - 49, 665 (La.App. 2 Cir. 9/8/14)

City resident brought action against candidate contesting his qualifications to run for mayor. The District Court entered judgment in favor of resident. Candidate appealed.

The Court of Appeal held that:

- Candidate was not a valid elector in city at the time of his qualification for mayor, and
- Candidate was not domiciled in nor did he reside in city for the year immediately preceding his candidacy for mayor.

Candidate was not a valid elector in city at the time of his qualification for mayor, as required by statutory qualifications for mayor, even though he changed his address to city on the date he qualified for mayor, where candidate had previously listed his address in another city for all important documents, and candidate's original voter registration application listed address in another city.

Candidate was not domiciled in nor did he reside in city for the year immediately preceding his candidacy for mayor, as required by statutory qualifications for mayor, even though candidate and his relatives testified that he was domiciled in city, where candidate's driver's license, voter registration, bank accounts, and corporate addresses had been in another city for many years preceding his candidacy.

ZONING - MASSACHUSETTS

Welch-Philippino v. Zoning Bd. of Appeals of Newburyport

Appeals Court of Massachusetts, Suffolk - September 9, 2014 - N.E.3d - 2014 WL 4410875

Neighbors appealed decision of city zoning board of appeals to issue special permit authorizing property owners to replace nursing-home facility, which was nonconforming use but dimensionally conforming structure, with modernized facility in residential zone. The Land Court Department determined that project was permissible as of right. Neighbors appealed.

The Appeals Court held, as an apparent matter of first impression, that replacement of a conforming structure devoted to a nonconforming use that does not result in a change or substantial extension of the use is permissible as of right under the zoning statute governing existing structures and uses.

MUNICIPAL ORDINANCE - NEW JERSEY

In re Jackson Tp. Administrative Code

Superior Court of New Jersey, Appellate Division - September 8, 2014 - A.3d - 2014 WL 4388283

Mayor and township council brought action against petitioners seeking declaratory judgment that ordinance proposed in initiative petition was unlawful. The Superior CourT granted mayor and council summary judgment. Petitioners appealed.

The Superior Court, Appellate Division, held that:

- Trial court had the authority under Declaratory Judgments Act to hear the pre-election challenge to the proposed township ordinance, and
- In a matter of first impression, trial court did not have authority to revise proposed ordinance and order that altered ordinance be placed on ballot.

Trial court did not have authority to revise township ordinance dealing with insourcing of legal department and shared-services agreement with board of education, which ordinance was proposed in citizens' initiative petition, and order that altered ordinance be placed on ballot, even though proposed ordinance contained a severability clause. The Optional Municipal Charter Law (Faulkner Act), mandated minimal judicial interference in initiative process, and the policies underlying the Faulkner Act were not served by the court severing part of the ordinance based on its subjective evaluation of the significance of the school board and severability clauses, then rewriting the ordinance, ballot question, and interpretative statement.

EMINENT DOMAIN - NEW JERSEY

Borough of Merchantville v. Malik & Son, LLC

Supreme Court of New Jersey - August 7, 2014 - 218 N.J. 556 - 95 A.3d 709

Borough filed petition to condemn property. The Superior Court denied motion by mortgagee's assignee to dismiss, and entered judgment for borough. Mortgagee's assignee appealed.

The Supreme Court of New Jersey held that:

- Borough was not obligated to negotiate with mortgagee's assignee prior to initiating condemnation proceedings, and
- Borough did not breach its duty to engage in bona fide negotiations with property owner.

PUBLIC UTILITIES - NEW JERSEY

PPL Energyplus, LLC v. Solomon

United States Court of Appeals, Third Circuit - September 11, 2014 - F.3d - 2014 WL 4454999

Dissatisfied with the stock and reliability of power-generating facilities in New Jersey, the state adopted the Long Term Capacity Pilot Program Act. The Act-known as LCAPP-instructed New Jersey's Board of Public Utilities to promote the construction of new power-generating facilities in the state. Rather than pay for the construction of these plants directly, the Board of Public Utilities crafted a set of contracts, called Standard Offer Capacity Agreements, that assured new electric energy generators fifteen years of revenue from local utilities and, ultimately, New Jersey ratepayers. LCAPP guaranteed revenue to new generators by fixing the rates those generators would receive for supplying electrical capacity, that is, the ability to make energy when called upon.

Energy producers and sellers brought action seeking to have LCAPP declared unconstitutional. The District Court granted judgment for plaintiffs. New Jersey's Board of Public Utilities and contractor under LCAPP appealed.

The Court of Appeals held that LCAPP was preempted by the Federal Power Act.

FPA occupied field of interstate rates for electricity, and therefore LCAPP – which provided incentives for construction of new power plants by regulating rates that new electric generators would receive for their capacity through Standard Offer Capacity Agreements – intruded into area reserved exclusively for federal government and was preempted, since LCAPP compelled participants in federally-regulated marketplace to transact capacity at prices other than price fixed by marketplace. Even if reasonableness of Agreements' rates would be within exclusive jurisdiction of FERC to review, Agreements could not set capacity prices in the first place.

PENSIONS - NEW JERSEY

Saccone v. Board of Trustees of Police and Firemen's Retirement System

Supreme Court of New Jersey - September 11, 2014 - A.3d - 2014 WL 4450553

Retired member of Police and Firemen's Retirement System (PFRS) sought review of PFRS Board of Trustees' decision to uphold Division of Pension and Benefits' denial of member's request to reassign survivors' benefits from his disabled son as an individual to special needs trust (SNT) in his son's name. The Superior Court, Appellate Division, affirmed. Member petitioned for certification, which was granted.

The Supreme Court of New Jersey held that SNT was permitted to stand in son's place as beneficiary to whom survivors' benefits were due.

TAX - NEW YORK

Baldwin Union Free School Dist. v. County of Nassau

Supreme Court, Appellate Division, Second Department, New York - September 10, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 06043

School district brought action against county, alleging ordinance establishing and imposing "service charges" upon exempt users of sewer system violated equal protection and due process, violated General Municipal Law and county charter, and that adoption of ordinance was precluded by doctrine of preemption. School district moved for preliminary injunction and county cross-moved for summary judgment. The Supreme Court, Nassau County, granted school district's motion and denied county's motion. County appealed.

The Supreme Court, Appellate Division, held that trial court's denial of summary judgment should have been without prejudice to renewal upon the completion of discovery.

While Trial court providently exercised its discretion in denying county's motion, in effect, for summary judgment declaring that ordinance establishing and imposing "service charges" upon exempt users of sewer system was an authorized exercise of county's lawmaking authority and was constitutional under the New York and United States Constitutions, such denial should have been without prejudice to renewal upon the completion of discovery.

IMMUNITY - OHIO

Porter v. Probst

Court of Appeals of Ohio, Seventh District, Belmont County - August 29, 2014 - N.E.3d - 2014 -Ohio- 3789

Laid-off jail administrator filed complaint against county commissioners and sheriff alleging promissory estoppel, denial of sick leave benefit, due process violation, and tortious interference with employment, and subsequently moved to amend complaint to include county's insurer. The Court of Common Pleas denied motion and granted summary judgment for defendants. Administrator appealed.

The Court of Appeals held that:

- Court did not abuse its discretion in finding undue prejudice as basis for denying motion;
- Defendants had sovereign immunity from promissory estoppel claim;
- County commissioners were not required to pay administrator sick leave benefit;
- Administrator failed to show he had any constitutionally protected interest in vacation time in excess of caps; and
- Tortious interference claim was barred by doctrine of sovereign immunity.

CONTRACTS - SOUTH CAROLINA

Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia

Supreme Court of South Carolina - August 20, 2014 - S.E.2d - 2014 WL 4087917

In April 2003, the City entered into an MOU with Stevens & Wilkinson of South Carolina, Inc. (S&W)

to develop a publicly-funded hotel. As architect, S&W was to complete sufficient preliminary design work to determine a guaranteed maximum price for the project, which would be used by the City to obtain municipal bond funding to cover the cost of the hotel. Pursuant to the MOU, the construction company was to pay S&W directly. On June 26, 2003, the City received a letter stating that S&W would complete its preliminary design on July 10, 2003, and would thereupon cease further work until the bond financing for the hotel was finalized. Realizing this could delay the start of construction, S&W offered to continue working the remaining ninety days until the anticipated bond closing date of October 13, 2003, but required assurance it would be compensated for the work it performed during this time frame. It provided an estimate requiring $650,000 through October 13 and $75,000 per week after that. On July 30, the City approved "$650,000 for interim architectural design services for a period of 90 days prior to bond closing."

The bond closing did not occur as scheduled, but S&W nevertheless continued to work. On December 16, 2003, S&W submitted an invoice to the City for $697,084.79 for work that took place from July 10 to December 15, 2003. By letter dated December 17, 2003, S&W informed the construction company that the City had voted that day "to advance [$705,000.000] to the design team for design services and expenses at cost covering the time period between July 10, 2003 to December 15, 2003." Because under the MOU the construction company was to pay S&W, not the City, the construction company agreed to reimburse the City for the funds paid to S&W after the bond closing. The City remitted $697,084.79 directly to S&W later that month. S&W continued to work on the project, but in March 2004, the City abandoned its plans under the MOU and ended its relationship with S&W. S&W received no further compensation and sued the City for breach of contract under the MOU and the July 2003 agreement. S&W then moved for partial summary judgment arguing it had a contract with the City as a matter of law based on the performance of and payment for architectural design services agreed to in July 2003. S&W's motion clarified that it only sought resolution of whether there was a contract, and did not seek summary judgment on the issue of breach or damages.

The City argued there was no separate agreement and the payment of interim fees was merely an advance on fees under the MOU and furthermore, the MOU provided that S&W was to be paid by the construction company, not the City. The circuit court agreed with S&W and granted partial summary judgment on the sole issue of the existence of a contract under the July 2003 agreement. Specifically, the court found S&W made an offer by delivering its estimate to the City, and the City accepted the offer, "albeit on seemingly modified terms," by voting to authorize the $650,000.

The City filed a Rule 59(e) motion, abandoning the argument that there was no contract. For the first time, the City argued the authorization of the $650,000 could not constitute an acceptance on "seemingly modified terms" because any modification of the terms resulted in a counteroffer, which S&W accepted by performance. It further argued that because S&W accepted by performance, the terms were limited to the counteroffer of $650,000. Because S&W had already been paid that sum, the City argued the court should find the City had fully performed and the contract was satisfied.

The Supreme Court of South Carolina held that city failed to preserve for appellate review assertion that contract was satisfied.

PUBLIC UTILITIES - TEXAS

Exelon Wind 1, L.L.C. v. Nelson

United States Court of Appeals, Fifth Circuit - September 8, 2014 - F.3d - 2014 WL 4421392

Qualifying wind generation facilities under the Public Utilities Regulatory Policies Act (PURPA) brought action against the Texas Public Utilities Commission (PUC), challenging the PUC's requirement that only qualifying facilities that generate "firm power" were eligible to sell power through a legally enforceable obligation. The District Court granted summary judgment for the generation facilities. The PUC appealed.

The Court of Appeals held that:

- Texas Courts had exclusive jurisdiction over the facilities' challenges to the Texas PUC's order;
- Federal courts had exclusive jurisdiction over the facilities' challenges to the Texas PUC's rule; and
- PURPA and Federal Energy Regulatory Commission (FERC) regulations did not mandate that all qualifying facilities must be able to form legally enforceable obligations.

EMPLOYMENT - ALASKA

Adamson v. Municipality of Anchorage

Supreme Court of Alaska - August 29, 2014 - P.3d - 2014 WL 4258361

Firefighter, who developed prostate cancer, filed a workers' compensation claim under a new statute creating a presumption that certain diseases in firefighters, including prostate cancer, were work related when specific conditions were met. The Workers' Compensation Board decided that the firefighter was eligible for benefits, and appeal was taken. The Workers' Compensation Appeals Commission agreed that the firefighter had attached the presumption, but reversed the Board's decision disallowing the expert testimony. Both parties petitioned for review.

The Supreme Court of Alaska held that:

- In order to give effect to the legislature's intent that prior toxic exposures were covered by statutory presumption of compensability and to avoid an unrealistic result, firefighter could attach the presumption through substantial compliance with statute;
- Firefighter produced sufficient evidence that he had substantially complied with the statutory requirements for medical examinations;
- Statute does not require a firefighter to show exposure to a carcinogen that has been shown to cause a specific cancer;
- Firefighter is free to retain and use an expert, but firefighter is not required to do so pursuant to statute;
- Substantial evidence supported the Workers' Compensation Board's decision that firefighter attached the presumption in statute; and
- Evidence rebutting statutory presumption that firefighter's cancer is compensable under workers' compensation law must be personal to firefighter.

LAND USE - CALIFORNIA

Citizens for Restoration of L Street v. City of Fresno

Court of Appeal, Fifth District, California - August 29, 2014 - Cal.Rptr.3d - 2014 WL 4254492

The City of Fresno approved a residential infill development project in downtown Fresno to build 28 two-story townhouses. The project site contained vacant parcels and two lots with houses built in the

early 20th century. A citizens group interested in historical resources in downtown Fresno challenged the City's approval of the townhouse project, particularly its decision to issue demolition permits for the two houses. The trial court decided the City violated certain procedural requirements of the California Environmental Quality Act (CEQA) in approving the project, but applied the correct legal standards in determining the two houses were not "historical resources" protected by CEQA. Both sides appealed.

The Court of Appeals concluded that CEQA allows a local lead agency, such as the City, to delegate the authority to approve a mitigated negative declaration and a project to a nonelected decisionmaking body such as the Preservation Commission. In this case, however, the Fresno Municipal Code did not actually authorize the Preservation Commission to (1) complete the environmental review required by CEQA and (2) approve the mitigated negative declaration. As a result, the Preservation Commission's approval of the mitigated negative declaration did not comply with CEQA.

As to historical resources, the Court concluded that the substantial evidence test, rather than the fair argument standard, applies to a lead agency's discretionary determination of whether a building or district is an historical resource for purposes of CEQA. Therefore, the trial court did not err when it applied the substantial evidence test to the City's determination that no historical resources were impacted by the project.

TAX - DISTRICT OF COLUMBIA

District of Columbia v. 17M Associates, LLC

District of Columbia Court of Appeals - September 4, 2014 - A.3d - 2014 WL 4361554

Tenant filed petition claiming that the District of Columbia violated lease by imposing possessory interest tax. The Superior Court entered summary judgment in favor of tenant. District appealed.

The Court of Appeals held that:

- Board of Real Property Assessments and Appeals (BRPAA) lacked jurisdiction to decide if lease exempted tenant from the tax, and
- Lease did not exempt tenant from possessory interest tax.

"Real property classification" in statute permitting lessee or user disputing possessory interest tax assessment to appeal from a notice of proposed assessed value and real property classification in the same manner and under the same conditions as an owner referred to classes of taxable real property, not taxpayer's exemption status under lease, and, thus, BRPAA lacked jurisdiction to decide if lease exempted District of Columbia tenant from the tax.

Tenant's leasehold interest in District of Columbia land was a species of personal property, not part of "demised premises," within meaning of lease requiring tenant to pay any new tax imposed upon the demised premises, if the tax was based on or arose out of the ownership, use, or operation of tenant's improvements, and, thus, lease did not exempt tenant from possessory interest tax, even though it was measured by value of the property. Leased defined "demised premises" as including the District-owned land and the improvements, ways, easements, air and surface rights for that land, District could not have demised tenant's possessory interest to it, and lease did not indicate that tenant was liable only for expressly authorized taxes.

ZONING - ILLINOIS

Gurba v. Community High School Dist. No. 155

Appellate Court of Illinois, Second District - September 3, 2014 - N.E.3d - 2014 IL App (2d) 140098

Owners of land adjacent to school football stadium brought action against school district and board of education, alleging bleachers constructed pursuant to district decision violated municipal zoning and stormwater ordinances. Board brought third-party action against city and superintendent, seeking declaratory judgment that bleacher project was not subject to such ordinances. The Circuit Court entered judgment finding that project was subject to ordinances. Board appealed.

The Appellate Court held that:

- As a matter of apparent first impression, constitutional provisions tasking state government with provision of public education did not preclude enforcement of municipal zoning ordinances against school district and board of education, and
- Pursuant to School Code, board was required to follow city zoning ordinances.

IMMUNITY - ILLINOIS

O'Toole v. Chicago Zoological Soc.

Appellate Court of Illinois, First District, Fourth Division - August 28, 2014 - N.E.3d - 2014 IL App (1st) 132652

Visitor who had tripped and fallen at zoo located in county forest preserve district brought action against zoological society, seeking damages for personal injuries. The Circuit Court dismissed the action on limitations grounds, and visitor appealed.

The Appellate Court held that zoological society was not “local public entity” and thus one-year limitations period under Local Governmental and Governmental Employees Tort Immunity Act did not apply to action.

Zoological society, a not-for-profit corporation located in county forest preserve district, was not a “local public entity,” and thus one-year limitations period under Local Governmental and Governmental Employees Tort Immunity Act did not apply to negligence action arising when visitor tripped and fell at zoo, since zoological society did not conduct “public business.” Contract between zoo and district gave zoological society entire control and management of the zoo, including control over daily operations, maintenance of zoo building and collections, over 90% of zoological society’s board of trustees and governing members were neither employees nor elected officials of the district, and zoo employees were not entitled to a state pension or state workers’ compensation.

PUBLIC FINANCE - INDIANA

Gary Community School Corp. v. Indiana Dept. of Local Government Finance

Tax Court of Indiana - August 29, 2014 - N.E.3d - 2014 WL 4258826

Gary Community School Corporation entered into an agreement with the Gary Community School Building Corporation to build/lease-back two elementary schools.

To pay its obligations under the lease, the School Corp. issued a bond and secured two common school loans. In the ensuing years, the School Corp. used surplus monies from its general fund to pay its rental obligations, but the surplus dwindled more rapidly than anticipated. Accordingly, the School Corp. incorporated an exempt debt service fund levy into its 2011 Budget. The School Corp. subsequently submitted the budget to the Indiana Department of Local Government Finance (DLGF) for review.

The DLGF reduced the School Corp.'s exempt debt service fund levy by removing all the amounts related to the payment of the rental obligations. The DLGF explained that it had done so: 1) because there was no indication that the School Corp. had used an exempt debt service fund levy to pay its rental obligations in the past; 2) School Corp. had not availed itself of the taxpayer remonstrance process; and 3) School Corp. had not established that there were insufficient funds in the general fund to satisfy its obligations. School Corp. appealed.

The Tax Court held that:

- DLGF exceeded its authority in reducing School Corp.'s exempt debt service fund levy because the statutory framework for reviewing such levies did not authorize the DLGF to consider other sources of funding (e.g., its general fund).
- Although the original DLGG-approved lease indicated that the School Corp.
- did not need a property tax levy beyond that provided under Indiana Code § 6–1.1–19 to pay its bond obligations, that did not preclude the Corp. from ever seeking a property tax levy to pay its rental obligations.
- DLGF lacked the authority to reduce the School Corp.'s exempt debt service fund levy to redress its avoidance of the taxpayer remonstrance process.

ZONING - LOUISIANA

Maw Enterprises, L.L.C. v. City of Marksville

Supreme Court of Louisiana - September 3, 2014 - So.3d - 2014-0090 (La. 9/3/14)

Property owner/commercial lessor brought action against city, seeking to recover damages for city's denial of retail alcoholic beverage permit to lessee, which was convenience store operator. The District Court entered judgment in favor of landlord. City appealed.

The Supreme Court of Louisiana held that:

- City owed no duty to lessor to issue alcoholic beverage permit to lessee, and
- Harm caused to lessor was not within scope of protection afforded by duty breached.

City did not owe duty to lessor to issue retail alcoholic beverage permit to lessee of lessor's property, and therefore city was not liable to lessor for negligence stemming from denial of permit. Applicable statute's reference to "premises" spoke to where a business engaged in the sale of alcohol could be located, it did not confer an independent right to a permit on the premises where the business was to be located, and statute made clear that the permits were directed to persons engaged in the business of manufacturing, supplying, or dealing in alcoholic beverages, not the property owner of the property on which the business was conducted.

Harm cause to lessor by city's denial of retail alcoholic beverage permit to lessee that operated convenience store was not within the scope of protection afforded by the duty allegedly breached, and therefore city was not liable to lessor for negligence. It was highly unlikely that the moral,

social, and economic considerations underlying the imposition of a duty to issue a retail alcoholic beverage permit to a qualified applicant encompassed the risk that a third party who had contracted with the applicant would thereby suffer an economic loss, especially when that loss was not even directly tied to the sales of alcohol the timely issuance of a permit would have allowed, but instead was based on decrease of gasoline sales at the store.

SCHOOLS - NEW MEXICO

Herrera v. Santa Fe Public Schools

United States District Court, D. New Mexico - August 29, 2014 - F.Supp.2d -

Students brought § 1983 action against city public schools alleging that their Fourth Amendment rights were violated during pat-down searches at school dances. Temporary restraining order enjoining schools from conducting such searches was granted. Schools moved for summary judgment.

The District Court held that:

- Genuine issues of material fact existed as to whether allegedly inadequate training and supervision of security officers was official custom or practice;
- Genuine issues of material fact existed as to whether schools' alleged failure to train or supervise security officers caused students' alleged deprivation of their right not to be searched absent individualized suspicion;
- Genuine issues of material fact existed as to whether schools acted with deliberate indifference as to known or obvious consequences of pat-down searches;
- Schools' alleged custom of allowing security officers to conduct suspicionless searches was not moving force behind security officers' alleged touching of students' breasts and inner thighs; and
- Genuine issue of material fact existed as to whether students suffered compensable damages.

IMMUNITY - NEW YORK

Dixon v. City of New York

Supreme Court, Appellate Division, Second Department, New York - August 27, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 05946

Mother and infant son brought action against city and city fire department alleging infant's brain injuries were caused by negligence of ambulance dispatcher in sending wrong type of ambulance when mother experienced heavy vaginal bleeding and negligence of ambulance personnel in delaying transport of mother to hospital. The Supreme Court, Kings County, denied defendants' motion for summary judgment. Defendants appealed.

The Supreme Court, Appellate Division, held that:

- Actions of city's ambulance dispatcher were discretionary, and
- Actions of city's emergency medical technicians and paramedics were discretionary.

Actions of city ambulance dispatcher in sending basic life support (BLS) ambulance, instead of advanced life support (ALS) ambulance, to 911-report that pregnant woman was experiencing heavy vaginal bleeding were discretionary, and thus actions were protected by governmental immunity

doctrine in personal injury lawsuit brought by woman and her infant child.

Actions of city's emergency medical technicians (EMTs) and paramedics in responding to 911-report that pregnant woman was experiencing heavy vaginal bleeding in calling for advanced life support (ALS) ambulance based on amount of blood loss, in declining assistance of police officers on scene, in requiring woman to wait for ALS paramedics in her apartment, and in administering IV prior to transport to hospital were discretionary, and thus actions were protected by governmental immunity doctrine in personal injury lawsuit brought by woman and her infant child.

LIABILITY - NEW YORK

Telsaint v. City of New York

Supreme Court, Appellate Division, Second Department, New York - August 27, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 05974

Pedestrian brought slip and fall action against city. Following jury verdict in favor of pedestrian, the Supreme Court, Kings County, granted city's motion to set aside verdict. Pedestrian appealed.

The Supreme Court, Appellate Division, held that:

- Jury rationally could have concluded that city had constructive notice of icy condition that caused pedestrian to slip and fall on sidewalk, and
- Damages award deviated materially from what would be reasonable compensation.

Damages awarded to pedestrian in slip and fall action against city in amount of $750,000 for past pain and suffering and $1,500,000 for future pain and suffering deviated materially from what would be reasonable compensation.

PUBLIC UTILITIES - OHIO

In re Fuel Adjustment Clauses for Columbus S. Power Co. & Ohio Power Co.

Supreme Court of Ohio - September 3, 2014 - N.E.3d - 2014 -Ohio- 3764

After conducting annual review of electric utility's recovery of fuel costs pursuant to fuel adjustment clause (FAC), the Public Utilities Commission entered order determining that a portion of proceeds utility had received in settlement agreement with fuel supplier should be credited against utility's underrecovery of its fuel costs. Utility appealed, and association of industrial energy users cross-appealed.

The Supreme Court of Ohio held that PUC's order was not unlawful retroactive ratemaking.

Order of PUC after review of electric utility's recovery of fuel costs pursuant to FAC, determining that a portion of proceeds utility had received in settlement agreement with fuel supplier should be credited against utility's underrecovery of its fuel costs, did not increase utility's generation costs for year prior to the reviewed year, such as would constitute unlawful retroactive ratemaking. Under settlement agreement, utility paid below-market price for coal until end of year prior to reviewed year, after which 20-year contract between utility and supplier was terminated, and PUC's audit report showed that, absent the settlement agreement, utility would have continued to pay below-market fuel costs during reviewed year.

Order of PUC after review of electric utility's recovery of fuel costs pursuant to FAC, determining that a portion of proceeds utility had received in settlement agreement with fuel supplier should be credited against utility's underrecovery of its fuel costs, did not seize proceeds that utility had booked under proper regulatory accounting principles for year prior to reviewed year, such as would constitute unlawful retroactive ratemaking. PUC, not utility, determined whether utility's proceeds had been booked properly.

BENEFITS - OHIO

State ex rel. O'Grady v. Griffing

Supreme Court of Ohio - August 28, 2014 - N.E.3d - 2014 -Ohio- 3687

City employee, who applied with Public Employee Retirement System (PERS) to commence receiving her vested statutory retirement benefits, sought writ of mandamus to compel city's fiscal officer to certify her final payroll. The Court of Appeals granted writ. City's fiscal officer appealed as of right.

The Supreme Court of Ohio held that, without direct evidence that city employee had actually resigned or been terminated, fiscal officer had no clear legal duty to file the form with employee's final-earnable-salary date for purposes of retirement benefits.

Without direct evidence that city employee had actually resigned or been terminated, city auditor could not know for sure that employee had carried out the intent expressed in the judge's letter, stating that employee was going to take her Ohio Public Employees Retirement System (OPERS) retirement, but would remain as a court employee in her present position, and thus, auditor had no clear legal duty to file the form with employee's final-earnable-salary date for purposes of retirement benefits. Employee never terminated her service for purposes of OPERS, because she failed to write a letter of resignation or get the judge to officially terminate her.

TAX - OHIO

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

Supreme Court of Ohio - August 27, 2014 - N.E.3d - 2014 -Ohio- 3620

Board of education (BOE) appealed real-property-valuation of the County Board of Revision (BOR) of a commercial building consisting of warehouse and office space. The Board of Tax Appeals (BTA) ordered that the auditor's valuation be reinstated. Taxpayer appealed.

The Supreme Court of Ohio held that:

- Record contained no support for finding that taxpayer's counsel prepared written valuation;
- Knowledgeable employee of taxpayer's corporate affiliate could give owner-opinion testimony as to property's value; and
- The BTA was precluded from reverting to auditor's valuation.

Board of Tax Appeals (BTA) was precluded from reverting to auditor's valuation of commercial real property consisting of warehouse and office space in spite of the its findings that taxpayer's opinion of value, under income approach, lacked market data, where county board of revision (BOR) adopted new value based on owner's opinion of value, which shifted burden of going forward with evidence to city board of education (BOE), and no new evidence was presented at the BTA.

BALLOT INITIATIVE - OHIO

State ex rel. Columbus Coalition for Responsive Govt. v. Blevins

Supreme Court of Ohio - August 29, 2014 - N.E.3d - 2014 -Ohio- 3745

Citizens group brought action seeking mandamus to compel city clerk to verify signatures on an initiative petition and submit the proposed initiative to city council.

The Supreme Court of Ohio held that city clerk had no duty to submit citizen coalition's precirculation copy of proposed initiative petition to city council, where city's charter was silent on the subject of precirculation requirements, which invoked statute requiring such petitions to be filed with city's auditor.

TAX - RHODE ISLAND

Town of Johnston v. Federal Housing Finance Agency

United States Court of Appeals, First Circuit - August 27, 2014 - F.3d - 2014 WL 4237996

The Town of Johnston, Rhode Island and the Commissioners of Bristol County, Massachusetts ("the municipalities") brought separate actions against the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), and the Federal Housing Finance Agency ("FHFA") (collectively, "the entities"), alleging that the entities failed to pay taxes on the transfer of property.

Federal district courts in Massachusetts and Rhode Island granted the entities' motions to dismiss based on statutory exemptions from taxation.

The municipalities appealed, claiming that the transfer tax is a tax on "real property" and therefore falls outside the entities' tax exemptions, and that the entities' tax exemptions themselves are unconstitutional.

Court of Appeals wasn't buying it.

ANNEXATION - TENNESSEE

State ex rel. Garrett v. City of Norris

Court of Appeals of Tennessee - August 28, 2014 - Slip Copy - 2014 WL 4260848

The City of Norris passed two annexation ordinances on the same day. The second territory to be annexed was contiguous to the city only through bordering the territory annexed earlier that same day.

A property owner in the second annexed territory sued Norris in a bid to stop the annexation of this second territory (the "Territory").

The Trial Court eventually voided the annexation of the Territory on the basis that the Territory was not contiguous to the city. Norris appealed.

The Court of Appeals held that the annexation ordinance purporting to annex the Territory was void

because at the time of the passage of the annexation ordinance, the first annexation was not yet operative and the Territory, therefore, was not contiguous to the city as required by law.

CONTRACTS - TEXAS

Zachry Const. Corp. v. Port of Houston Authority of Harris County

Supreme Court of Texas - August 29, 2014 - S.W.3d - 2013 WL 9600952

Construction contractor brought action against county port authority for breach of contract. The District Court entered judgment on jury verdict for contractor. Port authority and contractor appealed.

The Supreme Court of Texas held that:

- Local Government Contract Claims Act does not waive immunity from suit on a claim for damages not recoverable under section of Act that defines the scope of the waiver of immunity;
- Act waives immunity for a contract claim for delay damages not expressly provided for in the contract;
- No-damages-for-delay provision was unenforceable;
- Releases signed by contractor did not cover contractor's breach of contract claims; and
- Evidence was sufficient to support verdict that port authority was entitled to an offset of $970,000 as damages for contractor's use of defective wharf fenders.

SPECIAL ASSESSMENTS - WISCONSIN

Yankee Hill Housing Partners v. City of Milwaukee

Court of Appeals of Wisconsin - September 3, 2014 - Slip Copy - 2014 WL 4328201

Yankee Hill is a large residential apartment complex in Milwaukee that paid over $196,000 in BID special assessments for tax years 2005 through 2011. The City of Milwaukee added BID special assessments to Yankee Hill's property tax bill during those years because the South Tower of the Yankee Hill complex lies within a business improvement district.

Yankee Hill eventually discovered that the BID special assessments it paid were contrary to WIS. STAT. § 66.1109(5)(a), which prohibits a municipality from imposing such assessments on real property used exclusively for residential purposes. Yankee Hill contacted various City authorities and requested a refund. The City refused, not because it believed that it was correct to impose the assessments, but because it believed that, pursuant to WIS. STAT. § 74.35(5)(a), any challenges to a special assessment must be brought by January 31 for the year in which the tax is payable and Yankee Hill's challenges were not timely made.

The Court of Appeals disagreed, concluding that neither § 893.80(1d) nor any statute of limitations barred Yankee Hill's claim.

Yankee Hill was not required to comply with the notice of claim statute, WIS. STAT. § 893.80(1d), because it gave the City actual notice of the claim and the City had not been prejudiced.

ZONING - DISTRICT OF COLUMBIA

Howell v. District of Columbia Zoning Com'n

District of Columbia Court of Appeals - August 14, 2014 - A.3d - 2014 WL 4085785

Neighbors sought review of Zoning Commission's approval of zoning map amendment and application for a planned unit development (PUD).

The Court of Appeals held that:

- Evidence was sufficient to support finding that additional height sought in zoning map amendment was essential to successful functioning of project;
- Fact that Commission improperly failed to make explicit finding about gross floor area, in determining whether PUD satisfied requirement that new residential building projects of a certain size reserve units for affordable housing, did not require reversal; and
- Commission's failure to include in record a land disposition and development agreement did not violate neighbors' due process rights.

TAX - INDIANA

Indianapolis Racquet Club, Inc. v. Marion County Assessor

Tax Court of Indiana - August 21, 2014 - N.E.3d - 2014 WL 4116487

Owner contended that Indiana Board of Tax Review erred when it found that the Indianapolis Racquet Club, Inc. failed to establish a prima facie case that its land assessments were excessive or that they were not uniform and equal.

The Tax Court held that:

- Club's presentation of land assessments of other three clubs did not establish a prima facie case that tennis club's land was over-valued;
- Club was required to show how inconsistent use of surrounding parcels negatively impacted its land's value; and
- Showing that three other tennis clubs were valued differently was insufficient to establish that property tax assessment was not uniform and equal.

LIABILITY - LOUISIANA

Odom v. Fair

Court of Appeal of Louisiana, Second Circuit - August 20, 2014 - So.3d - 49, 274 (La.App. 2 Cir. 8/20/14)

Tenant brought action against her landlord, a city housing authority, after a dog owned by another tenant bit her, alleging that housing authority failed to monitor its premises for risks and hazards, failed to require tenant to keep dog in a secured area, and allowed tenant to maintain a dog known to attack without provocation. The District Court entered judgment in favor of tenant after a bench trial. Housing authority appealed.

The Court of Appeal held that housing authority did not have actual knowledge of vicious

propensities of dog as required to impose liability on it for tenant's injuries.

Dog had never bit or attacked anyone prior to incident, tenant did not report that dog was a vicious animal, and housing authority's maintenance crew that visited dog owner's property was not tasked with enforcing pet policy or inspecting for technical violations of lease.

LIABILITY - MINNESOTA

Shariss v. City of Bloomington

Court of Appeals of Minnesota - August 18, 2014 - N.W.2d - 2014 WL 4056083

Motorist brought negligence action against city and snowplow driver after snowplow backed into motorist while making room for school bus. The District Court denied city's and snowplow driver's motion for summary judgment on immunity grounds, and city and snowplow driver appealed.

The Court of Appeals held that snowplow driver's decision to back up was ministerial rather than discretionary.

City snowplow driver's decision to place snowplow in reverse to allow school bus to proceed was ministerial rather than discretionary such that driver did not have discretionary function immunity from motorist's negligence action arising out of collision between snowplow and motorist's vehicle. Snowplow driver was stopped and was waiting in a queue behind another snowplow, and based on standard operating procedure, which imposed a duty to maintain traffic flow, driver decided to reverse his snowplow and began to back up.

HOUSING - MINNESOTA

Housing and Redevelopment Authority of Duluth v. Lee

Supreme Court of Minnesota - August 27, 2014 - N.W.2d - 2014 WL 4212688

Public housing authority (PHA) brought eviction action against tenant in Section 8 federally-subsidized housing after tenant failed to timely pay rent and late fees imposed by PHA for three consecutive months. The District Court granted summary judgment in favor of PHA, holding that monthly late fee assessed by PHA was reasonable, and that federal regulations preempted state law governing fees for late payment of rent. Tenant appealed.

The Supreme Court of Minnesota held that:

- State law capping late fee at eight percent of overdue rent was not preempted by federal law, and
- PHA was subject to eight percent limitation.

BENEFITS - NEW YORK

Pastalove v. Kelly

Supreme Court, Appellate Division, First Department, New York - August 21, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 05922

Police officer brought article 78 petition seeking to annul determination of board of police pension

fund rejecting his application for accidental disability retirement benefits. The Supreme Court, New York County, denied the petition. Police officer appealed.

The Supreme Court, Appellate Division, held that officer's injury was not a sudden or unexpected event.

Police officer's accident, in which he sustained injuries from falling when two water hoses he stepped on were charged with water by firefighters to combat residential fire, was not the result of a sudden, fortuitous, or unexpected event, and thus officer was not entitled to accidental disability retirement benefits.

LIABILITY - NEW YORK

Kellman v. Hauppauge Union Free School Dist.

Supreme Court, Appellate Division, Second Department, New York - August 20, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 05844

Student injured during baseball practice brought personal injury action against school district. School district moved to dismiss, and student moved for leave to serve late notice of claim. The Supreme Court granted plaintiff's motion. School district appealed.

The Supreme Court, Appellate Division, held that School district employees had actual knowledge of essential facts underlying legal theories on which liability was predicated well within 90–day statutory period, as required for leave to serve late notice of claim in student's personal injury action against school district.

Two weeks before injury during baseball practice, student sustained ankle injury at school, in connection with first injury, student wore visible air cast on his leg, school made accommodations for his injury, and student did not participate in gym or sports activities, and school had in possession a note from student's doctor advising that he should not participate in sports until reevaluation, before scheduled reevaluation had occurred, baseball coach directed student to act as goalie in "handball" game during baseball practice, coach was present when student fell and injured shoulder, and coach filled out accident report which was signed by school nurse and principal and retained in school records.

TAX - OREGON

Habitat for Humanity of the Mid-Willamette Valley v. Marion County Assessor

Oregon Tax Court, Magistrate Division - August 8, 2014 - 2014 WL 3890325

Habitat for Humanity appealed County Assessor's property tax exemption application denial for the 2103–14 tax year on vacant land it had purchased for the purpose of constructing a home.

ORS 307.130(2) exempts from taxation property owned by charitable institutions provided the property "is actually and exclusively occupied or used in the * * * charitable * * * work carried on by [the] institutions [ ]."

At issue here was whether or not land merely being held for future use is "actually occupied or used."

Habitat argued that the subject property was actually and exclusively occupied or used in its charitable work because its tax exempt activities include purchasing property and purchasing property is its charitable use.

The Tax Court concluded that Habitat's failure to make any actual use of the property by commencing construction of a residence prior to the tax year did not meet the statutory requirement that the property be "actually and exclusively occupied or used."

EMINENT DOMAIN - PENNSYLVANIA

In re Tax Parcel 27-309-216

Commonwealth Court of Pennsylvania - August 27, 2014 - A.3d - 2014 WL 4214922

In 1992, the Department of Transportation condemned a portion of a tract of land as part of a project to relocate part of Route 15 in Lycoming County. As a result of the condemnation, part of the tract became landlocked.

Owners filed a civil action under the Private Road Act requesting the appointment of a board of viewers to open a private road across adjacent private property to connect their parcel to the nearest public road.

Owners admitted that the access they sought across the adjacent land was for their use – as opposed to a particular public use as required by the Act – but contended that because the public benefitted from the Commonwealth's exercise of eminent domain that caused their property to become landlocked in the first place, the public was also the primary and paramount beneficiary of the private road that would unlock their property.

The Commonwealth Court disagreed, noting that the Act was constitutionally limited to situations in which the public was the primary and paramount beneficiary of its use and, in this case, Owners failed to meet this burden. The Court agreed that the public was the undeniable beneficiary of the condemnation for the Route 15 relocation, but that the evidence of connection between the condemnation and use of the Act was less than compelling, citing the availability of other options for connecting the land to a public road and Owner's significant delay in seeking to utilize the Act.

MUNICIPAL ORDINANCE - TEXAS

Hosseini v. State

Court of Appeals of Texas, Houston (14th Dist.) - August 26, 2014 - S.W.3d - 2014 WL 4199138

Defendant was convicted of violating a city ordinance requiring managers of sexually-oriented businesses to possess a permit. Defendant appealed.

The Court of Appeals held that:

- Evidence was sufficient to support conviction, and
- Ordinance was not unconstitutionally vague.

Ordinance requiring managers of sexually-oriented businesses to possess a permit was not

unconstitutionally vague. Ordinance described with specificity that managers were required to hold a permit and described conduct that was required to demonstrate that a person was acting as a manager, ordinance set forth punishment for its violation, and ordinance provisions related clearly and directly to regulation of a sexually-oriented business enterprise and provided guidance to law enforcement and the general public concerning what type of conduct was prohibited and how ordinance would be enforced.

ZONING - WASHINGTON

Potala Village Kirkland, LLC v. City of Kirkland

Court of Appeals of Washington, Division 1 - August 25, 2014 - P.3d - 2014 WL 4187807

Property developers filed action against city seeking writ of mandamus directing city to accept and process building permit application for proposed project. The Superior Court granted summary judgment in favor of developers and issued writ. City appealed.

The Court of Appeals held that developers' filing of application for shoreline substantial development permit did not vest rights to zoning ordinances for entire project that existed on date of application.

Developers' filing of completed application for shoreline substantial development permit for portion of project prior to city's moratorium on certain building permits did not vest rights to zoning or other land use control ordinances for entire project that existed on date of filing, absent filing of completed building permit application. Statute governing vested rights doctrine only referred to building permits and did not include shoreline substantial development permits, and no law prevented developer from filing building permit application prior to moratorium.

EMPLOYMENT - WASHINGTON

Lee ex rel. Office of Grant County Prosecuting Attorney v. Jasman

Court of Appeals of Washington, Division 3 - August 19, 2014 - P.3d - 2014 WL 4086304

County prosecuting attorney filed quo warranto action against deputy coroner seeking judgment of ouster and alleging that coroner's conviction for disorderly conduct precluded him from serving as county coroner or deputy coroner. The Superior Court granted attorney summary judgment. Coroner appealed.

The Court of Appeals held that:

- Coroner was disqualified from serving as a deputy county coroner and from signing death certificates due to his conviction for disorderly conduct;
- County coroner and deputy coroner were not entitled to appointment of a special prosecuting attorney to represent them in quo warranto action;
- In a matter of first impression, judicial estoppel could not be raised in the first lawsuit; and
- County prosecutor was not entitled to attorney fee award.

Coroner was disqualified from serving as a deputy county coroner and from signing death certificates due to his conviction for disorderly conduct stemming from an incident that occurred when he served as the elected county coroner in which he repeatedly refused to let a colleague out of coroner's truck after an argument. Individual who held the position of deputy county coroner and

performed the task of signing death certificates was a “public officer” subject to disqualification under statute disqualifying a public officer from holding future public office following a criminal conviction.

ZONING - ALASKA

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

Supreme Court of Alaska - August 15, 2014 - P.3d - 2014 WL 3973529

Property purchaser sought review of borough board of adjustment appeals’ decision denying exemption from borough’s setback requirement. The Superior Court affirmed. Purchaser appealed.

The Supreme Court of Alaska held that:

- Zoning ordinance creating a 75-foot setback from shoreline applied to property at the time exterior stairwell was constructed;
- Ordinance did not violate property owner’s substantive due process rights;
- Enforcement of ordinance did not constitute a taking; and
- Stairwell was not exempt from setback requirement.

INVERSE CONDEMNATION - CALIFORNIA

City of Pasadena v. Superior Court

Court of Appeal, Second District, Division 3, California - August 14, 2014 - Cal.Rptr.3d - 2014 Daily Journal D.A.R. 10, 981

During a windstorm, a tree owned by the City of Pasadena fell on the residence of James O’Halloran. As a result of the damage caused to the house, the insurer Mercury Casualty Company paid benefits to O’Halloran pursuant to his homeowner’s insurance policy. Mercury then sued the City for inverse condemnation and nuisance based on the damages caused by the tree.

On appeal, the City contended that the trial court should have granted summary adjudication of the inverse condemnation and nuisance causes of action because (1) the subject tree was not a work of public improvement, and (2) Mercury failed to submit any evidence that the City was negligent such that it can be held liable for nuisance.

The Court of Appeal held that:

- The trial court properly denied summary adjudication as to the inverse condemnation cause of action because there were triable issues of material fact as to whether the tree was part of a work of public improvement; and
- The city failed to meet its burden on summary adjudication of establishing that Mercury could not show nuisance.

TRANSPORTATION - CONNECTICUT

Stotler v. Department of Transp.

Supreme Court of Connecticut - August 19, 2014 - A.3d - 313 Conn. 158

Motorist's estate brought action against Department of Transportation under highway defect statute. The Superior Court denied Department's motion to dismiss and motion for summary judgment. Department appealed. The Appellate Court reversed and remanded. Motorist's estate petitioned for further review.

The Supreme Court of Connecticut held that:

- The plan of design providing for a steep downhill grade of the highway, in combination with the absence of adequate warning signs and tangible safety measures, did not render highway defective within the scope of the state highway defect statute;
- Any deficient conduct by the Department regarding the training of its employees, the inspection and maintenance of the roadway, and the adherence to proper procedures, did not render highway defective within the scope of the state highway defect statute; and
- The Department's decision to adopt a plan for the construction of highway across mountain, and its decision regarding the safety measures necessary to ensure the safety of motorists thereon, were not subject to collateral review.

EMINENT DOMAIN - FLORIDA

Baker County Medical Services, Inc.

United States Court of Appeals, Eleventh Circuit - August 14, 2014 - F.3d - 2014 WL 3954005

Hospital commenced action against various federal agencies and officials, seeking declaratory judgment that statute imposing Medicare rate as full compensation for medical services rendered to federal detainees was unconstitutional taking as applied to it. The District Court dismissed action. Hospital appealed.

The Court of Appeals held that requiring hospital to treat federal detainees at Medicare rate on basis that it had opted into Medicare and Emergency Medical Treatment and Active Labor Act (EMTALA) was not a taking.

Requiring hospital to treat federal detainees at Medicare rate on basis that it had opted into Medicare and Emergency Medical Treatment and Active Labor Act (EMTALA) was not a taking, since hospital voluntarily undertook that obligation. Even if opting out of Medicare would amount to grave financial setback for hospital and hardship to Medicare participants, economic hardship was not equivalent to legal compulsion for purposes of takings analysis and practicalities did not make participation involuntary.

LIABILITY - GEORGIA

City of Atlanta v. Demita

Court of Appeals of Georgia - August 20, 2014 - S.E.2d - 2014 WL 4086244

Resident brought action against city to recover damage to her home and property allegedly caused by flooding due to city's creation or maintenance of a nuisance. Following jury trial, the trial court found in favor of resident. City appealed.

The Court of Appeals held that:

- City was not liable for nuisance based on alleged negligent construction or maintenance of storm water drainage system; and
- City was not liable to resident for nuisance created by water draining from city-maintained streets.

City was not liable to resident on nuisance claim for damage to her property due to flooding based on city's alleged negligent construction or maintenance of storm water drainage system, absent evidence that city constructed or maintained sewer or drainage system under its control that had caused repeated flooding of resident's property. Although city owned and maintained street in front of resident's property, there was no evidence that city ever installed any manhole or grate to allow water on street to drain into sewer piping, that city constructed any catch basin on the street, or that city took control and responsibility for maintaining any such sewer or drainage infrastructure components.

INFRASTRUCTURE - KENTUCKY

Coalition for Advancement of Regional Transp. v. Federal Highway Admin.

United States Court of Appeals, Sixth Circuit - August 7, 2014 - Fed.Appx. - 2014 WL 3882677

Coalition for the Advancement of Regional Transportation alleged that the Federal Highway Administration and state agencies (the "Defendants") failed to comply with the National Environmental Policy Act and violated Title VI of the Civil Rights Act of 1964 when they approved the Louisville–Southern Indiana Ohio River Bridges Project, a $2.6 billion construction and transportation management program designed to improve mobility across the Ohio River in the Louisville metropolitan area.

The Court of Appeals granted summary judgment to the Defendants, finding no NEPA or Civil Rights Act violations.

PENSIONS - MARYLAND

Cherry v. Mayor and City Council of Baltimore City

United States Court of Appeals, Fourth Circuit - August 6, 2014 - F.3d - 2014 WL 3844078

Active and retired city police officers and firefighters and their unions filed class action alleging that city's amendments to their pension plan violated Contract Clause and Takings Clause. The District Court ruled that elimination of variable benefit was substantial impairment of plaintiffs' vested rights, that ordinance violated Contracts Clause, and that dismissal of takings claim was warranted. Parties appealed.

The Court of Appeals held that:

- City's substitution of cost-of-living adjustment for "variable benefit" in calculating pension benefits did not violate Contract Clause, and
- City's other amendments to pension plan did not violate Contract Clause.

City's substitution of cost-of-living adjustment for "variable benefit" in calculating pension benefits under its pension plan for eligible retired public safety employees was, at most, mere breach of contract, not rising to level of Contract Clause violation, where nothing prevented plan participants

and beneficiaries from pursuing state law breach of contract claim nor shielded city from its obligation to pay damages if it was found in breach of contract.

City's amendments to its pension plan for retired public safety employees changing age and service requirements for retirement eligibility, using member's prior 36 months' salary rather than prior 18 months' salary to calculate basic benefit, increasing required member contributions over period of years, reducing interest rate on member contributions, and changing eligibility requirements for deferred retirement option plan were, at most, mere breaches of contract, not rising to level of Contract Clause violations, where nothing prevented plan participants and beneficiaries from pursuing state law breach of contract claim nor shielded city from its obligation to pay damages if it was found in breach of contract.

ZONING - MASSACHUSETTS

Palmer Renewable Energy, LLC v. Zoning Bd. of Appeals of City of Springfield

Massachusetts Land Court - August 14, 2014 - Not Reported in N.E.3d - 2014 WL 4049881

Palmer Renewable Energy, LLC filed suit to challenge the decision of the Springfield City Council to revoke a Special Permit it had previously issued to Palmer to construct a biomass energy plant (the "Project").

Following hearings before the MassDEP and concerns over potentially toxic air emissions, Palmer changed its source of fuel from recycled wood to green wood chips. The City then revoked the Special Permit, claiming violations of local ordinance.

The Land Court held that the Project did not require a special permit and reinstated the previously-revoked building permits.

BENEFITS - MINNESOTA

Ekdahl v. Independent School District #213

Supreme Court of Minnesota - August 13, 2014 - N.W.2d - 2014 WL 3932770

Employer sought to offset its permanent total disability benefits payment to workers' compensation claimant by amount of claimant's retirement pension. The Workers' Compensation Court of Appeals (WCCA) reversed compensation judge's denial of requested offset. Claimant petitioned for review by certiorari.

The Supreme Court of Minnesota held that under workers' compensation statute providing offset against permanent total disability benefits when claimant receives any old age and survivor insurance benefits, phrase "old age and survivor insurance benefits" refers only to federal social security benefits.

AUCTION RATE SECURITIES - NEW YORK

Goldman, Sachs & Co. v. Golden Empire Schools Financing Authority

United States Court of Appeals, Second Circuit.August 21, 2014--- F.3d ----2014 WL

4099289

Underwriters/broker-dealers of auction rate securities (ARS) issued by public financing authorities brought actions for declaratory and injunctive relief against issuers, seeking to enjoin Financial Industry Regulatory Authority (FINRA) arbitration of disputes involving the securities. The District Court granted preliminary injunctions. Issuers appealed.

The Court of Appeals held that forum selection clause of broker-dealer agreements, requiring "all actions and proceedings" related to the transactions between the parties to be brought in court, superseded FINRA's mandatory arbitration rule.

Forum selection clause was all-inclusive and mandatory, and broker-dealer agreements contained merger clauses.

ZONING - NORTH CAROLINA

Fort v. County of Cumberland

Court of Appeals of North Carolina - August 19, 2014 - S.E.2d - 2014 WL 4071036

Petitioners sought writ of mandamus to contest County Board of Adjustment determination that proposed weapons training and gun range facility was permitted by right in zoning district. The Superior Court reversed, and facility operator and county appealed.

The Court of Appeals held that:

- Facility was not a vocational school prohibited by zoning ordinance, and
- Evidence supported Board determination that facility was most similar to recreation/amusement classification allowed under zoning ordinance.

Proposed weapons training and firearm safety facility was not a vocational school prohibited by zoning ordinance. Facility did not teach a skill or trade to be pursued as a career, but rather provided training to existing members of a profession in order to practice and refine their already-existing skills such that the facility was in the nature of skill level improvement.

Evidence supported Board of Adjustment determination that weapons training and firearm safety facility was most similar to recreation/amusement classification allowed under zoning ordinance. Planning department director testified that they looked at the effects of a firing range on health, safety and welfare to neighboring properties, that outdoor recreation was the only portion of the zoning ordinance that addressed objects of any kind leaving a site or area, and that "with respect to that and that measure of any projectile on a firing range leaving the area as well as the less impact of lighting and noise, they were also similarly addressed in outdoor recreation."

CONTRACTS - SOUTH CAROLINA

Stevens and Wilkinson of South Carolina, Inc. v. City of Columbia

Supreme Court of South Carolina - August 20, 2014 - S.E.2d - 2014 WL 4087936

Architectural firm and two developers sued city after city abandoned its plan under a memorandum of understanding into which the parties had entered to develop a publicly funded hotel, asserting

claims for breach of contract, quantum meruit, and estoppel. The Circuit Court granted summary judgment in favor of city on all claims. Firm and developers appealed. The Supreme Court granted certiorari.

The Supreme Court of South Carolina held that:

- Where the language of a purported contract clearly expresses the intent to be non-binding, the analysis is limited to the four corners of the document;
- Memorandum of understanding was not a binding contract;
- Developers did not provide more than a mere scintilla of evidence that city retained a benefit from their work, such that city was entitled to summary judgment on a quantum meruit claim; and
- Any enrichment by the city from developers' work was not unjust.

INVERSE CONDEMNATION - TENNESSEE

Phillips v. Montgomery County

Supreme Court of Tennessee, at Nashville - August 18, 2014 - S.W.3d - 2014 WL 4056698

Landowners, whose subdivision plat had been denied by county, brought action for regulatory taking under state constitution, seeking compensation under inverse condemnation statute. The Circuit Court denied county's motion to dismiss. County filed interlocutory appeal. The Court of Appeals affirmed in part, reversed in part, and remanded. Landowners applied for permission to appeal.

The Supreme Court of Tennessee held that:

- As a matter of first impression, state constitution's section governing taking of property encompasses regulatory takings to the same extent as the Takings Clause of the Fifth Amendment to the United States Constitution, and
- Landowners' complaint was sufficient to state regulatory takings claim.

Landowners' complaint against county was sufficient to state regulatory takings claim under state constitution's section governing taking of property, where landowners alleged that county planning commission's denial of landowners' subdivision plat was based solely upon fact that land lay in path of potential future extension of state highway and that there were no current plans to begin construction or condemnation proceedings for highway extension.

EMPLOYMENT - TEXAS

Hunt County Community Supervision and Corrections Dept. v. Gaston

Court of Appeals of Texas, Austin - August 6, 2014 - S.W.3d - 2014 WL 3892948

Former probation officer with county adult probation department brought action against the department, alleging department violated the Whistleblower Act when it terminated her. Department filed a plea to the jurisdiction. The District Court denied plea. Department appealed.

The Court of Appeals held that, as a matter of apparent first impression, the officer did not have an objectively reasonable good-faith belief that judge to whom she reported alleged department violations of law was an appropriate law enforcement authority under the Whistleblower Act.

Judge was not empowered to "regulate under or enforce" the allegedly violated law, as required by

Act, and even if he were so empowered, there was no pleading or proof that alleged violations concerned probationers over whom judge exercised jurisdiction, or that employee had reasonable basis to believe that they did.

PUBLIC RECORDS - WASHINGTON

O'Neill v. City of Shoreline

Court of Appeals of Washington, Division 1 - August 18, 2014 - P.3d - 2014 WL 4066219

Citizens brought Public Records Act (PRA) action against city for disclosure of e-mail sent to city's deputy mayor alleging improprieties in city zoning decisions, metadata associated with the e-mail, and other records. After a show cause hearing, the Superior Court dismissed the action. Citizens appealed. On remand, the Superior Court granted partial summary judgment in favor of citizens, and then, following entry of a stipulated judgment, entered an order awarding citizens $428,966.18 for fees and $9,588.79 for costs. City appealed.

The Court of Appeals held that:

- Citizens' failure to file a motion to enlarge time within ten days after entry of judgment against city on citizens' Public Records Act (PRA) action did not result in a waiver of their right to recover attorney fees and costs;
- Citizens' reference to "unpublished authority" in their appellate brief did not warrant sanctions; and
- City's appeal of attorney fee award in favor of citizens on their Public Records Act (PRA) action was not frivolous or brought for purposes of delay, and therefore, sanctions were not warranted.

PENSIONS - WASHINGTON

Washington Educ. Ass'n v. Washington Dept. of Retirement Systems

Supreme Court of Washington, En Banc - August 1, 2014 - P.3d - 2014 WL 3970233

Unions and unaffiliated group of public employees brought action against State challenging the repeal of gain-sharing in public employee retirement systems, under which a portion of the excess investment returns were distributed to member employees, on the basis that the repeal was unconstitutional. The Superior Court entered summary judgment in favor of unions and employees. State appealed.

The Supreme Court of Washington held that:

- Unions' and public employees' contract rights were not impaired by the Legislature's 1998 enactment of the gain-sharing program;
- Department of Retirement Systems' (DRS) communications did not estop Legislature from repealing gain-sharing; and
- DRS communications did not create a unilateral contract.

Unions and public employees' contract rights were not impaired by the Legislature's 1998 enactment of the gain-sharing program, under which a portion of the excess investment returns in public employee retirement systems were distributed to member employees, and its reservation of the right to amend or repeal the program in the future. Legislature was allowed to condition its

grant of pension enhancements using express language in the statutory provision that created that right, and employees impliedly consented to the gain-sharing program, including its reservation clause, because gain-sharing was a gratuitous, favorable addition to their employment contract.

Failure of DRS handbooks to mention Legislature's reserved right to repeal gain-sharing program, under which a portion of the excess investment returns were distributed to public employees who were members of retirement systems, and statements that gain-sharing "will be" passed on if there were extraordinary investment returns did not estop Legislature from repealing gain-sharing. DRS communications did not promise a perpetual right to gain-sharing, all DRS handbooks contained qualifying statements advising employees to consult the statute for a fuller description of rights, and, taken as a whole, the DRS communications did not promise that gain-sharing would continue, rather, they merely described how gain-sharing would operate.

ZONING - CALIFORNIA

Tuolumne Jobs & Small Business Alliance v. Superior Court

Supreme Court of California - August 7, 2014 - P.3d - 14 Cal. Daily Op. Serv. 8977

When a city council receives a voter initiative petition meeting Elections Code requirements, it must do one of three things: (1) adopt the initiative without alteration; (2) submit it to a special election; or (3) order an abbreviated report on the initiative. Upon receipt of the report, it must then either adopt the initiative or hold a special election.

Several cases have held that provisions of the California Environmental Quality Act (CEQA) do not apply to land use initiatives proposed by voters and adopted at an election. In such cases, the abbreviated report provided for in the Elections Code furnishes the exclusive means of obtaining environmental review.

The question here was whether the result should be different if a city chooses to directly adopt a voter-sponsored initiative rather than hold a special election.

The Court of Appeal distinguished between these two courses of action and held that a city may not adopt a voter initiative with potential environmental impacts unless it conducts a full CEQA analysis.

The Supreme Court of California reversed, holding that CEQA review is not required before direct adoption of an initiative.

MUNICIPAL ORDINANCE - IDAHO

State v. Freitas

Court of Appeals of Idaho - August 12, 2014 - P.3d - 2014 WL 3906469

Freitas was cited for providing water to a neighbor's residence in violation of city ordinance that prohibited connecting city water to a third person for use in a residence that was not otherwise provided with city water service. Neighbor's water service had been terminated due to non-payment, so Freitas hooked up a hose.

Freitas filed a motion to dismiss, asserting that the ordinance was unconstitutional on its face and as applied under various provisions of the federal and state constitutions.

Freitas did not identify any specific term or phrase of the ordinance that rendered it unconstitutionally vague on its face or even that he found ambiguous. Instead, he asserted that the entire ordinance was a "mishmash" of "garbled language" comprised of "clumps of nonsense words" that are unintelligible to a person of ordinary intelligence and allow for unbridled interpretation by law enforcement.

The Court of Appeals was unable to find anything unconstitutionally vague about the ordinance, noting that "In this case, the conduct that Freitas engaged in—hooking a hose from his home to his neighbor's home to provide that neighbor with water within his home despite termination of the neighbor's water service by the city—is the quintessential example of the conduct the ordinance was designed to prohibit."

Do enough meth and I would imagine that everything eventually starts to sound like clumps of nonsense words.

TAX - COLORADO

TABOR Foundation v. Colorado Bridge Enterprise

Colorado Court of Appeals, Div. II - August 14, 2014 - P.3d - 2014 COA 106

In 1992, Coloradans adopted the Taxpayer's Bill of Rights (TABOR), which limits the power of the state, its subdivisions, and its districts to levy taxes or create debt. TABOR requires voter approval for any new tax and for the issuance of debt. Enterprises, as defined by TABOR, are exempt from TABOR's voter approval requirements.

In 2009, the General Assembly created the Colorado Bridge Authority (CBE) to finance, repair, reconstruct, and replace any designated bridge in the Colorado highway system.

The TABOR Foundation (Foundation) sought injunctive relief and a declaratory judgment that the CBE's bridge safety surcharge and its issuance of bonds violated Foundation member's right to vote on new taxes and issuance of debt.

The trial court held that the CBE did not levy a TABOR-prohibited tax when it imposed a bridge safety surcharge, but instead imposed a permissible fee. It further held that the CBE operated as a TABOR-exempt enterprise and did not violate TABOR by issuing bonds without submitting the matter to voters in a statewide election. The Court of Appeals affirmed.

IMMUNITY - FLORIDA

Barnes v. District Bd. of Trustees of St. Johns River State College

District Court of Appeal of Florida, First District - August 12, 2014 - So.3d - 2014 WL 3906856

Homeowners sued the District Board of Trustees of St. Johns River State College for damages to their property from water that had overflown from a retention pond that was part of the District's stormwater management system.

The trial court ruled that 373.443, Florida Statutes extended immunity to the homeowners' operational level negligence claims that would otherwise be actionable under section 768.28's

waiver of immunity. The District Court of Appeal affirmed.

BONDS - ILLINOIS

Land of Lincoln Goodwill Industries, Inc. v. PNC Financial Services Group, Inc.

United States Court of Appeals, Seventh Circuit - August 12, 2014 - F.3d - 2014 WL 3909534

County agreed to issue $2 million in economic development revenue bonds and loan the proceeds to Goodwill for purposes of a development project. The loan was for a period of twenty years. PNC (as successor) purchased the bonds and by so doing funded the loan to Goodwill. The transaction was evidenced by a loan agreement and promissory note, and the loan was secured by a mortgage on the project.

Interest accrued at a fixed rate for the first ten years of the loan period and at a variable rate during the second ten years. The interest rate would automatically revert to a variable rate in the event the bonds were deemed taxable.

The loan agreement imposed a prepayment penalty when prepayment is made "during a period when the unpaid principal balance bears interest, or is scheduled to bear interest, at a fixed rate."

Goodwill subsequently informed PNC that it intended to pay off the balance of the loan. PNC notified Goodwill that it would owe a prepayment charge in excess of $300,000. Goodwill filed suit seeking a declaratory judgment that it owed no such fee under the terms of its agreement with PNC.

Goodwill argued that at no time during the loan will interest accrue at a fixed rate, and consequently at no time will its prepayment trigger a charge. This argument was based on the possibility of a reversion to a variable rate should the bonds be deemed taxable and the 10-year rate adjustment.

The Court of Appeals disagreed, finding that Goodwill's reading loan agreement was contrary to the plain terms of the contract and would render one of its terms – the prepayment penalty – a nullity.

ANNEXATION - MISSISSIPPI

Pearson's Fireworks, Inc. v. City of Hattiesburg

Supreme Court of Mississippi - August 7, 2014 - So.3d - 2014 WL 3891637

Fireworks company brought action against city, seeking declaratory judgment stating that city ordinance prohibiting sale of fireworks was unenforceable against company, damages for regulatory taking of its business, and injunctive relief preventing city from closing company's business until resolution of company's first and second claims.

The Supreme Court of Mississippi held that:

- City's annexation notice was not invalid due to a lack of notice publication;
- Due process did not require that city provide fireworks company with actual, rather than constructive notice of its intent to annex property;
- The pre-existing-use doctrine and/or grandfathering did not apply to allow for the sale of fireworks

on newly annexed property; and
- City's annexation of land leased by fireworks company did not amount to a compensable "regulatory taking."

EMPLOYMENT - MISSISSIPPI

Renfro v. City of Moss Point

Court of Appeals of Mississippi - August 12, 2014 - So.3d - 2014 WL 3906520

City terminated police officer for insubordination and conduct unbecoming an officer, and city civil service commission affirmed. Officer appealed, and the Circuit Court also affirmed. Officer appealed again.

The Court of Appeals held that substantial evidence supported the commission's finding that city terminated the officer in good faith and for cause.

ANNEXATION - MONTANA

Sharp v. Eureka Town Council

Supreme Court of Montana - August 12, 2014 - P.3d - 2014 MT 216

Property owner brought action for judicial review of town's annexation of real property. The District Court granted summary judgment in favor of town. Property owner appealed.

The Supreme Court of Montana held that statute governing judicial review of annexation decision prohibited relation back of amended petition.

Statute requiring petition for judicial review of annexation decision to be filed by majority of affected property owners within 30 days after passage of annexation ordinance prohibited relation back of property owner's amended petition, which added names of property owners who had been listed as John Does in original petition challenging town's annexation of real property. Statute did not contemplate relation back of amendment adding names of majority of real property owners to petition after 30–day deadline had passed.

EMINENT DOMAIN - NEVADA

City of N. Las Vegas v. 5th & Centennial

Supreme Court of Nevada - August 7, 2014 - P.3d - 130 Nev. Adv. Op. 66

Landowners brought action against city for inverse condemnation and precondemnation damages resulting from city's highway-expansion project. The District Court found that inverse condemnation claim was not ripe but entered judgment in favor of landowners as to precondemnation damages. On cross-appeals, the Supreme Court entered dispositional order which affirmed in part but reversed as to calculation of prejudgment interest. City petitioned for rehearing.

The Supreme Court of Nevada issued clarifying opinion and held that:

- Date which triggered accrual of prejudgment interest recoverable by landowners in claim for

precondemnation damages was first date of compensable injury resulting from city's conduct, despite city's argument that controlling authority required calculation of prejudgment interest from date when condemnation summons was served;
- Statute providing for calculation of prejudgment interest in an eminent domain case, rather than general prejudgment interest statute, applies to calculation of prejudgment interest for a precondemnation damages claim; and
- Statute of limitations of 15 years for takings actions applied to landowners' claim for precondemnation damages, even though such claim was separate from landowners' inverse condemnation claim.

MUNICIPAL ORDINANCE - NEW HAMPSHIRE

State v. Bailey

Supreme Court of New Hampshire - August 8, 2014 - A.3d - 2014 WL 3883281

Defendants moved to dismiss charges of violating city's park curfew ordinance arising from their failure to comply with police directions to leave park, where they were participating in movement known nationally as Occupy Wall Street. The Circuit Court denied motion and found defendants guilty. Defendants appealed.

The Supreme Court of New Hampshire held that curfew ordinance was a reasonable regulation of time, place, and manner in which city's parks could be used and, as applied to defendants, did not violate constitutional protections of free speech.

LIABILITY - NEW YORK

Rosario v. New York City Health & Hospitals Corp.

Supreme Court, Appellate Division, First Department, New York - July 31, 2014 - N.Y.S.2d - 119 A.D.3d 490 - 2014 N.Y. Slip Op. 05603

Patients brought medical malpractice action against operator of municipal hospital. The Supreme Court, Bronx County, granted patients' motion for leave to file a late notice of claim as to infant plaintiff alone, and denied operator's cross-motion to dismiss the complaint. Operator appealed.

The Supreme Court, Appellate Division, held that:

- Patients' failure to demonstrate a reasonable excuse for their delay was not alone fatal to their motion, and
- Operator was not substantially prejudiced by patients' delay in filing late notice.

Patients' failure to demonstrate a reasonable excuse for their delay was not alone fatal to their motion for leave to file late notice of claim as to infant plaintiff alone, in medical malpractice action against operator of municipal hospital, where medical records provided operator actual knowledge of facts underlying patients' theory of a departure from accepted standard of pediatric care with regard to diagnosis and treatment of mother's placental infection and her fetal distress and subsequent self-extubation, and additional injuries to already compromised infant, who was born at 26 weeks' gestation.

Operator of municipal hospital was not substantially prejudiced by patients' delay in filing late notice

of medical malpractice claim, since operative facts of the claim were contained in the medical records, and the case would turn primarily on those records, rather than on witnesses' memories.

EMPLOYMENT - SOUTH DAKOTA

Kolda v. City of Yankton

Supreme Court of South Dakota - August 6, 2014 - N.W.2d - 2014 S.D. 60

Police officer brought action against city for wrongful discharge. Following a jury trial, the Circuit Court awarded officer procedural due process damages, even though the jury found just cause existed to terminate officer's employment. Officer and city both appealed.

The Supreme Court of South Dakota held that:

- The narrow exception to the general at-will status for employees when an employer's discharge policy provides that termination will occur only for cause applied to police officer terminated by city for violating police department policies, but
- The Circuit Court lacked jurisdiction to resolve police officer's wrongful discharge claims against city, because officer failed to exhaust his administrative remedies.

The narrow exception to the general at-will status for employees when an employer's discharge policy provides that termination will occur only for cause applied to police officer terminated by city for violating police department policies. The statutory provisions governing city manager's appointment and removal powers limited city manager's removal power to officers and employees in the administrative service of the municipality, and because police officer's job was not an administrative position, the city manager's statutory removal power did not apply, and the policies of the employee handbook that provided officer could only be terminated with notice and for just cause were not negated.

The circuit court lacked jurisdiction to resolve police officer's wrongful discharge claims against city, because officer failed to exhaust his administrative remedies before suing city in the circuit court. While officer appealed his discharge to the city manager, he failed to appeal the city manager's decision to the Department of Labor and Regulation, the city handbook upon which officer relied for his lawsuit included an administrative grievance procedure that governed officer as a public employee, and officer's allegations against city fit the statutory definition of a grievance.

INVERSE CONDEMNATION - TEXAS

Appaloosa Development, LP v. City of Lubbock

Court of Appeals of Texas, Amarillo - August 11, 2014 - Not Reported in S.W.3d - 2014 WL 3906458

Developer brought inverse condemnation claim against City after City Council denied Developer's request to zone property as commercial.

The trial court entered a take-nothing judgment against Developer. Developer appealed.

The Court of Appeals affirmed, holding that the denial of the zoning request did not constitute a regulatory taking.

MUNICIPAL ORDINANCE - ALASKA

Price v. Kenai Peninsula Borough

Supreme Court of Alaska - August 8, 2014 - P.3d - 2014 WL 3883419

Citizen brought action against borough, seeking injunction requiring borough clerk to prepare referendum petition for citizen's proposed referendum to repeal borough ordinance that authorized general law cities to tax non-prepared food items on a year-round basis. The Superior Court entered summary judgment in favor of borough, concluding that proposed referendum constituted local or special legislation in violation of state statute. Citizen appealed.

The Supreme Court of Alaska held that:

- Ordinance was generally applicable and thereby subject to repeal by referendum, and
- Proposed referendum, if passed, would not be not unenforceable as a matter of law.

Borough ordinance that authorized general law cities to tax non-prepared food items on a year-round basis was of borough-wide interest and did not apply to a permanently closed class, and thus ordinance was generally applicable and subject to repeal by referendum. Although ordinance was of greater concern to residents of borough's four general law cities than to residents of borough's two home-rule cities, ordinance affected all borough residents who shopped in general law cities, and ordinance applied to a class of cities that could theoretically grow in the future.

PUBLIC RECORDS - CALIFORNIA

St. Croix v. Superior Court

Court of Appeal, First District, Division 1, California - July 28, 2014 - Cal.Rptr.3d - 14 Cal. Daily Op. Serv. 8539 - 2014 Daily Journal D.A.R. 9903

City resident brought mandamus action against city ethics commission and its executive director challenging director's refusal to disclose requested documents pertaining to the development of certain city ethics commission regulations under city sunshine ordinance and Public Records Act (PRA). The Superior Court granted resident's petition. Commission and director petitioned for writ of mandate.

The Court of Appeal held that:

- City charter provisions designating city attorney as legal advisor to city's officers and agencies incorporate the statutory attorney-client privilege;
- Sunshine ordinance was inconsistent with attorney-client privilege and thus was invalid to extent that it required disclosure of attorney-client communications between city attorney and ethics commission; and
- Attorney-client privilege as to materials generated in attorney-client relationship created by city charter may not be waived by ordinance.

TAX - CALIFORNIA

City of San Diego v. Shapiro

Court of Appeal, Fourth District, Division 1, California - August 1, 2014 - Cal.Rptr.3d - 14

Cal. Daily Op. Serv. 8797 - 14 Cal. Daily Op. Serv. 8813

California's Proposition 13 placed significant limits on the taxing power of local and state governments by requiring that "Cities, Counties and special districts, by a two-thirds vote of the *qualified electors of such district*, may impose special taxes on such district.…"

Proposition 218 further provides that, "No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the *electorate* and approved by a two-thirds vote."

The City of San Diego held an election to authorize the levying of a special tax to help finance the potential expansion of the San Diego Convention Center. In the election, the City did not permit the City's registered voters to vote on the special tax. Instead, the City passed an ordinance that specifically defined the electorate to consist solely of (1) the owners of real property in the City on which a hotel is located, and (2) the lessees of real property owned by a governmental entity on which a hotel is located.

The election was challenged on the grounds that it failed to comply with the above-referenced provisions of the California Constitution.

The Court of Appeal held that:

- The election was invalid under the California Constitution because such landowners and lessees were neither "qualified electors" of the City, nor did they comprise a proper "electorate."
- The election was invalid under the provision of the City Charter requiring the approval of two-thirds of the "qualified electors" voting in an election on a special tax, as "qualified electors" are defined as persons who are registered to vote in general state elections under state law.

BONDS - CALIFORNIA

California High-Speed Rail Authority v. Superior Court

Court of Appeal, Third District, California - July 31, 2014 - Cal.Rptr.3d - 14 Cal. Daily Op. Serv. 8733

On March 19, 2013, High-Speed Rail Authority and its Finance Committee filed a validation action to obtain a judgment validating more than $8 billion in bonds authorized under Proposition 1A – the Bond Act.

The trial court denied the validation, holding that the Finance Committee's determination that issuance of the bonds was "necessary or desirable" was a quasi-legislative act that must be supported by evidence in the record. The trial court also issued a peremptory writ of mandate commanding the Authority to rescind its preliminary funding plan (2704.08(c)) and to redo that plan.

Everyone under the sun appealed.

The Court of Appeal held that:

- Contrary to the trial court's determination, the Finance Committee properly found that issuance of bonds for the project was "necessary or desirable." The Court found no authority for the trial court's decision, as neither the State bond law, nor the specific Bond Act, required the Finance Committee to make any factual findings or to explain the basis for its determination.

- The preliminary funding plan was intended to provide guidance to the Legislature in acting on the Authority's appropriation request. Because the Legislature appropriated bond proceeds following receipt of the preliminary funding plan approved by the Authority, the preliminary funding plan had served its purpose. A writ of mandamus would not lie to compel the idle act of rescinding and redoing it.

The Court of Appeal issued a peremptory writ of mandate directing the trial court to enter judgment validating the authorization of the bond issuance for purposes of the Bond Act. The writ also compelled the trial court to vacate its rulings requiring the Authority to perform the idle act of redoing the preliminary section 2704.08, subdivision (c) funding plan after the Legislature appropriated the bond funds.

PUBLIC CONTRACTS - CONNECTICUT

C and H Elec., Inc. v. Town of Bethel

Supreme Court of Connecticut - August 5, 2014 - A.3d - 312 Conn. 843

Electrical contractor brought action against town for breach of contract and unjust enrichment. Following a bench trial, the trial court rejected contractor's claim that town must reimburse it for additional costs incurred due to town's ongoing asbestos abatement work. Contractor appealed.

The Supreme Court of Connecticut held that:

- Any exercise of town's rights under the construction contract did not amount to "active interference";
- Town's directive to electrical contractor to proceed with its work on school construction project, despite town's knowledge of ongoing asbestos abatement, did not constitute "active interference";
- Town's failure to advise contractor of the remaining asbestos abatement work did not constitute "active interference";
- Any failure by town to coordinate the work of contractors on school construction project did not constitute "active interference";
- Town did not act in bad faith or with gross negligence in ordering electrical contractor to begin work on school construction project; and
- Town's failure to disclose and update specifications to reflect remaining asbestos work on construction project, and its failure to provide contractor with site access to complete its work while asbestos abatement was going on, did not rise to the level of a fundamental breach necessary to come within exceptions to enforceability of "no damages for delay" clause of construction contract.

SCHOOLS - FLORIDA

School Bd. of Polk County Florida v. Renaissance Charter School, Inc.

District Court of Appeal of Florida, Second District - August 6, 2014 - So.3d - 2014 WL 3843758

The School Board of Polk County, Florida appealed an order of the State Board of Education which allowed Renaissance Charter School, Inc. to operate a charter school in Polk County over the objections of the School Board. The School Board argued that the proposed charter school's educational program did not "substantially replicate" that of the high-performing charter school

being replicated.

The District Court of Appeal agreed with the School Board that Renaissance's proposed charter school's educational program did not substantially replicate that of the school to be replicated. The proposed school, composed mostly of kindergarten and elementary grade students, and the middle school on which the application was based neither shared the same characteristics, nor were they alike in substance or essentials. Furthermore, nowhere in the record did any representative of Renaissance articulate how the educational program of the high-performing middle school would be replicated so as to serve the students of different age and grade levels.

PENSIONS - ILLINOIS

Village of Vernon Hills v. Heelan

Appellate Court of Illinois, Second District - July 23, 2014 - N.E.3d - 2014 IL App (2d) 130823

Municipality brought action against police officer seeking declaratory judgment that it was not obligated under the Public Safety Employee Benefits Act to pay health insurance premiums for officer and his family after he was awarded a line-of-duty disability pension by the board of trustees for the municipality's police pension fund. The Circuit Court entered judgment in favor of officer but denied his motion for sanctions. Municipality appealed and officer cross-appealed.

The Appellate Court held that:

- Municipality's action was an impermissible collateral attack on board's decision;
- Trial court's refusal to allow discovery concerning officer's injuries did not violate due process; and
- Municipality's action was brought in an effort to change existing law and not in bad faith, and thus no sanctions were warranted.

Municipality's action seeking a declaratory judgment that it was not obligated under the Public Safety Employee Benefits Act to pay health insurance premiums for officer and his family after he was awarded a line-of-duty disability pension by the board of trustees for the municipality's police pension fund was an impermissible collateral attack on board's decision, where municipality did not dispute board's statutory authority to render decision but instead criticized the board proceeding and sought to introduce evidence regarding officer's injuries.

BONDS - ILLINOIS

Wells Fargo Bank, National Association v. Leafs Hockey Club, Inc.

United States District Court, N.D. Illinois, Eastern Division - July 31, 2014 - Not Reported in F.Supp.2d - 2014 WL 3855318

The Illinois Finance Authority raised $20 million through the issue and sale of of revenue bonds. The Illinois Finance Authority issued the bonds under a Trust Indenture and loaned the proceeds to LHC, LLC, an Illinois non-profit limited liability company, for the construction and operation of a hockey arena. Leafs Hockey was the guarantor.

Trustee sued LHC after it defaulted. It also sued Leafs Hockey as guarantor.

Leafs Hockey counterclaimed, alleging breach of contract, an equitable accounting claim, and conspiracy to defraud claim.

The District Court:

- Granted Trustee's motion to dismiss Leafs Hockey's conspiracy to defraud claim;
- Denied Trustee's motion to dismiss Leafs Hockey's breach of contract claim; and
- Denied Trustee's motion to dismiss Leafs Hockey's alternative equitable accounting claim.

As to the conspiracy to defraud claim, the court found that Leafs Hockey had failed to sufficiently allege that the Trustee knew of any fraudulent scheme, nor had it voluntarily participated in any such scheme.

As to the breach of contract claim, the court found that Leafs Hockey had provided sufficient, detailed allegations that the Trustee breached the Loan Agreement and Trust Indenture. These potential breaches included, Trustee's knowledge of a conflict of interest by an LHC board member, Trustee's failure to properly disburse funds, and Trustee's potential failure to keep proper books and records.

As to the equitable accounting claim, the court found that Leafs Hockey's contention that the $20 million that the Trustee sought to recover from Leafs Hockey involved numerous transactions between the Trustee and LHC to which Leafs Hockey was not a party was sufficient to plead a claim.

TAX - MAINE

Francis Small Heritage Trust, Inc. v. Town of Limington

Supreme Judicial Court of Maine - August 7, 2014 - A.3d - 2014 ME 102

Taxpayer sought judicial review of a decision of the State Board of Property Tax Review finding taxpayer was not entitled to a tax exemption as a benevolent and charitable institution. The Superior Court vacated the Board's decision, and town appealed.

The Supreme Judicial Court of Maine held that:

- In an apparent matter of first impression, trust holding land fully devoted to conservation was entitled to a property tax exemption as a benevolent and charitable organization, and
- The Farm and Open Space Tax Law did not preempt or otherwise displace the property tax exemption for benevolent and charitable organizations.

Trust, whose purpose was to conserve natural resources for the benefit of the public, was entitled to a property tax exemption as a benevolent and charitable organization. Trust had opened its properties to the public year-round, free of charge, and permitted school field trips, hunting, fishing, hiking, cross-county skiing, and snowmobiling, operating its properties in the manner of a state park, and in doing so, assisted the state in achieving its conservation goals.

The Farm and Open Space Tax Law did not preempt or otherwise displace the property tax exemption for benevolent and charitable organizations, even though the statutes might have overlapped in their application to a particular taxpayer. The Farm and Open Space Tax Law and the charitable exemption were distinct in their scope and purpose and contained no language indicating that they were mutually exclusive.

TAX - MONTANA

Westmoreland Resources Inc. v. Department of Revenue

Supreme Court of Montana - August 5, 2014 - P.3d - 2014 MT 212

Coal producer and Department of Revenue filed joint petition for interlocutory adjudication of substantive question of law, requesting determination as to whether deduction taken by producer for coal severance and gross proceeds taxes paid to Indian tribe, as owner of coal, to reduce amount owning under Resource Indemnity Trust and Ground Water Assessment Tax (RITT) was proper. The District Court held in favor of Department. Producer appealed.

The Supreme Court of Montana held that taxes that producer paid to tribe were not taxes paid on production subject to deduction from contract sales price.

Coal severance and gross proceeds taxes that coal producer paid to Indian tribe, as owner of coal mined by producer, were not "taxes paid on production," as used in statute governing coal severance tax, such that producer was precluded from deducting taxes paid to tribe from contract sales price when calculating amount owning under Resource Indemnity Trust and Ground Water Assessment Tax (RITT). Taxes paid on production were those taxes paid to specified group of governing authorities, namely, federal, state, and local governments, which did not include tribal governments. If so intended, legislature could have included tribal governments when defining specified governmental authorities, and disallowing state tax deduction did not undermine tribe's sovereign authority to govern itself.

EMINENT DOMAIN - NEW JERSEY

Borough of Merchantville v. Malik & Son, LLC

Supreme Court of New Jersey - August 7, 2014 - A.3d - 2014 WL 3858399

Borough filed petition to condemn property. The Superior Court denied motion by mortgagee's assignee to dismiss, and entered judgment for borough. Mortgagee's assignee appealed. The Superior Court, Appellate Division, affirmed. Assignee filed petition for a petition for certification, which was granted.

The Supreme Court of New Jersey held that:

- Borough was not obligated to negotiate with mortgagee's assignee prior to initiating condemnation proceedings, and
- Borough did not breach its duty to engage in bona fide negotiations with property owner.

FIRST AMENDMENT - NEW MEXICO

Felix v. City of Bloomfield

United States District Court, D. New Mexico - August 7, 2014 - F.Supp.2d - 2014 WL 3865948

Plaintiffs challenged the erection (hee, hee) of a monument inscribed with the Ten Commandments on the lawn in front of the City of Bloomfield, New Mexico municipal building complex as violative of Amendment I of the Constitution of the United States of America.

The District Court held that:

- Plaintiffs had Article III standing because they had regular, direct, and unwelcome contact with the Ten Commandments monument and therefore have suffered an "injury-in-fact," which was caused by Defendant's conduct and is likely to be redressed by a favorable decision.
- The Ten Commandments monument was government speech regulated by the Establishment Clause because the Ten Commandments monument is a permanent object located on government property and it is not part of a designated public forum open to all on equal terms.
- In view of the circumstances surrounding the context, history, and purpose of the Ten Commandments monument, it is clear that the City of Bloomfield had violated the Establishment Clause because its conduct in authorizing the continued display of the monument on City property has had the primary or principal effect of endorsing religion.

"…the Court considers this to be a very close case. The result could differ with a slight change in the facts. For example, had the Ten Commandments monument been established last in the series of monuments, after placement of the Declaration of Independence, Gettysburg Address, and Bill of Rights monuments, the First Amendment may not have been offended. Had the Ten Commandments monument been arranged at the rear of the north lawn near the municipal building complex, with the other three monuments (consisting of six tablets) in front of it, the Ten Commandments monument may have passed muster. Had the Ten Commandments monument been installed without a dedication event or with a ceremony absent religious overtones, the ultimate conclusion may have differed. Had the City of Bloomfield adopted the amended policy permitting monuments first, with language clearly allowing only temporary residence of a monument, the result might have changed. Any variation in the many factors in this proceeding could favor the Defendant instead of the Plaintiffs. Nevertheless, the Court decides that the legal precedent, by which it is constrained, mandates a ruling that the Bloomfield Ten Commandments monument violates the Establishment Clause of the First Amendment."

LOTTERIES - TEXAS

Department of Texas, Veterans of Foreign Wars of U.S. v. Texas Lottery Com'n

United States Court of Appeals, Fifth Circuit - July 28, 2014 - F.3d - 2014 WL 3714874

The Texas Bingo Enabling Act allows charitable organizations to raise money by holding bingo games on the condition that the money is used only for the organizations' charitable purpose. Plaintiffs filed suit challenging these political advocacy restrictions, arguing that they violate their speech rights under the First Amendment.

The Court of Appeals held that the political advocacy restrictions in the Bingo Act do not withstand strict scrutiny. Not only had the Lottery Commission failed to articulate a compelling interest justifying the challenged provisions, but even if we were to accept the interests raised by the Commission as compelling, the restrictions are not narrowly tailored. Consequently, the provisions at issue are facially invalid under the First Amendment.

PENSIONS - CALIFORNIA

California ex rel. California Dept. of Transp. v. U.S. Dept. of Labor

United States District Court, E.D. California - July 23, 2014 - Slip Copy - 2014 WL 3687540

Under Section 13(c) of the Urban Mass Transportation Act (UMTA), state and local governments seeking federal grants for transit assistance must seek certification from the Department of Labor (DOL) that the "interests of employees affected by the assistance" are protected by "fair and equitable" arrangements. These employee protective arrangements are called 13(c) agreements.

In 2012, California enacted the Public Employees' Pension Reform Act of 2013 (PEPRA). Under PEPRA, new state employees must contribute at least 50 percent of the normal costs of their defined benefit plan. PEPRA also establishes a cap on the amount of compensation that can be used to calculate a retirement benefit for both new and veteran employees.

The DOL has subsequently refused to certify grants to California transit agencies, stating that PEPRA's elimination of certain collective bargaining rights renders it legally impermissible for the DOL to certify fair and equitable employee protective conditions under section 13(c). This has resulted in the withholding of over $1 billion in transportation funding.

In their complaint, filed October 4, 2013, plaintiffs Sacramento Transit and CalTrans challenged DOL's determination that California's enactment of PEPRA prevented 13(c) certification. The complaint raised five claims: (1) DOL's interpretation of PEPRA and Section 13(c) was arbitrary and capricious in violation of the Administrative Procedure Act (APA); (2) DOL acted in excess of statutory authority in denying 13(c) certification; (3) DOL's refusal to grant 13(c) certification is inconsistent with limits on federal power embodied in the Spending Clause and violates the state's fiscal sovereignty in violation of the Tenth Amendment; (4) DOL prejudged the merits of the issues before it and denied plaintiffs due process in violation of APA; and (5) they are entitled to a declaratory judgment.

Because plaintiffs have filed a motion for summary judgment to be heard on August 28, 2014, the court declined to address defendant's motion to dismiss or in the alternative for summary judgment on claims one, two and four at this time and will consider those claims in conjunction with plaintiffs' motion.

This order addresses only the defendant's motion to dismiss the Spending Clause and declaratory judgment claims. The court granted the motion, but gave plaintiffs leave to amend their Spending Clause claim.

The court stated that it cannot evaluate whether plaintiffs have adequately pled the underlying coercive effect of DOL's interpretation of section 13(c) given its intersection with PEPRA, without more information about the relationship between the loss of funds and the total state transit budget or total state budget, thus granting leave to amend.

SCHOOLS - CALIFORNIA

DeYoung v. Commission on Professional Competence of the Hueneme Elementary School District

Court of Appeal, Second District, Division 6, California - July 30, 2014 - Cal.Rptr.3d - 2014 WL 3735721

School District's governing board voted to dismiss tenured teacher based on charges he had physically and abusively disciplined his students. The vote occurred after a District representative orally presented the charges to the board in a confidential proceeding. Although written charges subsequently were prepared and provided to teacher, the Education Code required that the board,

prior to initiating dismissal, consider either verified written charges prepared by the District or written charges formulated by the board itself. (Ed.Code, § 44934.)

Teacher contended that the board's failure to consider or formulate written charges before initiating his dismissal nullified all further proceedings.

The Court of Appeal held that this procedural error was neither substantive nor prejudicial, concluding that teacher's dismissal was proper.

"In sum, DeYoung's informal notification of charges, eventual receipt of written charges, representation by counsel, involvement in the discovery process and participation in a four-day evidentiary hearing confirm he was provided notice and a full opportunity to oppose the charges. He has not shown the governing board's reliance on an oral presentation of charges in initiating his dismissal undermined his preparation or otherwise prejudiced his defense."

SCHOOLS - CALIFORNIA

Daubert v. Lindsay Unified School Dist.

United States Court of Appeals, Ninth Circuit - July 25, 2014 - F.3d - 2014 WL 3686098

Disabled high school football patron who used wheelchair for mobility brought action against school district, alleging that school district was in violation of Title II of the Americans with Disabilities Act (ADA) because bleachers at high school football field were not wheelchair accessible. School district moved for summary judgment. The District Court granted motion. Patron appealed.

The Court of Appeals held that:

- Requirement under ADA that school district provide access to programs at football field did not require school district to provide access to specific area of facility, and
- Patron failed to make out a prima facie case of discrimination against school district.

LIABILITY - CALIFORNIA

Settle v. State

Court of Appeal, Second District, Division 6, California - July 23, 2014 - Cal.Rptr.3d - 14 Cal. Daily Op. Serv. 8278 - 2014 Daily Journal D.A.R. 9620

Pedestrian brought action against state and city for dangerous condition of public property. The Superior Court granted summary judgment for city and state and ordered pedestrian and her attorney to pay attorney fees and costs. Pedestrian's attorney appealed.

The Court of Appeal held that a mandatory award of defense costs for bringing a tort action against a public entity without reasonable cause may not be imposed against counsel.

EMINENT DOMAIN - FLORIDA

Livingston v. Frank

District Court of Appeal of Florida, Second District - July 30, 2014 - So.3d - 2014 WL

3734284

After quick-take eminent domain proceedings, the trial court determined that property owner had no property interest in the interest earned on deposit funds held in the court registry pursuant to the eminent domain proceedings. Property owner appealed.

The appeals court affirmed, holding that property owner was not entitled to the interest.

Under Florida's quick-take statutory scheme, once the condemning authority makes the deposit, two acts occur simultaneously. First, the condemning authority acquires title to the condemned property, and, second, the property owner's entitlement to full compensation under the respective constitutional provisions vests. It is the right to full compensation that vests, not a right to the specific funds, although common practice regularly releases the funds to the property owner.

MUNICIPAL ORDINANCE - FLORIDA

City of Miami v. Haigley

District Court of Appeal of Florida, Third District - July 23, 2014 - So.3d - 2014 WL 3610909

Non-resident brought class action suit against city, alleging that city ordinance requiring non-residents of city to pay $100 more than residents for use of the city's emergency medical transportation services was an unauthorized tax, violated equal protection, and unconstitutionally impaired intrastate travel. The Circuit Court granted summary judgment in favor of plaintiffs. City appealed.

The District Court of Appeal held that:

- Ordinance was a user fee, not a tax;
- Ordinance did not violate equal protection; and
- Ordinance did not implicate the right to intrastate travel.

ZONING - INDIANA

Brookview Properties, LLC v. Plainfield Plan Com'n

Court of Appeals of Indiana - July 31, 2014 - N.E.3d - 2014 WL 3753147

Brookview Properties, LLC and First Merchants Bank of Central Indiana (collectively "Brookview") petitioned the Town of Plainfield for approval of a Planned Unit Development ("PUD") preliminary plan and final detailed plan for development of a proposed apartment complex. The Plainfield Plan Commission ("Plan Commission") denied the petition following a public hearing. Brookview filed a verified petition for judicial review, and the trial court affirmed the Plan Commission's denial of the development plan. Brookview appealed.

The Court of Appeals held that:

- The Plan Commission did not exceed its authority when it decided that the proposed multifamily use was inappropriate, as no preliminary plan had been approved for Brookview's parcel;
- The Plan Commission's findings, as a whole, were adequate, supported by substantial evidence, and provided fair notice to Brookview of the reasons for the Plan Commission's decision;

- The Plan Commission's decision did not violate Brookview's right to substantive and procedural due process, as it had failed to show that the Plan Commission's actions were arbitrary and capricious and without any rational basis; and
- The Plan Commission's decision did not constitute an uncompensated taking, as Brookview could not have had any expectation concerning a designated land use given the absence of preliminary plan approval.

IMMUNITY - NEBRASKA

Jacobson v. Shresta

Supreme Court of Nebraska - July 25, 2014 - N.W.2d - 288 Neb. 615

Patient's estate filed suit against physicians for wrongful death premised on medical malpractice. Physicians' motion for summary judgment was granted, and estate appealed. The Court of Appeals reversed and remanded for determination of whether physicians were "employees" of political subdivision hospital for purposes of one-year limitations period of Political Subdivisions Tort Claims Act (PSTCA). On remand, the District Court, Sheridan County, Randall L. Lippstreu, J., granted physicians' motion to bifurcate employment issue, determined after a bench trial that physicians were employees, and dismissed complaint on limitations grounds. Estate appealed.

The Supreme Court of Nebraska held that:

- Merely failing to object, before trial, to a defendant's request for a bench trial on a bifurcated affirmative defense does not amount to oral consent in open court to waive a jury trial; but
- Because a jury trial is not one of the terms of the waiver of governmental immunity under PSTCA, estate was not entitled to a jury trial on its claim that physicians were not a political subdivision employees.

VOTING - NEW JERSEY

Tumpson v. Farina

Supreme Court of New Jersey - July 31, 2014 - A.3d - 2014 WL 3743792

Citizen's group brought action against city and its clerk, after clerk refused to file petition they submitted that sought to have its petition seeking to have amended rent control ordinance submitted to voters for referendum, asserting violation of the Faulkner Act and seeking injunctive relief prohibiting city from enforcing the ordinance. Group then filed motion to enforce litigants rights. The Superior Court granted motion, required clerk to certify petition as valid, and prohibited city from enforcing ordinance pending outcome of referendum in general election, at which voters ultimately rejected group's challenge of ordinance. City and clerk appealed and group cross-appealed.

The Supreme Court of New Jersey held that:

- Clerk's refusal to accept petition for referendum violated right to referendum in Faulkner Act;
- Right to referendum was substantive right protected by Civil Rights Act; and
- Refusal to accept petition deprived citizens of substantive right.

City clerk in a Faulkner Act municipality's refusal to accept for filing a petition for referendum on

the ground that the petition did not have a sufficient number of qualifying signatures violated the right to referendum guaranteed by the Faulkner Act; the various intersecting provisions of the Act contemplated a two-step process for validating a referendum petition, which provided that, if the initial petition was found insufficient, then a corrective, supplemental petition could be filed, but the statutory scheme did not indicate that one kind of deficiency in an initial petition empowered the clerk to refuse to file the petition and to forgo giving the particulars in which the petition was defective.

Power of citizens to approve or reject at the polls any ordinance through the referendum process constituted a "substantive right" protected by the Civil Rights Act, such that a deprivation of the right entitled the citizens to an award of attorney's fees under the Act.

City clerk's refusal to accept for filing petition for referendum in violation of the right to referendum guaranteed by the Faulkner Act constituted a deprivation of city citizens' substantive rights, and therefore citizens were entitled to award of attorney's fees pursuant to Civil Rights Act, where, although the citizens succeed in judicially compelling the clerk to process the referendum petition and place the ordinance on the ballot, the deprivation was complete when clerk initially refused to file the petition.

ZONING - NORTH CAROLINA

Atkinson v. City of Charlotte

Court of Appeals of North Carolina - July 29, 2014 - S.E.2d - 2014 WL 3724134

In 2010, the City of Charlotte amended its Zoning Ordinance to exempt certain parking decks from floor area ratio requirements imposed by the Ordinance.

Plaintiffs – neighboring residents – initiated a declaratory judgment action seeking to have the amendment invalidated.

Plaintiffs argued that the trial court erred by granting summary judgment in favor of the City and intervenors because the undisputed facts establish that the City Council failed to comply with N.C. Gen.Stat. § 160A–383 when it adopted the amendment. Specifically, plaintiffs contended (1) that the "Statement of Consistency" adopted by the City Council did not meet the requirements of a "statement" pursuant to that statute; and (2) that the Zoning Committee did not include the entire Planning Commission and thus the Zoning Committee's approval of the amendment also did not meet all statutory requirements.

The Court of Appeals agreed with plaintiffs' first contention, finding it to be dispositive. Consequently, the court did not address plaintiffs' second contention.

"The Statement of Consistency adopted by the City Council in the instant case cannot reasonably be said to include an "explanation" as to why the amendment is reasonable and in the public interest under the plain meaning of that term. Instead, the statement merely tracks the language of N.C. Gen.Stat. § 160A–383."

MUNICIPAL ORDINANCE - OHIO

Napoleon v. Green

Court of Appeals of Ohio, Third District, Henry County - July 21, 2014 - N.E.3d - 2014 - Ohio- 3192

Defendant was convicted following bench trial in the Napoleon Municipal Court of operating an overweight vehicle on local streets, in violation of city ordinance. Defendant appealed.

The Court of Appeals held that police officer's testimony, based on his "training and experience," as to weight of defendant's truck was insufficient to establish that defendant's truck was of gross weight of 10,000 pounds or more, without additional foundation as to what training and experience the officer had that would give him such expert knowledge.

IMMUNITY - PENNSYLVANIA

Markovich v. Panther Valley School Dist.

United States District Court, M.D. Pennsylvania - July 28, 2014 - Slip Copy - 2014 WL 3735292

Plaintiff Kenneth Markovich was an ROTC instructor in the Panther Valley School District. While he was injured and out on leave, the district superintendent contacted the Army, questioning plaintiff's qualifications to teach the ROTC program. He also received an "unsatisfactory" rating from the school board. Following these events, which plaintiff believes were retaliatory and in violation of state law and of his contract, plaintiff was placed on paid administrative leave at a public meeting. Although the board's solicitor advised the board not to make public the name of the employee being placed on leave, R. Mickey Angst, a board member, disclosed plaintiff's name at the meeting and on his personal blog. Thereafter, the local newspaper ran a story stating that plaintiff had been placed on leave. Plaintiff was eventually placed on unpaid leave, then fired. Plaintiff sued the school district, its superintendent, and Mr. Angst, bringing claims for violations of the Civil Rights Act, the U.S. Constitution, and state law claims.

The District Court declined to dismiss plaintiff's breach of contract and procedural due process claims, but did find that the board member was entitled to official immunity.

EMINENT DOMAIN - TEXAS

Thornton v. Northeast Harris County MUD 1

Court of Appeals of Texas, Houston (14th Dist.) - July 24, 2014 - S.W.3d - 2014 WL 3672897

In connection with the construction of a drainage ditch, Northeast Harris County MUD 1 filed an eminent domain suit against Frank and Shelley Thornton. The Thorntons brought counterclaims for inverse condemnation, nuisance, trespass, and negligent trespass. MUD filed a plea to the jurisdiction, arguing that there was no legislative waiver of its governmental immunity and that the Thorntons' counterclaims did not give rise to a constitutional taking sufficient to waive immunity because they could not show that MUD intended to contaminate their property and that alleged contamination of their property served a public use.

The Court of Appeals held that:

- A claim for constitutional taking cannot be based on mere negligence, thus the MUD was immune

from the Thornton's negligent trespass claim; and
- A trial courts subject matter jurisdiction cannot be challenged in a no-evidence motion for summary judgment, thus the trial court erred in granting MUD summary judgment as to the Thorntons' counterclaims for inverse condemnation, nuisance, and trespass.

PUBLIC UTILITIES - TEXAS

AEP Texas Commercial & Indus. Retail Ltd. Partnership v. Public Utility Com'n of Texas

Court of Appeals of Texas, Austin - July 17, 2014 - S.W.3d - 2014 WL 3558763

Retail electric provider (REP) sought judicial review of decision of Public Utility Commission (PUC) finding that proposed sharing of a common name, trademark, brand, or logo by a transmission distribution utility (TDU) and the REP, which was the TDU's competitive retail affiliate, would amount to prohibited preferential joint promotion.

The Court of Appeals held that:

- PUC reasonably construed provision of Public Utility Regulatory Act (PURA) and accompanying rule, prohibiting a utility from conducting joint advertising or promotion with a competitive affiliate in a manner that favors the competitive affiliate, to find that anticipated advertisements or promotions using shared name and logo would be prohibited preferential joint promotion;
- PUC unreasonably construed another provision of PURA, which required PUC to adopt rules to ensure that a utility did not allow a competitive affiliates before particular date to use utility's corporate name, brand, or logo unless a disclaimer was made, to find that the entire statutory provision expired on the particular date at issue; but
- Such error did not require reversal of commission order;
- Even if PURA does not categorically bar all sharing of names, logos, or branding by a utility and its competitive affiliate, such sharing may violate the prohibition of preferential joint advertising or promotion depending on the particular circumstances presented; and
- PUC's construction of PURA did not violate free speech provisions of state or federal constitution.

LIABILITY - TEXAS

Kitchen v. Dallas County, Tex.

United States Court of Appeals, Fifth Circuit - July 17, 2014 - F.3d - 2014 WL 3537022

Widow of pretrial detainee who died of asphyxiation while he was being extracted from his jail cell brought § 1983 action against county, detention officers, and others, alleging, inter alia, that defendants used excessive force and acted with deliberate indifference to detainee's medical needs. Defendants moved for summary judgment. The District Court granted the motion in its entirety, and plaintiff appealed.

The Court of Appeals held that:

- Genuine issues of material fact existed as to whether excessive force was used against detainee;
- Addressing an issue of first impression for the court, plaintiff's claims against detention officers were eligible for analysis under an alternative theory of bystander liability, even though plaintiff failed to identify with specificity the individual or individuals responsible for the underlying use of

excessive force;
- Plaintiff failed to demonstrate that defendants acted with deliberate indifference to detainee's medical needs, even though they failed to contact medical staff prior to attempting to extract detainee from his cell; and
- Plaintiff did not establish that county failed to provide proper training to personnel located in facility's North tower, as required to prevail on her Monell claim for municipal liability.

PENSIONS - WISCONSIN

Madison Teachers, Inc. v. Walker

Supreme Court of Wisconsin - July 31, 2014 - N.W.2d - 2014 WI 99

Certified representatives and their members brought action against state for declaration that budget repair act, which made changes to collective bargaining, payroll deduction of dues and contributions to pension benefits with respect to municipal employees, violated the Wisconsin Constitution and for injunctive relief.

The Supreme Court of Wisconsin held that:

- Act in no way implicated plaintiffs' freedom of association rights;
- Examined in isolation, provision of act that prohibited fair share agreements did not violate plaintiffs' right to freedom of association;
- Viewed as a whole, provisions of act that prohibited fair share agreements did not violate plaintiffs' right to freedom;
- Provisions of act that limited represented general employees to negotiating base wages survived equal protection challenge;
- Provisions of act that prohibited City of Milwaukee from paying on behalf of a general employee the employee share of required contributions to City of Milwaukee Employees' Retirement System did not violate Home Rule Amendment; and
- Provisions of act that prohibited City from paying on behalf of a general employee the employee share of required contributions to City of Milwaukee Employees' Retirement System did not violate the Contract Clause.

Provision of budget repair act that prohibited City of Milwaukee from paying on behalf of a general employee the employee share of required contributions to City of Milwaukee Employes' Retirement System did not violate Home Rule Amendment, although the act had a significant impact on Milwaukee and its retirement system and touched on a matter of local affairs. The act primarily touched on a matter of statewide concern, was enacted during a period of intense fiscal uncertainty in which state was facing a $3.6 billion dollar deficit, impacted the entire state, and applied to every general employee in the state.

Provision of budget repair act that prohibited City of Milwaukee from paying on behalf of a general employee the employee share of required contributions to City of Milwaukee Employes' Retirement System did not violate the constitutionally protected right of parties to contract with each other. There was nothing to suggest that the City intended to classify contribution rates as a contractually protected benefit, and consequently, there was no indication that the State bound itself to never modify the contribution rates that funded the retirement system, and no unmistakable indicia existed in statutes that contributions paid by the city were a defined benefit that was forever impervious to alteration.

TAX - WISCONSIN

Harry and Rose Samson Family Jewish Community Center, Inc. v. City of Mequon

Court of Appeals of Wisconsin - July 31, 2014 - Slip Copy - 2014 WL 3744290

Jewish Community Center argued that its facility qualified as tax exempt under WIS. STAT. § 70.11(4) because the property was used for benevolent purposes within the meaning of the statute.

JCC advanced two alternative benevolent purpose theories. First, it argued for an aggregate analysis approach that looked at all of JCC's properties and their uses in Wisconsin. Second, JCC contended that, even if the facility was considered individually, all of the activities at the facility have a benevolent purpose.

The Court of Appeals rejected both arguments, finding that that, 1) JCC had failed to identify any authority supporting its aggregate-use analysis, and 2) JCC had failed to meet its burden of establishing with clarity that the activities at the facility have a benevolent purpose under the statute or under cases interpreting and applying the statute.

EMINENT DOMAIN - CALIFORNIA

Olive Lane Industrial Park, LLC v. County of San Diego

Court of Appeal, Fourth District, Division 1, California - July 18, 2014 - Cal.Rptr.3d - 2014 WL 3542119

Taxpayer, which had acquired commercial property to replace property taken by eminent domain, filed action to compel County to transfer taken property's base year tax value to new property. The Superior Court entered judgment for county, and taxpayer appealed.

The Court of Appeal held that a taxpayer who acquires an eminent domain replacement property within statutory four-year timeline for transfer of the original property's base year tax value but fails to file the claim with the County within the four-year period is nevertheless entitled to have a request for prospective relief considered by the assessor.

EMPLOYMENT - CALIFORNIA

Rodriguez v. City of Santa Cruz

Court of Appeal, Sixth District, California - July 17, 2014 - Cal.Rptr.3d - 14 Cal. Daily Op. Serv. 8100

Former police officer petitioned for a writ of administrative mandate challenging city's denial of his application for industrial disability retirement. The Superior Court denied officer's petition. Officer appealed.

The Court of Appeal held that:

- Trial court was required to use its independent judgment on former police officer's administrative mandate petition, and

- Trial court incorrectly applied substantial evidence review.

LIABILITY - GEORGIA

City of Atlanta v. McCrary

Court of Appeals of Georgia - July 16, 2014 - S.E.2d - 2014 WL 3557465

Estate administrators of driver and passenger brought action against city arising from its police officer's high-speed chase of third party resulting in third party's collision with vehicle and the deaths of driver and passenger, alleging maintenance of a nuisance in failing to enforce police department's high-speed pursuit policy. The trial court denied city's summary judgment motion. City sought interlocutory review, which was granted.

The Court of Appeals held that city did not have the requisite notice of repeated or continuous dangerous acts as required to hold it liable for maintenance of a nuisance.

Assuming that nuisance law could apply in the context of police pursuit cases, city did not have notice of any repeated or continuous dangerous acts from its alleged failure to enforce its high-speed police pursuit policy, as required to hold city liable for maintenance of a nuisance in connection with fatal crash following police chase.

Despite statistics showing that less than half of high-speed pursuits were documented as required by standard operating procedure and less than half of those documented were justified as required by procedure, there was no showing that dangerous conditions or injuries resulted from any unauthorized pursuits or any lack of officer training or enforcement, and there was no link between any documented injuries or accidents and any unauthorized pursuits.

IMMUNITY - GEORGIA

City of Hapeville v. Grady Memorial Hosp. Corp.

Court of Appeals of Georgia - July 15, 2014 - S.E.2d - 2014 WL 3409110

Hospital brought action against city and police department arising from city's alleged failure to pay for medical services provided by hospital to four prisoners in city's custody. The trial court denied city's summary judgment motion. City appealed.

As a matter of apparent first impression, the Court of Appeals held that the statutory waiver of sovereign immunity as to medical providers alleging claims for reimbursement against county or state jailers for services rendered to prisoners applies to municipal jailers.

IMMUNITY - MARYLAND

Dehn Motor Sales, LLC v. Schultz

Court of Appeals of Maryland - July 22, 2014 - A.3d - 2014 WL 3586548

Automobile dealership filed suit under Local Government Tort Claims Act (LGTCA) and § 1983 against police officer and sergeant, seeking damages arising out of alleged illegal, warrantless seizure and towing of 67 vehicles from dealership property. The Circuit Court entered summary

judgment for officer and sergeant, and dealership appealed. The Court of Special Appeals affirmed. Request for certiorari review was granted.

The Court of Appeals held that:

- Dealership's prior replevin action against director of city Department of Transportation and others arising out of seizure and towing of vehicles from dealership's lot did not serve as notice of claim for damages against police officer and sergeant, as prerequisite to suit for alleged state constitutional violations under LGTCA, and
- Officer and sergeant who initiated seizure and towing of vehicles from automobile dealership were entitled to qualified immunity from suit under § 1983.

MUNICIPAL TRUSTEE - MASSACHUSETTS

The Woodward School For Girls, Inc. v. City Of Quincy

Supreme Judicial Court of Massachusetts, Norfolk - July 23, 2014 - N.E.3d - 2013 WL 8923423

Income beneficiary of charitable trust brought action against trustee, seeking an accounting and asserting that trustee committed breach of its fiduciary duties to keep adequate records, invest trust assets properly, exercise reasonable prudence in the sales of real estate, and incur only reasonable expenses related to the management of the funds. The Probate and Family Court Department removed trustee as trustee and ordered trustee to pay nearly $3 million judgment. Trustee appealed and beneficiary cross-appealed.

Following transfer from the Appeals Court, the Supreme Judicial Court of Massachusetts held that:

- Trustee' failure to follow investment advice was not per se breach of fiduciary duty;
- Failure to invest in growth securities was breach of fiduciary duty;
- Damages award calculation based on unrealized gains was inappropriate;
- Trial judge was not required to subtract from damages potential costs and expenses;
- Beneficiary was entitled to prejudgment interest from date of breach, rather than date of filing of complaint;
- Breach of fiduciary duty claim sounded in tort, rather than contract;
- Sovereign immunity was impliedly waived; and
- Action was not barred by doctrine of laches.

Trustee of charitable trust breached fiduciary duty of prudent investment pursuant to the Prudent Investor Act by failing to invest in growth securities, where, although it was the trustee of a trust with only an income beneficiary, trustee was still required to protect the trust's principal against inflation, and acting prudently in managing a charitable trust that benefited an institutional income beneficiary required considering the specific needs of the beneficiary in the short and long term and balancing prioritization of income with protection and preservation of the principal.

Sovereign immunity was impliedly waived, and therefore income beneficiary's failure to comply with requirements of Tort Claims Act in breach of fiduciary duty of prudent investment action against municipal trustee of charitable trust did not bar action, where, when trustee agreed to serve as trustee, it assumed fiduciary duties of that role, including the consequences for not fulfilling those duties, and Prudent Investor Act created a formal system of actionable guaranties and expected the same level of conduct from any trustee.

IMMUNITY - NEW JERSEY

Kain v. Gloucester City

Superior Court of New Jersey, Appellate Division - July 21, 2014 - A.3d - 2014 WL 3558687

Parent/chaperone of Boy Scout troop that participated in free education sail provided by nonprofit maritime educational organization at city-owned pier filed premises liability claims against city, nonprofit organization, and organization's volunteer for injuries sustained while helping scout board schooner. The Superior Court granted summary judgment to all defendants. Parent/chaperone appealed.

The Superior Court, Appellate Division, held that:

- Phrase "some other body" applied to the Coast Guard, as used in section of Tort Claims Act (TCA) providing immunity for injuries caused by plan or design of public property approved by entities including "some other body";
- Plan-or-design immunity that attached under Tort Claims Act (TCA) to original alleged defect approved by Coast Guard remained unaltered by change from class of users from military to civilian, or by the fact that pier came to be used for recreational purposes;
- Although a volunteer, parent/chaperone for Boy Scout troop was "beneficiary" of nonprofit organization, such that organization and its volunteer had charitable immunity; and
- Parent/chaperone failed to establish that actions of organization's volunteer were grossly negligent, so as to defeat volunteer's charitable immunity.

BONDS - NEW YORK

MBIA Inc. v. Certain Underwriters at Lloyd's, London

United States District Court, S.D. New York - July 16, 2014 - Slip Copy - 2014 WL 3533985

MBIA purchased a Primary Financial Institutions Professional Indemnity Policy and an Excess Financial Institutions Professional Indemnity Policy (together, the "Policies") from a syndicate of insurers, including Lloyds, London (the "Underwriters").

In July 2008, MBIA was named as a defendant in a number of lawsuits by several public entities and others who had purchased bond insurance from MBIA (collectively, the "Bond Cases"). In these suits plaintiffs alleged that MBIA committed negligence, among other things, in the sale and underwriting of financial guarantee insurance for the plaintiffs' public finance bonds as well as wrongful acts in the bidding for and sale of municipal derivatives to plaintiffs.

In March, 2010, MBIA was named as a defendant in *City of Phoenix v. Ambac Financial Group, Inc., et al.* ("Phoenix") based on improper credit ratings resulting in unfair insurance premiums. MBIA sought coverage for the Bond Cases as a single Claim under the Policies.

In July 2008, lawsuits were filed against MBIA alleging that MBIA and others allocated the municipal derivatives market among themselves and rigged the bidding system through which plaintiffs purchased municipal derivatives and assigned plaintiffs lower interest rates, charged them higher fees, and subjected them to unnecessarily high risks (collectively, "Derivatives Cases"). MBIA submitted all of the Derivative Cases as a single Claim under the Policies.

In February 2009, MBIA separated its subsidiaries in order to provide municipal and state issuers

frozen out of the public finance market with financial guarantee policies, while attracting capital investment to the benefit of the holding company and all policyholders (the series of transactions that implemented this change is referred to as the "Transformation").

Subsequent lawsuits alleged that MBIA's Transformation was improper because it deprived plaintiffs of the benefits of the financial guarantee insurance MBIA sold to the plaintiffs and lowered the credit rating of MBIA Insurance (collectively, "Transformation Cases"): Plaintiffs alleged that this had the effect of decreasing the value of the structured finance instruments MBIA guaranteed. Moreover, plaintiffs alleged that following the Transformation, MBIA lacked the necessary assets to perform its obligations under the structured finance guarantee policies and MBIA favored its public finance bond insurance clients over its structured finance clients. MBIA submitted all of the Transformation Cases as a single Claim under the Policies.

Although certain of the cases against MBIA have settled, Underwriters refused to advance MBIA money for their defense costs or settlement, arguing that the Policies only require the Underwriters to make payment after the final disposition of all related or identical underlying claims. Thus, Underwriters took the position that MBIA was not yet entitled to reimbursement. MBIA sued the Underwriters for breach of contract and declaratory judgment.

The District Court held that:

- As MBIA had submitted the Bond, Derivatives, and Transformation Cases as single Claims, the Underwriters had no obligation to pay any Loss until final disposition of all underlying actions constituting a Claim;
- Underwriters could not invoke the professional services exclusion in the Policy as a coverage defense in the Transformation Claim;
- MBIA's Transformation did not fall within the Financial Guarantee Exclusion provision of the Policy; and
- The Underwriters must make payment to MBIA on the Transformation Claim under the Policy.

DEEDS - NORTH CAROLINA

Prelaz v. Town of Canton

Court of Appeals of North Carolina - July 15, 2014 - S.E.2d - 2014 WL 3409678

Property owners with reversionary interest in adjacent property retained by town by fee simple determinable title, sued town, seeking declaration of title recognizing them as rightful title holders based on town's alleged breach of express condition of governing deed. Following a jury trial, the Superior Court entered judgment in favor of town. Owners appealed.

The Court of Appeals held that clause in deed forbidding operation of a summer camp was precatory and, therefore, merely advisory, such that violation of clause could not trigger owners' reversionary interest.

PENSIONS - OHIO

In re Ormet Corporation

United States Bankruptcy Court, D. Delaware - July 17, 2014 - Slip Copy - 2014 WL 3542133

Steelworkers Pension Trust objected to bankrupt debtor's sale of aluminum smelter and related assets free and clear of any successor liability claim of the Trust. The Trust held a claim estimated at $5 million for under-funding of the debtors' pension plan.

The Bankruptcy Court concluded that the Congressional policy favoring multi-employer pension plans expressed in ERISA and MPPAA did not trump the express provisions of the Bankruptcy Code permitting the sale of the debtor's assets free and clear of the Trust's successor liability claim.

PUBLIC UTILITIES - OHIO

U.S. v. Board of Hamilton County Com'rs

United States District Court, S.D. Ohio, Western Division - June 26, 2014 - Slip Copy - 2014 WL 2918676

The County of Hamilton and the City of Cincinnati entered into a Consent Decree requiring the County and City to implement infrastructure improvements to the county-wide Metropolitan Sewer District of Greater Cincinnati (MSD) to address longstanding capacity and pollution problems.

The County and City disagreed on the prevailing procurement laws that apply to Consent Decree sewer improvement projects and agreed to resolution of the issue by the Magistrate Judge.

The court concluded that the terms of the Consent Decree are clear and unambiguous and require the City to apply County rules, regulations, and resolutions, as well as state law, in procuring contracts for MSD Consent Decree projects both within and outside of the City limits.

IMMUNITY - PENNSYLVANIA

Dorsey v. Redman

Supreme Court of Pennsylvania - July 21, 2014 - A.3d - 2014 WL 3579688

Administratrix of decedent's estate brought action against county register of wills, alleging that register had violated Probate, Estates and Fiduciaries Code (PEF Code) by issuing granting letters of administration to an alleged friend of decedent without securing a bond from friend, and seeking damages. The Court of Common Pleas entered summary judgment in favor of register. Administratrix appealed. The Commonwealth Court vacated and remanded. Register petitioned for allowance of appeal.

The Supreme Court of Pennsylvania held that:

- Register was not immune under Political Subdivision Tort Claims Act;
- Applicability of defense of official immunity was preliminary question for trial court; and
- Genuine issue of material existed as to damages, precluding summary judgment.

UNIONS - TENNESSEE

American Federation of State, County, Mun. Employees Local 1733 v. City of

Memphis

United States District Court, W.D. Tennessee, Western Division - July 21, 2014 - Slip Copy - 2014 WL 3591813

City unilaterally implemented a 4.6% wage reduction in City employees' pay, resulting in wages less than those provided in labor agreements (the MOUs) between the City and the Unions representing the City employees.

Unions brought suit under 42 U.S.C. § 1983, alleging that the wage reduction violated municipal employees' rights under the Fourteenth Amendment and under § 5–4–13 of the City of Memphis Code of Ordinances (the "Impasse Ordinance"), which requires arbitration in the event of labor disputes.

The District Court held that:

- There was no need to decide whether plaintiffs had a protected property interest in the wage rates set in the MOUs because no reasonable jury could find that City employees were deprived of those wages without due process; and
- The MOUs did not preclude a wage reduction, as all negotiating parties knew or should have known that the terms of the MOUs were contingent on the City Council's passing a budget to fund them.

EMINENT DOMAIN - TEXAS

City of Dallas v. Highway 205 Farms, Ltd.

Court of Appeals of Texas, Dallas - July 22, 2014 - Not Reported in S.W.3d - 2014 WL 3587403

In August 2011, the City of Dallas filed a statement in the county court at law seeking to condemn a portion of plaintiff's property in Kaufman County for a raw water pipeline project.

By early 2013, however, a special commissioners' hearing had still not been scheduled. On March 7, 2013, plaintiff filed a motion in the county court to dismiss the case for want of prosecution pursuant to rule 165(a) of the Texas Rules of Civil Procedure and the trial court's inherent authority. They argued they were entitled to dismissal because the matter had been pending for eighteen months with no activity and the City had failed to prosecute the case with due diligence. The City responded that because the case was still in the administrative stage of a condemnation proceeding, the trial court lacked subject matter jurisdiction to dismiss the case.

The trial court dismissed the City's condemnation action. The Court of Appeals reversed, holding that the trial court's action was not authorized by the condemnation statute. Because the trial court did not have jurisdiction in the administrative phase of a condemnation proceeding except for what was provided in the eminent domain statute, any judgment or order made outside of the statutory authority is void. Accordingly, the trial court abused its discretion when it dismissed this condemnation proceeding when there was no judicial case before it.

LIABILITY - WISCONSIN

Legue v. City of Racine

Supreme Court of Wisconsin - July 25, 2014 - N.W.2d - 2014 WI 92

Motorist brought action against city and city police officer for injuries sustained in collision between motorist's vehicle and police car driven by police officer responding to emergency dispatch calling the officer to the scene of an accident. Following jury verdict in favor of motorist, the Circuit Court granted officers' motions for judgment notwithstanding the verdict and motion for directed verdict. Motorist appealed. The Court of Appeals certified appeal to the Supreme Court.

The Supreme Court of Wisconsin held that:

- Statute creating duty of due regard imposed liability;
- Duty of due regard was ministerial duty, rather than discretionary duty; and
- Officer's actions were cause of accident.

Statute governing exemption of emergency vehicle operators from compliance with certain rules of the road imposed liability on operators for violations of the express duty of due regard imposed by the statute. There was no reason for legislature to exempt an operator of an emergency vehicle from complying with certain rules of the road and impose a duty of due regard unless a violation of the duty could result in liability.

MUNICIPAL ORDINANCE - ALASKA

Lake & Peninsula Borough Assembly v. Oberlatz

Supreme Court of Alaska - July 11, 2014 - P.3d - 2014 WL 3377607

Registered voters who maintained a home in Borough and a home outside that Borough sought judicial review of decision of canvassing committee to reject their ballots and asserted direct claims against Borough and a number of Borough officials in their official and individual capacities. The Superior Court entered judgment in favor of voters as to claims against Borough, finding that they were eligible to vote in future Borough elections absent substantial changes in circumstances, but limited their award of attorney fees as prevailing parties against Borough, and awarded individual officials fees as prevailing parties. Parties appealed.

The Supreme Court of Alaska held that:

- Each of the voters established their residency such that they were eligible to vote in Borough election;
- Ordinance governing voter residency did not operate to preclude a finding of residency;
- Order predetermining voters' eligibility to vote in future Borough elections and effectively enjoining Borough from exercising its responsibility to comply with state and Borough election laws in the future was inappropriate and unnecessary;
- Voters' claims were constitutional in nature such that they were entitled to attorney fee award; and
- Remand was necessary for trial court to limit prevailing party fees to individual officials based on fees devoted solely to defending against non-constitutional claims.

BONDS - CALIFORNIA

Lord Abbett Municipal Income Fund, Inc. v. Asami

United States District Court, N.D. California - July 11, 2014 - Not Reported in F.Supp.2d - 2014 WL 3417941

In 2007 and 2010, Lord Abbett Municipal Income Fund, Inc. purchased a total of $9.5 million of tax-exempt municipal bonds issued by the California Statewide Communities Development Authority ("CSCDA") on behalf of Windrush School, a private K–8 school in El Cerrito, California. In 2011, after failing to make an interest payment on the bonds, Windrush filed for bankruptcy and the school closed in 2012.

In this litigation, Lord Abbett sued the individuals who were members of the Windrush Board of Trustees when CSCDA issued the bonds for negligent misrepresentations allegedly made by them in the Preliminary Limited Offering Memorandum ("PLOM") for the bonds.

Lord Abbett also filed a lawsuit in New Jersey against broker-dealer Stone & Youngberg LLC (broker) for negligent misrepresentation and violation of California and New Jersey securities laws in connection with the bond issuance. Both suits were consolidated. Both defendants moved for summary judgment.

At the core of this lawsuit was the fact that the PLOM contained no mention of a private foundation supporting low-income students, that was to be a major source of students and tuition, but subsequently opted to open its own charter school.

The District Court held that:

- Lord Abbett failed to show that the individual board members authorized, directed, or actively participated in an alleged misrepresentation;
- No duty to disclose arose on the part of the individual board members, as they did not vote on, ratify, sign, or endorse the PLOM;
- The board members were not individual parties to Windrush's Continuing Disclosure Agreement with the trustee, Wells Fargo, and thus could not be held liable for any duties created in that agreement;
- New Jersey law governs Lord Abbett's negligent misrepresentation claim against broker;
- Lord Abbett's could not, under the circumstances, justifiably rely on the 2007 PLOM in making the 2010 bond purchases; and
- Privity did not exist between broker and Lord Abbett – as required by California and New Jersey securities law – because broker acted as a placement agent for the bonds and not as a seller or underwriter.

PUBLIC UTILITIES - CALIFORNIA

Cooney v. California Public Utilities Commission

United States District Court, N.D. California - July 15, 2014 - Not Reported in F.Supp.2d - 2014 WL 3531270

Plaintiff sought declaratory relief and an injunction requiring the replacement of all smart grid technology with the original analog equipment, claiming that she had been injured by radio waves released by smart meters installed on her house and in her neighborhood.

The District Court held that:

- State Attorney General and President of the CPUC were immune from suit;
- District Court lacked subject matter jurisdiction over claims against manufacturer of smart meters; and
- Plaintiff had failed to state a federal claim.

LIABILITY - CALIFORNIA

Flores v. County of Los Angeles

United States Court of Appeals, Ninth Circuit - July 14, 2014 - F.3d - 14 Cal. Daily Op. Serv. 7922

Plaintiff brought § 1983 action against county and its sheriff, alleging she was sexually assaulted by a deputy sheriff at vehicle inspection site, where she had gone to clear a traffic ticket, as the result of defendants' failure properly to train deputy sheriffs. The District Court granted defendants' motion to dismiss and plaintiff appealed.

The Court of Appeals held that plaintiff failed to allege sufficiently that failure of county and sheriff to train sheriff's deputies not to commit sexual assault was deliberate indifference to risk of such assault by a deputy, as required to state § 1983 failure to train claims.

Plaintiff did not allege a pattern of sexual assaults perpetrated by sheriff's deputies before her alleged assault, and her sole factual allegation regarding the alleged failure to train consisted in the absence of language in sheriff's department manual that would have instructed deputies not to sexually harass or sexually attack women with whom they came into contact, yet such deputies were sworn to uphold the law prohibiting such assaults.

ZONING - GEORGIA

Druid Hills Civic Ass'n, Inc. v. Buckler

Court of Appeals of Georgia - July 10, 2014 - S.E.2d - 2014 WL 3361172

Civic association petitioned the Superior Court for a writ of certiorari from planning commission's decision to approve developers' sketch plat. The Superior Court authorized the petition but granted developers' motion to dismiss on the ground that neither the association nor its members had standing in the matter. Association and its members appealed, and developers cross-appealed.

The Court of Appeals held that:

- Superior Court's certificate of immediate review was adequate to confer jurisdiction on the Court of Appeals;
- Civic association was free to renew its action challenging planning commission's decision to approve developers' sketch plat within six months of its own voluntary dismissal of its original petition; and
- Developers were precluded from challenging civic association's standing in the Superior Court when they had not raised the issue before the commission.

Planning commission's approval of developer's sketch plat constituted an administrative or a quasi-judicial decision to approve a plat, rather than an exercise of its zoning or legislative powers, and thus, developers were precluded from challenging civic association's standing to challenge the

approval in the superior court when they had not raised the issue before the commission. The superior court was bound by the record as developed before the commission, and could not consider the issue of the association's standing.

PUBLIC UTILITIES - IOWA

SZ Enterprises, LLC v. Iowa Utilities Bd.

Supreme Court of Iowa - July 11, 2014 - N.W.2d - 2014 WL 3377074

Solar energy company appealed decision by the Utilities Board determining that it was a public utility prohibited from serving customers within the exclusive service territory of another electric utility. The District Court reversed. Board and intervenors appealed, and company cross-appealed.

The Supreme Court of Iowa held that company was not a public utility subject to the regulation of the Board.

Supreme Court would not defer to decision by Utilities Board regarding whether solar energy company that proposed to enter into third-party purchase agreement with city to provide it with renewable energy was a public utility subject to regulation by the Board. The legislature provided a definition for both "public utility" and "electric utility," a significant factor weighing against requiring deference, in interpreting chapter of statutes governing public utility regulation, Court gave no deference to the agency's interpretation of public utility, and the terms "public utility" and "electric utility" were not very complex and were not uniquely within the subject matter expertise of the Board.

Solar energy company that proposed to enter into third-party purchase agreement with city to provide it with renewable energy was not a "public utility" under statute stating that public policy was to encourage the development of alternate energy production facilities and small hydro facilities in order to conserve finite and expensive energy resources and to provide for their most efficient use, where transaction was one of arms-length between a willing buyer and a willing seller, solar panels on city's rooftops were not dedicated to public use, provision of on-site solar energy was not an indispensable service that ordinarily cried out for public regulation, company was not a 600 pound economic gorilla that had cornered defenseless city leaders, and company was not producing a fungible commodity that everyone needed, rather it was providing a customized service to individual customers.

Solar energy company that proposed to enter into third-party purchase agreement with city to provide it with renewable energy was not a public utility under statute that stated that, unless the context otherwise required, "electric utility" included a public utility furnishing electricity, and thus was not prohibited, on that basis, from serving customers within the exclusive service territory of another electric utility. The phrase "unless the context otherwise require[d]" was designed to ensure that city utilities that did not furnish electricity were not inadvertently drawn into the statute, and Utility Board did not offer a clear explanation as to why company should be considered an electric utility even if it was not one.

SCHOOLS - MINNESOTA

Exner v. Minneapolis Public Schools, Special School Dist. No. 1

Court of Appeals of Minnesota - July 14, 2014 - N.W.2d - 2014 WL 3396635

High school principal appealed by certiorari a school board's decision to terminate his employment in accordance with the Teacher Tenure Act.

The Court of Appeals held that:

- Board waived argument that principal was discharged because he did not have a valid employment contract, and
- Board failed to make specific findings to support its termination decision.

School board failed to make specific findings to support its decision to terminate high school principal's employment during his probationary period, and thus remand was required to permit board to make additional findings that adequately explained the cause for termination, where board approved school district's discharge recommendation but did not adopt the grounds upon which the recommendation was based and did not mention or consider any other permissible causes for discharge listed in the Teacher Tenure Act.

BONDS - MISSOURI

George K. Baum & Co. v. Twin City Fire Ins. Co.

United States Court of Appeals, Eighth Circuit - July 16, 2014 - F.3d - 2014 WL 3445713

George K. Baum & Company (Baum) sold or underwrote various municipal bonds, representing the interest on the bonds was tax exempt. The IRS later determined the bonds were not tax exempt. Baum timely notified its insurer, Twin City Fire Insurance Company (Twin City), of the potential for related civil liability, and Twin City agreed the IRS investigation was a claim under the policy. Years later, several lawsuits (Derivatives Litigation) were filed, and Baum waited almost two years to notify Twin City.

Twin City disclaimed coverage "because the the Derivatives Litigation was not timely reported." Baum responded that untimely notice is no defense under applicable Missouri law unless the insurer suffers prejudice, and Twin City was not prejudiced. Twin City maintained that New York law, requiring no showing of prejudice, controlled this dispute.

The District Court decided Missouri law applied, and Twin City conceded it suffered no prejudice from Baum's delay. Resolving a secondary dispute, the District Court also found Baum was liable for a $3 million self-insured retention, rather than the lower $1 million retention Baum believed should apply. Both parties appealed.

The Court of Appeals held that:

- New York law governed case;
- Timely notice provision in policy was inapplicable to liabilities arising from same underlying conduct as earlier, timely notified claim;
- Insurer waived untimely notice defense; and
- Same $3 million self-insured retention under policy that applied to liability to Internal Revenue Service (IRS) for selling or underwriting various municipal bonds, representing that interest on bonds was tax exempt, also had to apply to related derivatives litigation.

Language of policy plainly applied $3 million retention to any claim which "in any manner relat[es] to [insured's] activities as an underwriter or seller of municipal bonds" and only reason insurer had to cover derivatives litigation at all was that litigation arose out of same underlying wrongful acts

giving rise to IRS liability.

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.
