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## Recent Case Decisions

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## RECENT CASE DECISIONS

### ***Environmental Regulation***

Case Citation: New Jersey Civil Justice Inst. v. Grewal, No. CV 19-17518, 2020 WL 4188129 (D.N.J. July 21, 2020).

Category: Technology and Business - Corporations

#### Summary:

In this case, Plaintiffs sued the N.J. Attorney General in order to oppose an enacted N.J. statute which potentially prevented employers from entering into pre-dispute arbitration agreements (PDA's) with employees. Here, Defendants filed a Motion to Dismiss (MTD), arguing a lack of standing, which the court denied. The court found that Plaintiffs had both Direct Organizational and Associational Standing. The court reasoned that Plaintiffs had Organizational Standing because the Plaintiff-Organization itself was suffering the direct injury of diverting resources from other projects in order to educate its members regarding the potential harms of the N.J. statute as applied to them. Despite not specifically noting what resources were being diverted, as required at summary judgment, Plaintiffs still had standing because the evidentiary threshold was lower at the MTD phase. Next, the court found Plaintiffs had Associational Standing because the Plaintiff-Organization's members had standing to sue in their own right, the members' interest were germane to the Plaintiff-Organization's purpose, and the claim asserted did not require participation in the lawsuit by any single member. Specifically, the court reasoned that Plaintiff-Organization's members had standing to sue in their own right as a pre-enforcement action. This was because the members had continued to enter into PDA's with their employees creating the threat of a sufficiently imminent injury in the form of a potential suit brought by the Defendant to enforce the disputed statute. Based on that reasoning, the court found that the standing requirement of the imminent injury being traceable to the actions of the Defendant was also satisfied, and therefore the Plaintiffs had standing. Finally, the court found Plaintiffs' case ripe for adjudication, because it was a pre-enforcement action and therefore a finding of satisfactory standing was also applicable to a finding of ripeness. As such, the Defendant's MTD was denied.

Case Citation: RigUp, Inc. v. Sierra Hamilton, LLC, No. 03-19-00399-CV, 2020 WL 4188028 (Tex. App. July 16, 2020)

Category: Technology and Business - Corporations

Summary:

Staffing Firm A and Staffing Firm B both provide qualified personnel to the oil and gas industry. Staffing Firm A sues Staffing Firm B for tortious interference with contract and unjust enrichment, alleging that Staffing Firm B engaged in a pattern of wrongful conduct by inducing Staffing Firm A's independent contractors to breach their agreements with Staffing Firm A and work for Staffing Firm B instead. Staffing Firm B then filed a motion seeking dismissal of the lawsuit under the Texas Citizens Participation Act ("TCPA"). The TCPA safeguards the constitutional rights of persons to petition, speak, and associate freely, and in doing so allows for a party being sued to move for expedited dismissal of claims aimed at obstructing one's exercise of their First Amendment rights. In reversal of the trial court, the court of appeals held that the TCPA does apply in this situation because Staffing Firm A's pleadings alleged communications that were made in connection with a matter of public concern (non-compete agreements in the oil and gas industry). Because Staffing Firm B's alleged communications related to a service in the marketplace, the communications qualified as an exercise of the right of free speech protected by the TCPA. The court then held that the Texas Covenants Not to Compete Act ("CNCA") does not preempt the TCPA, nor does the TCPA commercial-free exception apply to this case because Staffing Firm A could not satisfy all four elements of the TCPA exception. Accordingly, the court of appeals concluded that the trial court erred when it denied Staffing Firm B's motion to dismiss, and remanded the case back to the trial court to order dismissal of Staffing Firm A's claims.

***Procedural***

Case Citation: City of Las Cruces v. New Mexico Pub. Reg. Comm., NO. S-1-SC-37458, 2020 WL 4188186 (N.M. Supreme Court June 25, 2020).

Category: Electricity - Rate

Summary:

Petitioner sought to stay a decision of the Commission by putting forth a motion for stay filed with the Supreme Court. The Commission had

previously granted approval of a plan for the Respondent Energy Company which increased the price of renewable energy certificates. The Court denied the motion to stay filed by Petitioner because Petitioner failed to exhaust all administrative remedies prior to requesting relief from the court. The Petitioner subsequently filed a motion to stay the Commission's decision with the Commission. The Commission granted the stay in part. Respondent then brought a motion for declaratory judgement before the Supreme Court. The Court addressed two issues in its final decision. The first being, must a party request a stay from the commission prior to requesting a stay from an appellate court? To this point the Court stated that yes, a party must exhaust all administrative remedies prior to seeking relief from an appellate court. The court emphasized that this was not the implementation of new law, but merely a clarification on existing appellate procedure rules. The second issue the court considered was if the Commission had jurisdiction to consider and grant Petitioner's motion for stay after the Court had previously denied the Petitioner's motion to stay. The Court stated in its final judgement that their original order expressly stated that the Petitioner was not precluded from requesting a stay from the Commission following their original order. The Court stated that although the Court has discretion to rule of a motion for stay this is not exclusive jurisdiction. Furthermore, the Court's decision regarding exhausting administrative remedies prior to seeking appellate relief alludes to this non-exclusive jurisdiction decision.

### ***Minerals***

Case Citation: United States v. 30.00 Acres of Land, NO. 7:19-CV-270, 2020 WL 4188610 (S.D. Tex. July 21, 2020).

Category: Land - Easement

#### **Summary:**

Under the authority of the Declaration of Taking Act, the United States received a temporary, assignable, twelve-month easement over the subject property. The legal standard used is the fair market value standard, which considers not only the present use of the property, but also the "highest and best use." After considering briefs for just compensation filed by both the United States and the property owner, the court held \$250.00 to be just compensation. The property owner contended she was owed several thousand dollars by multiplying the rates she charged for annual recreational lease by the estimated number of workers the United States

may send to her property at once. The United States argued it should owe only \$100, as there was no measurable market value or comparable sales for temporary rights of entry. The court rejected the argument that rights of entry have no market value and held that though distinct, the recreational license was sufficiently like the United States's right of entry. However, it also rejected the owner's argument to multiply this price by the anticipated number of government employees entering the property, as the United States is one entity and because, unlike the recreational lessees, the United States does not have the right to take fish and game from the property.