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Federal Judge's Waste Contract Decision a Win for San Angelo Citizens

San Angelo, Texas, September 23, 2015 – Federal Judge Sam R. Cummings of the United States District Court for the Northern District of Texas, San Angelo Division ruled yesterday in a case of first impression that the City of San Angelo could not grant an exclusive contract to Republic Waste Services of Texas, Ltd. for hauling waste generated at construction sites. The Republic Waste lawsuit asked the court to grant a declaratory judgment and assess damages against Texas Disposal Systems, Inc. (“TDS”) for tortious interference with Republic Waste’s contract.

At a hearing held in San Angelo on September 14<sup>th</sup>, Austin attorney Jim Hemphill and San Angelo attorney Paul Stipanovic argued that a state law passed in 2007 prohibits exclusive construction waste contracts, and Judge Cummings agreed in yesterday’s ruling. The ruling means San Angelo citizens will have the right to select the most economical waste service provider for their construction projects.

Republic Waste and the City signed a controversial exclusive waste contract in July 2014 that attempted to give Republic the sole right to collect construction waste. Republic Waste then sued TDS in an attempt to enforce the exclusive construction waste contract provision. TDS has provided waste services to construction projects at rates that are generally less than Republic Waste’s contract rates, relying on state law that prohibits exclusivity in construction waste. In essence, Republic Waste argued that it had the legal right to exert a monopoly in the San Angelo city limits over waste collection at construction projects.

Judge Cummings agreed with TDS that the Texas Legislature barred cities from giving private companies exclusive contracts for waste disposal services to construction projects. The Legislature granted cities some power to enter exclusive waste contracts, but also stated in Health & Safety Code Section 364.034(h) that the power “does not apply to a private entity that contracts to provide temporary solid waste services to a construction project.” Despite this law’s plain language, Republic Waste sued TDS in an attempt to force TDS out of the market in San Angelo. Judge Cummings’ ruling dismissed Republic Waste’s lawsuit against TDS. A copy of the Court’s Order is attached.

Republic Waste is involved in another pending case in San Angelo for overcharging customers for waste services under previous City contracts for approximately 14 years. Republic Waste sought to have the class action lawsuit for the overcharges heard in federal court, where Republic Waste apparently believed it had a better chance of prevailing. In that case, Judge Cummings also ruled against Republic Waste by sending the case back to state court, where it was originally filed, for further proceedings.

Republic Waste can appeal yesterday’s dismissal of its suit against TDS to the U.S. 5th Circuit Court of Appeals in New Orleans. Republic Waste claimed during oral arguments last week before Judge Cummings that it relied on the projected revenue from the exclusive construction contract provision as part of its pricing in entering into the July 2014 contract. In light of this, Republic Waste may choose to go back to the City with a request to raise rates on the residents, or other commercial businesses that are not protected by the 2007 statute barring exclusive construction waste contracts, to make up for the loss of expected revenue from construction projects.