The Texas Court of Appeals in the 14th Circuit denied an interlocutory appeal from the trial court’s denial of a motion to dismiss under the Texas Citizens Participation Act (TCPA), holding that TCPA does not protect communications concerning a private transaction between private parties. *Post Acute Medical, LLC v. Meridian Hospital Systems Corporation*, No. 14-19-00546-CV (Tex. App. – Houston [14th Distr.], May 18, 2021) (Wise, J.)

Meridian Hospital Systems developed and licensed web-based medical software to Post Acute Medical, PAM Physician Enterprise and Clear Lake Institute for Rehabilitation (collectively, PAM). Under the license, Meridian retained ownership of the software and reverse-engineering, as well as providing login information to third parties, were both prohibited. Meridian filed a complaint against PAM, alleging that PAM misappropriated Meridian’s trade secrets by entering into a contract with a third party to develop new software, and more specifically, by providing log-in information to the third party and “documenting” Meridian’s software to replicate its features. PAM moved to dismiss under the TCPA, but the trial court denied the motion. PAM filed an interlocutory appeal.
The Court of Appeals cited several cases to the effect that TCPA does not apply if the defendants’ communications concern a private transaction between private parties. The Court characterized PAM’s communications (among PAM entities and with the third party) as misappropriating Meridian’s software and breaching its contract with Meridian. Thus, it reasoned that the communications related to PAM’s entities reflected only a “common business interest,” not to “common interests” under TCPA, which are limited to public interests that relate to the community at large. Because Meridian could not meet its burden to show by a preponderance of the evidence that TCPA applied to Meridian’s claims, the court affirmed the denial of the motion to dismiss.

**Practice Note:** In this case, PAM advanced the same legal theory (i.e., that “common business interests” qualify as “common interests” under TCPA) that the same Texas appeals court had embraced in prior cases. It’s also a legal theory that a panel of the Texas Court of Appeals [1st Dist.] had embraced in the *Gaskamp* opinion that was subsequently vacated *en banc* (the Court here agreed with the *en banc* opinion in *Gaskamp*). The issue may still be appealed (whether in this case or another) to the Texas Supreme Court.

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