LEGAL UPDATES

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Texas Supreme Court Denies Review of Challenge to Texas Central's Eminent Domain Power

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On June 18, 2021, the Texas Supreme Court issued a denial notice to a landowner's request for review challenging the Thirteenth Court of Appeal's finding that Texas Central Railroad & Infrastructure, Inc. (Texas Central) has the power to condemn land to build a high-speed electronic-power passenger train connecting Dallas and Houston. By denying the request for review, the Texas Supreme Court leaves in place the lower appellate court's decision, which held that Texas Central can be considered a railroad company and railway with eminent domain power under Texas law.

In T*exas Central Railroad & Infrastructure, Inc. and Integrated Texas Logistics, Inc. v. James Fredrick Miles* (2020 WL 2213962), the Thirteenth Court of Appeals reviewed a challenge to a trial court decision denying "railroad company" and "interurban electric railway" status, and thus, eminent domain power, to Texas Central. A Texas landowner filed for a declaratory judgment in the trial court, seeking a determination that Texas Central did not have eminent domain power by which to survey the landowner's property for the future high-speed train. The landowner argued that Texas Central was not a railroad company or interurban electric railway, because Texas Central was not yet actually operating a railway. The landowner argued that under the Texas Government Code, only present operations could be considered when determining a company's railroad or railway status.

Conversely, Texas Central argued that if the landowner's interpretation was correct, it would implicitly close Texas to any new railroad companies or railways. Texas Central contended that whether it was considered a railroad company or railway should instead be determined by its expressed intent in its formation documents. The trial court rejected Texas Central's position and

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found for the landowner. The trial court declared that Texas Central was not a railroad company nor an interurban electric railway, and thus, did not have eminent domain power.

The Thirteenth Court of Appeals reviewed the trial court's finding and ultimately concluded that, based on the intent language in the Texas Central formation documents and the steps taken to begin operations as a railroad company and interurban electric railway, Texas Central had satisfied the requirements for becoming a railway with eminent domain power.

Following the appellate court's reversal, the landowner filed a challenge in the Texas Supreme Court seeking to overturn the appellate decision and re-instate the trial court's finding regarding Texas Central's status. After a year-long consideration by the high court, the Texas Supreme Court issued notice on June 18, 2021, to all parties that it was denying review of the lower appellate court holding.

The landowner has until July 5, 2021, to file a motion for rehearing of the Texas Supreme Court's denial of review.

What this means to you

The Texas Supreme Court's denial of review effectively upholds the lower appellate court's decision allowing entities to use statutory eminent domain power if the entity can demonstrate a reasonable probability that the entity will qualify under an eminent domain-granting statute.

Contact us

If you have any questions about this opinion or whether your entity may similarly have eminent domain powers based on future operations, feel free to reach out to Kate David, Robert Eckels (a founder and director of Texas Central Railway), Ben Stephens, Anthony Franklyn, Logan Leal or your Husch Blackwell attorney for more information.

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