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 **NORTON ROSE FULBRIGHT**

## **31<sup>st</sup> Annual UT Health Law Conference Operational Impact of Significant Cases**

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### **ISSUES AFFECTING HOSPITALS AND HEALTHCARE PROVIDERS**

#### **Theories of Liability**

#### ***Star Systems International Ltd. v. Neology, Inc.* p. 2**

- In *Star Systems* a United States District Court for the Eastern District of Texas held that the Texas Citizens Participation Act (TCPA) is procedural and does not apply in federal court
- On May 13, 2014, 3M Company and 3M Innovative Properties sued *Star Systems International Limited* (SSI) and Stephen C. Lockhart regarding an employment dispute
- The case ended with a Settlement Agreement and Consent Judgment entry in March 2017

*Star Systems International Ltd. v. Neology, Inc.*  
(cont'd)

- In June 2017, Neology, Inc. (Neology) acquired 3M, becoming the successor-in-interest to the Settlement Agreement and Consent Judgment
- The TCPA is an anti-SLAPP (Strategic Litigation Against Public Participation) statute designed to “encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury”
- Neology argued that the TCPA applies in federal court and required the dismissal of SSI’s claims

*Star Systems International Ltd. v. Neology, Inc.*  
(cont'd)

- Federal courts sitting in diversity apply state substantive law rather than federal common law
- Erie requires a multi-step inquiry, determining first whether the statute is procedural or substantive and then whether the state substantive law conflicts with federal procedural rules
- At the time the case was decided, the United States Fifth Circuit Court of Appeals had yet to address whether the TCPA is procedural or substantive, or whether it applies in federal court

## *Star Systems International Ltd. v. Neology, Inc.* (cont'd)

- The court quoted directly from the dissent in *Cuba v. Plyant*, noting that it found it to be persuasive and holding that the TCPA does not apply in federal court
- Neology Inc. filed an appeal with the Fifth Circuit Court of Appeals on January 25, 2019

## *Nawar v. Gonzalez* p. 3

- Dr. Nawar treated Joseph M. Gonzalez at the Val Verde County Hospital Corporation d/b/a Val Verde Regional Medical Center
- Mr. Gonzalez underwent a cardiac catheterization procedure and subsequently had complications, displaying signs of a heart attack
- He died four days later
- Dr. Nawar was working under an “Independent Contractor Agreement” with the Val Verde Health Clinic d/b/a Amistad Medical Professionals (the Clinic)

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"Operational Impact of Significant Cases"