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## Texas Justices Take Up Glassdoor's Bid To Shield Reviewers

By Jess Krochtengel

Law360 (June 1, 2018, 6:56 PM EDT) -- The Texas Supreme Court on Friday agreed to review Glassdoor Inc.'s bid to avoid turning over identifying information about two employees of an online lingerie retailer who posted anonymous negative reviews of the company.

Glassdoor **is aiming** to throw out a discovery request from Andra Group LP, which runs the online retail site HerRoom.com, that would force it to identify former employees who posted reviews that said the retailer has illegal hiring practices, a supervisor is racist and sexist, and illegal immigrants work there. A trial court allowed the depositions, and the Dallas appellate court **upheld the ruling** in March 2017.

The case tees up a question of first impression for the high court: whether Glassdoor can use the Texas Citizens Participation Act — a state law intended to curb meritless suits that target a party's protected free speech — to dismiss Andra's discovery request.

Andra had used what's known as a Rule 202 petition to obtain discovery from Glassdoor in anticipation of a defamation lawsuit against the former workers.

Glassdoor **has argued** that the Fifth Court of Appeals in Dallas used too low a standard to evaluate whether Andra's Rule 202 proceeding could survive dismissal under the TCPA: whether Andra could show the likely benefit of allowing the discovery outweighed the burden or expense of the undertaking.

Glassdoor contends the standard should be more like what the Third Court of Appeals in Austin applied in a 2016 case called *In re Elliott*: that the party seeking discovery must establish through clear and specific evidence "a prima facie case for each essential element of the claim in question" — in other words, for the underlying defamation claim being investigated in the discovery request.

"If Andra had filed a lawsuit based on the Glassdoor reviews, a TCPA motion could have been filed and all discovery in the legal action would be suspended until the court has ruled on the motion to dismiss," Glassdoor said in a brief to the court. "Andra's use of Rule 202 was an effort to avoid this limitation."

Andra told the court in briefing that the allegedly defamatory online reviews have adversely affected its ability to hire new employees and that the suggestions of unethical and illegal business practices have damaged the company.

Andra argued the lower courts correctly ruled the likely benefit of allowing it to take a deposition about the two anonymous reviews in question outweighed the burden or

expense to Glassdoor. It said it's not required to establish each element of a defamation claim to survive dismissal of its Rule 202 petition under the TCPA.

And Andra told the high court the TCPA doesn't actually apply to Rule 202 proceedings, arguing the TCPA applies only to legal actions that "request legal or equitable relief." It took the position in briefing that a petition to obtain discovery doesn't assert any substantive claim or cause of action, so the TCPA can't be used to dismiss the case.

Seven tech companies backed Glassdoor's appeal in **amicus briefs to the court**. Twitter Inc., Yelp Inc. and others told the high court Andra is seeking the identity of the anonymous reviewers as part of a "pretextual investigation into time-barred, meritless claims."

Counsel for the parties did not immediately respond to requests for comment.

Glassdoor is represented by Pete Kennedy and Jim Hemphill of Graves Dougherty Hearon & Moody PC.

Andra Group is represented by Cole B. Ramey, W. Alan Wright and Tamara D. Baggett of Kilpatrick Townsend & Stockton LLP.

The case is Glassdoor Inc, Doe 1 and Doe 2, v. Andra Group LP, case number 17-0463, in the Texas Supreme Court.

--Editing by Emily Kokoll.

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