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### **FCC v. AT&T Inc. (09-1279)**

*Appealed from the U.S. Court of Appeals for the Third Circuit (Sept. 22, 2009)*

**Oral argument: Jan. 19, 2011**

The Freedom of Information Act (FOIA) allows access to, and disclosure of, federal information and records to those who request them, subject to exceptions, including one for a disclosure that would constitute an invasion of “personal privacy.” Following a recent investigation of respondent AT&T Inc., by petitioner Federal Communications Commission (FCC), respondent CompTel, a nonprofit trade association, requested, under FOIA, the records and information pertaining to the FCC’s investigation of AT&T. Allowing disclosure of some of the information, the FCC rejected AT&T’s argument that such disclosure would constitute an invasion of personal privacy, holding that this exception was strictly limited to individuals. AT&T appealed the decision to the Third Circuit, which held that a corporation may have personal privacy interests. The U.S. Supreme Court will now consider the FCC’s appeal.

#### **Background**

Under the FOIA, federal agencies must disclose records to anyone who requests them, subject to certain exemptions. Three exemptions are relevant to this case. Exemption 4 allows an agency to refuse to disclose privileged or confidential “trade secrets and commercial or financial information obtained from a person.” Exemption 6 applies to any personnel and medical files whose disclosure would “constitute an unwarranted invasion of personal privacy.” Exemption 7(C) exempts investigatory files compiled for law enforcement

purposes if the production of such files could “reasonably be expected to constitute an unwarranted invasion of personal privacy.”

AT&T, a private corporation, participated in the FCC’s “E-Rate Program,” which provides telecommunications equipment and services to elementary and secondary schools in exchange for federal reimbursement. AT&T later informed the FCC that the telecommunications company had violated the E-Rate Program’s rules. The FCC’s Enforcement Bureau began an investigation and requested that AT&T produce certain information, and AT&T complied. The Enforcement Bureau terminated its investigation, and AT&T agreed to pay the FCC \$500,000.

CompTel, a nonprofit trade association, requested, under FOIA, all information that the Enforcement Bureau had procured during its investigation, and AT&T objected to the disclosure. The FCC granted the request in part and denied it in part, holding that some of the information sought fell within FOIA’s Exemption 4 in that it constituted “commercial or financial information” that could cause competitive harm to AT&T if disclosed. In addition, the FCC withheld information identifying AT&T’s staff and customers, which the FCC thought fit within FOIA’s Exemption 7(C). The FCC decided to disclose all the other records obtained in the investigation, rejecting the argument that AT&T’s own personal privacy was protected by Exemption 7(C).

Denying AT&T’s administrative appeal from this decision, the FCC rejected AT&T’s further argument that it was a “corporate citizen” with personal privacy rights and held that Exemptions 6 and 7(C) apply only to individuals. AT&T sought review in

the U.S. Court of Appeals for the Third Circuit, which held that, because a “person” includes a corporation under the FOIA, a corporation may have a personal privacy interest within the meaning of Exemption 7(C). On Sept. 28, 2010, the U.S. Supreme Court granted certiorari to decide whether corporations may take advantage of Exemption 7(C).

#### **Implications**

CompTel contends that Congress enacted the Freedom of Information Act in order to ensure that the citizenry was adequately informed about the actions performed by government entities and able to check on them, and that interpreting “personal privacy” in a way that included corporations would undermine these goals. The Reporters Committee for Freedom of the Press and 22 other media organizations worry that allowing corporations to withhold information under Exemption 7(C)’s personal privacy provision would seriously impede the “watchdog” function of journalists and news media organizations that were seeking information about corporations. These reporters argue that the news media have played an important role in the recent past in informing the public of the dangerous safety records and public health violations of corporate entities. Citizens for Responsibility and Ethics in Washington (CREW) argues that these goals are especially important in informing the public about government’s response to crises and environmental disasters, such as British Petroleum’s oil spill in the Gulf of Mexico in 2010. In addition, CREW argues that allowing corporations to use Exemption 7(C) would offer them more protection under FOIA than is given to individuals, who do not benefit from Exemption 4’s protection of “trade secrets and commercial or financial information.”

In contrast to the FCC’s position, AT&T asserts that the purpose of Exemption 7(C) is to protect persons or entities subject to the serious consequences of law enforcement investigations. The respondent maintains that

mandatory disclosure of a corporation's private information to the public, which includes the corporation's competitors, would undermine this very purpose. AT&T also contends that disallowing a corporation to claim a personal privacy exemption would harm competition by allowing economic and industry competitors automatic access to the information.

Furthermore, AT&T argues that corporations, faced with potential disclosure of competitive personal information, would be hesitant to cooperate voluntarily with law enforcement investigations. The U.S. Chamber of Commerce notes that, in this case, AT&T self-reported its violations to the FCC and worries that corporations would be reluctant to take such action if doing so would expose trade secrets. The Chamber of Commerce also argues that a ruling for the FCC would cause particular harm to small businesses whose owners' personal privacy overlaps the corporation's.

### **Legal Arguments**

The FCC argues that the term "personal privacy" as used in FOIA Exemption 7(C) does not protect corporations. CompTel agrees and argues that Exemption 7(C) applies only to individuals' privacy interests. AT&T argues that Exemption 7(C) does, in fact, protect the privacy of corporations.

### **Plain Meaning of "Personal Privacy"**

The FCC argues that the term "personal privacy," in its ordinary lay meaning as found in *Webster's Dictionary*, stands only for the privacy of individual human beings. According to the FCC, the ordinary meaning of the term should be used because FOIA leaves the phrase undefined. CompTel supports this argument by noting that the modifier "personal" can apply only to the privacy interests of human beings.

AT&T contends that Exemption 7(C)'s "personal privacy" phrase refers to the privacy of both individuals and corporations, relying on the definition of "person" seen in other legislation rather than the dictionary definition. AT&T defines "personal privacy" according to the statutory definition

of "person" used in the Administrative Procedure Act (APA), which includes both individuals and corporations in the term "person." AT&T asserts that Congress' meaning of the word "person" applies to its adjectival form, "personal," as well.

### **Meaning of "Personal Privacy" Within the Broader FOIA Statute**

The FCC claims that the broader structure of the FOIA supports the meaning of "personal privacy" as a feature that protects only individuals' interests, not corporate interests. In particular, the FCC argues that Exemptions 6 and 4 confirm this interpretation. The FCC asserts that the phrase "personal privacy" used in Exemption 7(C) was incorporated from Exemption 6, and Exemption 6 was specifically designed to protect an individual's right to privacy. The FCC argues that Exemptions 6 and 7 protect the same privacy rights, especially if the Court follows the interpretive rule that identical phrases within the same statute normally have the same meaning.

AT&T rejects the FCC's view that Exemption 6 supports the argument that Exemption 7(C) excludes the interests of corporations. AT&T points to the fact that the U.S. attorney general has interpreted Exemption 6's "personal privacy" phrase as including corporations, based on the statutory definition of "persons."

The FCC also argues that Exemption 4 supports its view that "personal privacy" applies only to an individual's interests, asserting that Exemption 4's use of the word "person" is limited to disclosure of confidential corporate information, such as trade secrets and commercial or financial information. The FCC argues that, if Congress had wanted Exemption 7(C) to apply to corporations, it would have used language similar to Exemption 4's "trade secrets" or "commercial or financial information"—terms that would be indicative of corporate privacy interests. Also, the fact that Congress passed a specific exemption for corporations in Exemption 4 strengthens the argument that Exemption 7(C) was not intended to include corporate privacy interests.

AT&T rejects the FCC's attempt to analogize Exemption 4's protection of corporate interests to Exemption 7(C) and argues that Exemption 4's purpose of protecting corporate trade secrets and commercial information is distinct from Exemption 7(C)'s purpose to protect a corporation's reputational interest. AT&T asserts that, if Congress had wanted to exclude corporations, it would have used the word "individual," as it did in Exemption 7(F). AT&T also refers to other related statutes, such as the Privacy Act, in which Congress distinguished the terms "person" and "individual." According to AT&T, the fact that Congress intentionally chose not to use a term that exclusively refers to an "individual" in Exemption 7(C) is demonstrated by numerous provisions in the United States Code that use the phrase "individual privacy." In addition, AT&T asserts that the fact that the Court has applied the Double-Jeopardy Clause and the Fourth Amendment of the U.S. Constitution to corporations is telling, because both constitutional provisions serve a similar purpose as Exemption 7(C) does: protecting privacy and preventing reputational harm.

### **Legislative History and Purpose**

The FCC argues that the drafting history of FOIA amendments shows that Congress intended Exemption 7(C) to apply only to individuals. The FCC refers to the floor debate regarding the amendments in the 1970s and 1980s, during which Sen. Gary Hart stated that the protections of Exemption 6 would also apply to Exemption 7(C). The debate also included one senator's understanding that corporations cannot be included under Exemption 6's protection. CompTel notes that, during the debates regarding the 1986 amendment to Exemption 7(C), the Department of Justice published an opinion stating that Exemption 7(C) applied only to individuals. The FCC further argues that, at the time FOIA amendments were being debated, Congress was also working to pass the Privacy Act of 1974, which, according to the FCC, protects only an individual's privacy rights, and Congress referred to "personal privacy" in the Privacy Act in the

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same way that it did in FOIA.

In contrast, AT&T argues that Exemption 7(C) is intended to protect corporate privacy interests. AT&T claims that the statutory purpose of Exemption 7(C) is to afford privacy rights to suspects, witnesses, and investigators during law enforcement investigations and to protect these individuals from any embarrassment resulting from the disclosure of information gathered during the investigation. AT&T argues that this purpose applies equally to corporations, because corporations also face the threat of reputational harm as a result of law enforcement investigations. In addition, AT&T asserts that a statute's scope can be broader than the specific harm that Congress intended to remedy; the fact that Congress' primary goal in including Exemption 7(C) was to protect an individual's privacy interests does not necessarily exclude the protection of corporate privacy interests.

### Conclusion

In this case, the U.S. Supreme Court will determine whether FOIA Exemption 7(C)'s protection of "personal privacy" interests also applies to corporations. The FCC argues that the plain meaning of the provision, the statute's broader context, and the legislative history establish that "personal privacy" includes only the privacy interests of individuals. AT&T argues that Exemption 7(C) also protects the privacy interests of corporations based on the statutory meaning of "personal privacy," the legislative purpose, and the recognition of corporate privacy interests in other legal contexts. Full text is available at [topics.law.cornell.edu/supct/cert/09-1279](http://topics.law.cornell.edu/supct/cert/09-1279). **TFL**

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*Prepared by Justin Haddock and So Jung Choo. Edited by Joanna Chen.*

### **J. McIntyre Machinery Ltd. v. Nicastro (09-1343)**

*Appealed from the Supreme Court of New Jersey (Feb. 2, 2010)*

**Oral argument: Jan. 11, 2011** (The U.S. Supreme Court will hear this case

in tandem with *Goodyear Dunlop Tires Operations v. Brown*.)

Robert Nicastro was injured while operating a machine made by J. McIntyre Machinery. Nicastro sued J. McIntyre Machinery and its exclusive American distributor, McIntyre Machinery of America Inc., in New Jersey state court. Nicastro argues that New Jersey has specific jurisdiction over J. McIntyre Machinery under the stream-of-commerce theory as described in *Asabi Metal Industry Co. v. Superior Court*. J. McIntyre Machinery argues that New Jersey courts do not have personal jurisdiction over it because it has never targeted New Jersey market for its products.

### Background

Robert Nicastro injured his hand in a shearing machine manufactured by J. McIntyre Machinery Ltd., a British company with no physical American presence. McIntyre Machinery America (MMA), McIntyre's exclusive U.S. distributor, sold the machinery to Nicastro's employer, Curcio Scrap Metal (CSM), which is situated in New Jersey. Even though there was no commonality of ownership or management between McIntyre Machinery Ltd. and MMA, McIntyre was the dominant party in the business relationship. McIntyre did not have a presence in New Jersey, nor did it specifically target the New Jersey market, but the company did generally target the U.S. market.

The New Jersey trial court ruled that neither the traditional minimal contacts test nor the stream-of-commerce theory provided it with personal jurisdiction over McIntyre Machinery Ltd. On appeal, the New Jersey appellate court, observing that McIntyre Machinery Ltd. did target the United States in general, held that the company was, in fact, within the jurisdiction of New Jersey state courts, and the New Jersey Supreme Court affirmed the ruling. McIntyre Machinery Ltd. appealed to the U.S. Supreme Court to determine whether a foreign manufacturer's targeting of the U.S. market in general is sufficient to provide personal jurisdiction to New Jersey.

### Implications

#### **Fairness to the Plaintiffs**

Nicastro argues that New Jersey must protect the civil liberties of its residents by permitting trials in the location where the harm occurred. Nicastro contends that, without the ability to exercise personal jurisdiction over a foreign manufacturer whose product caused an injury within the state, states would be unable to fulfill their duty to protect the rights of their citizens. Furthermore, a group of law professors argues that a foreign corporation that intentionally serves the U.S. market is indirectly serving all the states in the United States and, therefore, ought to be liable for injuries caused by the product in each state. The law professors contend that, if McIntyre Machinery Ltd. avoids state liability in New Jersey, it would be functionally immune from liability in all states, despite its targeting of the U.S. market as a whole. Public Citizen adds that it is more just to require foreign corporations that do business in the United States generally to defend themselves in any state forum than to require injured plaintiffs to pursue foreign corporations overseas.

#### **Fairness to Defendants**

The Organization for International Investment argues that finding personal jurisdiction over McIntyre Machinery Ltd. will force companies to engage in burdensome affirmative efforts to avoid commerce with particular states. In addition, the organization claims that adopting a broad personal jurisdiction standard would limit global access to the U.S. market for companies worried about unintentionally establishing personal jurisdiction in states where they do not have a physical presence.

The Product Liability Advisory Council argues that allowing state jurisdiction for torts involving products targeted at the United States in general will expand the scope of state jurisdiction to areas where the state has little interest. Specifically, the council argues that, under the analysis adopted by New Jersey, the gray market activity of purchasing prescription drugs in

Canada for consumption in the United States will create personal jurisdiction for the drug manufacturers in any forum in which a purchaser may reside. The Product Liability Advisory Council also contends that the expansion of jurisdiction would capture corporate subsidiaries, parents, and resellers, which could lead to virtually unlimited jurisdiction for activities performed anywhere in the world.

### Legal Arguments

In this case, McIntyre Machinery Ltd. argues that it has insufficient contacts with New Jersey to be subject to personal jurisdiction in that state. Nicastro counters that the company's decision to distribute its products throughout the United States does not make McIntyre's relationship with New Jersey or any other state distant enough to prevent the company from being subject to personal jurisdiction.

#### ***“Purposeful Availment”***

McIntyre Machinery Ltd. explains that limitations on personal jurisdiction reflect the due process restrictions on the power of American courts. Personal jurisdiction, McIntyre stresses, is a form of territorial jurisdiction, which is the concept that sovereigns—including American states—have power over people and things only within their territory or with some meaningful connection to their territory. When a defendant's connection to the state is weak, McIntyre points out, minimum contacts with the state may establish “specific jurisdiction” over a defendant to resolve a particular issue. McIntyre Machinery Ltd. argues that to prevent state courts from overreaching, the U.S. Supreme Court must resolve the split between two plurality opinions in *Asabi Metal Industry Co. v. Superior Court*. In *Asabi*, the justices disagreed on whether simply knowing that a product would enter a state through the stream of commerce provided sufficient grounds for that state to obtain personal jurisdiction over the manufacturer of the product.

McIntyre Machinery Ltd. argues in favor of the “purposeful availment” test from Justice O'Connor's opinion in *Asabi*. The purposeful availment test requires that a manufacturer's

minimum contacts proceed from the manufacturer's purposeful actions directed at that forum. Under this theory, a plaintiff must demonstrate that a manufacturer intended to put its products in a particular market through advertising, contracts, or sales. McIntyre Machinery Ltd. argues that New Jersey courts must restrict their inquiry to evidence of McIntyre's intent to specifically serve New Jersey markets. McIntyre Machinery Ltd. opposes the New Jersey Supreme Court's interpretation of *Asabi*, which McIntyre characterizes as essentially requiring McIntyre to produce evidence that it affirmatively and explicitly prevented its products from entering New Jersey markets.

#### ***Actual Awareness***

McIntyre argues against the adoption of the “awareness test,” proposed by Justice Brennan in *Asabi*, which allows the exercise of personal jurisdiction as long as a manufacturer has actual awareness that its products are entering a given market. McIntyre Machinery Ltd. argues that the awareness test opens the doors to subjective court decisions that do not respect due process and fair notice requirements. To support this argument, McIntyre describes several lower court opinions that extend the awareness test beyond *actual* awareness to include *constructive* awareness. Moreover, McIntyre points out that the awareness test does not require affirmative action on the part of the manufacturer, which McIntyre argues is the key to earlier precedents and the purposeful availment test and also comports with the idea of state personal jurisdiction arising from presence in or acts specifically directed at its territory.

#### ***Reasonable Anticipation of Being Subject to Suit: World-Wide Volkswagen***

Nicastro cites *World-Wide Volkswagen v. Woodson* to support the position that awareness of the possibility of suit is the core of the due process fairness requirement for personal jurisdiction. However, McIntyre argues that *World-Wide Volkswagen* supports its own position. As McIntyre explains, *World-Wide Volkswagen* dealt with

a suit brought in an Oklahoma state court against a car retailer and wholesaler organized in New York whose only contact with the state was the presence of the plaintiffs, who were driving the car they had purchased in New York through Oklahoma when their accident occurred. The plaintiffs in that case argued that, because it was foreseeable that a car would be driven to Oklahoma, the defendant should have anticipated a lawsuit in Oklahoma. The U.S. Supreme Court rejected this argument.

McIntyre Machinery Ltd. concedes that the holding in *World-Wide Volkswagen* allowed personal jurisdiction in places where defendants “should reasonably anticipate” being sued. However, McIntyre contends that *World-Wide Volkswagen* defined reasonable anticipation as arising only from the defendant's connection to, and conduct toward, a particular state. McIntyre argues that it is inaccurate for Nicastro to describe McIntyre's intent as one to serve a national market, and that, in any case, such intent is irrelevant to the minimum contacts test of *World-Wide Volkswagen*. Rather, McIntyre suggests that it merely intended to distribute products through McIntyre Machinery America, which is based in Ohio.

#### ***Nicastro's Offer of Facts Supporting Personal Jurisdiction Under Any Test***

Nicastro argues that McIntyre's actions satisfy the “minimum contacts” test of *International Shoe v. State of Washington*, despite MMA's independent ownership. According to Nicastro, McIntyre, acting through MMA, its exclusive distributor, put its products on the U.S. market with the expectation that they could be purchased by consumers in any given state. Nicastro claims that this arrangement satisfies the minimum contacts requirement. Specifically, Nicastro argues that the following actions support finding personal jurisdiction under the minimum contacts test: granting MMA exclusive sales in the United States; participating in trade shows across the United States; explicitly retaining ownership

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until the product is paid for in full; basing its relationship with MMA on sales commissions; and extending its own liability insurance, rather than MMA's, to McIntyre Machinery's products.

Nicastro argues that McIntyre Machinery's intent to serve the broader national market satisfies even the purposeful availment test. Nicastro cites McIntyre's exclusive authorization of MMA as its sales agent as exactly the kind of purposeful availment that was lacking in *Asabi*, which involved a manufacturer of component parts that had no connection to its products or their direct distribution within the United States. If McIntyre had desired to limit the sale of its products to particular markets, Nicastro argues that the company would have done so in its contracts with MMA. Instead, Nicastro argues that McIntyre authorized the sale of its products to every potential buyer with no distinction between states.

Turning to *World-Wide Volkswagen*, Nicastro acknowledges that MMA's decisions regarding where to sell McIntyre Machinery's products remained outside McIntyre's control, but argues that McIntyre still satisfies the minimum contacts test because it clearly intended to serve a *national* market and, by extension, to serve at least indirectly any state, including New Jersey. Nicastro contends that *World-Wide Volkswagen* held that a manufacturer is subject to personal jurisdiction only in its targeted market. Thus, Nicastro argues that, regardless of whether a manufacturer has actual knowledge that its product is being sold in a given market, a reasonable manufacturer should anticipate being sued in every state that is part of its overall target market.

### **Component Parts Versus Finished Products**

According to Nicastro, *Asabi* dealt with the exercise of jurisdiction over a foreign component manufacturer that sold its product to another foreign manufacturer, which then sold its finished product in the United States. Thus, Nicastro argues, Justice O'Connor intended the purposeful availment test of *Asabi* to prevent manufacturers of

component parts that never did business in the United States from being subject to unforeseeable suits involving finished products that contain the component parts they manufactured. Nicastro argues, therefore, that *Asabi* is best applied to suits against foreign manufacturers of components, whereas manufacturers of finished products like McIntyre Machinery Ltd. are covered by the test in *World-Wide Volkswagen*.

### **Conclusion**

In this case, the U.S. Supreme Court will determine the criteria necessary to establish personal jurisdiction over a foreign manufacturer that does not target any particular state in the United States but targets the U.S. market generally. J. McIntyre Machinery Ltd., argues that New Jersey courts lack personal jurisdiction over McIntyre Machinery, because it did not specifically target the New Jersey market for its products. Robert Nicastro argues that McIntyre's intent to serve the U.S. market as a whole is sufficient to establish personal jurisdiction in New Jersey, where the product was purchased and the accident involving the product occurred. Full text is available at [topics.law.cornell.edu/supct/cert/09-1343](http://topics.law.cornell.edu/supct/cert/09-1343). **TFL**

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*Prepared by L. Sheldon Clark and Omair Khan. Edited by Joanna Chen.*

### **Astra USA v. Santa Clara County, CA (09-1273)**

*Appealed from the U.S. Court of Appeals for the Ninth Circuit (Dec. 9, 2009)*

**Oral argument: Jan. 19, 2011**

Congress enacted § 602 of the Veterans Health Care Act to provide relief to certain federally funded organizations for the cost of prescription drugs. The act requires the federal government and drug manufacturers to enter into pricing agreements that set price ceilings for the drugs. The county of Santa Clara and several other third-party beneficiaries of the pricing agreement filed suit against several drug manufacturers under the act, alleging that the manufacturers

had overcharged them for prescription drugs. The California federal district court dismissed Santa Clara's claim, but the Ninth Circuit reinstated the claim, holding that third-party beneficiaries of the act have the right to sue for violations of the act. The manufacturers subsequently appealed, arguing that, because there was no federal statutory right of action, Santa Clara lacked standing to sue. Full text is available at [topics.law.cornell.edu/supct/cert/09-1273](http://topics.law.cornell.edu/supct/cert/09-1273). **TFL**

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*Prepared by Sara Myers and John Sun. Edited by Catherine Sub.*

### **General Dynamics Corp. v. United States (09-1298); Boeing Company v. United States (09-1302)**

*Appealed from the U.S. Court of Appeals for the Federal Circuit (June 2, 2009)*

**Oral argument: Jan. 18, 2011**

The U.S. Navy contracted with McDonnell Douglas and General Dynamics Corporation to build stealth aircraft and subsequently terminated its contract with both companies. The contractors sued, alleging that delays in building the aircraft were the result of the government's failure to share information. The United States asserted the state secrets privilege, claiming that disclosing the information would harm national security. The Federal Circuit ruled that the government could invoke the state secrets privilege to preclude the contractors' defense. The contractors appealed the ruling, arguing that the government cannot maintain a claim against a party when it invokes the state secrets privilege to preclude that party from raising a defense when the government is the moving party. Full text is available at [topics.law.cornell.edu/supct/cert/09-1298](http://topics.law.cornell.edu/supct/cert/09-1298). **TFL**

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*Prepared by Natanya DeWeese and James Rumpf. Edited by Kate Hajjar.*

## **Goodyear Dunlop Tires Operations v. Brown (10-76)**

*Appealed from the North Carolina Court of Appeals (Aug. 18, 2009)*

**Oral argument: Jan. 11, 2011** (The Supreme Court will hear this case in tandem with *J. McIntyre Machinery Ltd v. Nicastro*.)

Two North Carolina teenagers were killed in France when a tire, manufactured by Goodyear Luxembourg, malfunctioned and caused an accident. The victims' estates sued the foreign manufacturers of the defective tire for negligence in a North Carolina state court, and the state court found that it had general jurisdiction over the defendants. Goodyear Luxembourg argues that North Carolina does not have general jurisdiction, because the company has no presence in or direct business with North Carolina. The teenagers' estates argue that the court properly found jurisdiction, because Goodyear Luxembourg is part of the larger and highly integrated Goodyear enterprise, which does have significant contact with North Carolina. Full text is available at [topics.law.cornell.edu/supct/cert/10-76](http://topics.law.cornell.edu/supct/cert/10-76). **TFL**

*Prepared by Kelly Halford and Eric Schulman. Edited by Eric Johnson.*

## **Kentucky v. King (09-1272)**

*Appealed from the Supreme Court of Kentucky (Jan. 21, 2010)*

**Oral argument: Jan. 12, 2011**

While pursuing a known drug felon, police officers smelled burning marijuana emanating from behind a closed apartment door. After knocking and announcing themselves, the police heard shuffling within the apartment. Believing that evidence was being destroyed inside, they entered the apartment, found a variety of drugs and drug paraphernalia, and arrested Hollis Deshaun King, the respondent. King claims that this warrantless entry and search violated his Fourth Amendment rights because there were no exigent circumstances. The Commonwealth of Kentucky

asserts that the smell of burning marijuana, combined with the sounds of shuffling and movement within the apartment, validated the police's warrantless entry. Full text is available at [topics.law.cornell.edu/supct/cert/09-1272](http://topics.law.cornell.edu/supct/cert/09-1272). **TFL**

*Prepared by Jacqueline Bendert and Rachel Sparks Bradley. Edited by Kate Hajjar.*

## **Matrixx Initiatives Inc. v. Siracusano (09-1156)**

*Appealed from the U.S. Court of Appeals for the Ninth Circuit (Oct. 28, 2009)*

**Oral argument: Jan. 10, 2010**

Matrixx Initiatives Inc. argues that the Ninth Circuit erred in allowing James Siracusano and other Matrixx shareholders to sue under the Securities and Exchange Act of 1934 for Matrixx's alleged failure to disclose information to shareholders. Specifically, Siracusano claims that Matrixx should have disclosed reports linking one of its products to anosmia, a condition affecting an individual's ability to smell. Matrixx claims that the reports were immaterial, because they did not establish a statistically significant relationship between the product and the occurrence of anosmia. Siracusano contends that Matrixx should have shared such studies with investors regardless of the studies' statistical significance. Full text is available at [topics.law.cornell.edu/supct/cert/09-1156](http://topics.law.cornell.edu/supct/cert/09-1156). **TFL**

*Prepared by Sarah Pruett and Melissa Koven. Edited by Joanna Chen.*

## **Montana v. Wyoming and North Dakota (137, Orig.)**

*Original Jurisdiction: On Motion of Montana Excepting the First Interim Report of the Special Master*

**Oral argument: Jan. 10, 2011**

Montana accused Wyoming of violating the Yellowstone River Compact by consuming water in excess of the amount allotted to the state of

Wyoming. A special master appointed by the U.S. Supreme Court concluded that Montana had valid claims but recommended that the Court deny Montana's claim that Wyoming's use of improved irrigation techniques violates the compact. In addition, the special master recommended that Montana show that it lacks an intrastate remedy before calling on Wyoming to adjust its usage of the water. Montana argues that the compact's purpose is undermined if upstream appropriators can use more efficient irrigation methods to reduce return flows at downstream appropriators' expense, and the need to prove a lack of intrastate remedies places disproportionate burdens on Montana. Full text is available at [topics.law.cornell.edu/supct/cert/137ORIG](http://topics.law.cornell.edu/supct/cert/137ORIG). **TFL**

*Prepared by Colin O'Regan and Edan Shertzer. Edited by Sarah Chon.*

## **Smith v. Bayer Corp. (09-1205)**

*Appealed from the U.S. Court of Appeals for the Eighth Circuit (Jan. 5, 2010)*

**Oral argument: Jan. 18, 2011**

Bayer Corporation manufactured and distributed Baycol, a prescription cholesterol medication linked to 31 deaths. After removing Baycol from the market, Bayer was sued by thousands of individuals. These individual claims, including the claim of an individual seeking economic damages under the West Virginia Consumer Credit and Protection Act, were consolidated in a Minnesota federal district court. Two other individuals separately sued Bayer under the same act in a West Virginia state court. The federal district court denied class certification of the West Virginia economic damages claim, determining that such claims required individual damages. Bayer moved to enjoin certification of the economic damages claim in the West Virginia state court based on the decision handed down by the federal district court in Minnesota. The district court granted the injunction and the Eighth Circuit affirmed the decision. The U.S.

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Supreme Court will determine whether the relitigation exception applies when the parties and issues involved in two actions are not entirely identical and whether a court has jurisdiction over an absent class member or a nonparty if a class does not actually exist because the certification that was denied by the court. Full text is available at [topics.law.cornell.edu/supct/cert/09-1205](http://topics.law.cornell.edu/supct/cert/09-1205). **TFL**

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*Prepared by Kristen Barnes and Jessica Meneses. Edited by Chris Maier.*

### **Stern v. Marshall (10-179)**

*Appealed from the U.S. Court of Appeals for the Ninth Circuit (March 19, 2010)*

**Oral argument: Jan. 18, 2011**

**J**. Howard Marshall II, a wealthy oil executive, married Vickie Lynn Marshall, a model and actress who worked under the name Anna Nicole Smith and is now deceased. J. Howard Marshall died shortly after they were married, leaving most of his estate to his son, E. Pierce Marshall. Vickie Lynn Marshall subsequently filed for bankruptcy protection, and Pierce Marshall

brought a defamation claim against her in bankruptcy court. Vickie made a compulsory counterclaim, alleging that Pierce had tortiously interfered with J. Howard Marshall's intent to give her part of his estate. The bankruptcy court ruled in favor of Vickie Lynn Marshall. Pierce Marshall appealed to the Ninth Circuit, which reversed on the grounds that Vickie's counterclaim was not a "core" proceeding and, therefore, was improperly before the bankruptcy court. Vickie Lynn Marshall's estate argues that the Ninth Circuit erroneously applied 28 U.S.C. § 157(b)(2)(C), because the provision categorically establishes compulsory counterclaims as core proceedings. Full text is available at [topics.law.cornell.edu/supct/cert/10-179](http://topics.law.cornell.edu/supct/cert/10-179). **TFL**

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*Prepared by Priscilla Fasoro and Eli Kirschner. Edited by Joanna Chen.*

### **Sykes v. United States (09-11311)**

*Appealed from the U.S. Court of Appeals for the Seventh Circuit (March 12, 2010)*

**Oral argument: Jan. 12, 2011**

**F**aced with a prison sentence of more than 15 years for committing three "violent felonies" under the Armed Career Criminal Act, Marcus Sykes is challenging the Seventh Circuit Court of Appeals' ruling that his conviction under Indiana law for fleeing from law enforcement officers in a vehicle constitutes a "violent felony." Sykes argues that classifying his offense as a "violent felony" presumes that there is violence associated with flight from police. However, the United States contends that fleeing from police in a vehicle is both violent in nature and in practice, because it poses a risk of serious harm to law enforcement officers and members of the public. Full text is available at [topics.law.cornell.edu/supct/cert/09-11311](http://topics.law.cornell.edu/supct/cert/09-11311). **TFL**

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*Prepared by Teresa Lewi and Benjamin Rhode. Edited by Catherine Sub.*

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