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U.S. AIRWAYS V. MCCUTCHEN (11-1285)

Appealed from the U.S. Court of Appeals for the Third Circuit

Oral argument: Nov. 27, 2012

Questions Presented

“Whether the Third Circuit correctly held—in conflict with the Fifth, Seventh, Eighth, Eleventh, and D.C. Circuits—that ERISA Section 502(a)(3) authorizes courts to use equitable principles to rewrite contractual language and refuse to order participants to reimburse their plan for benefits paid, even where the plan’s terms give it an absolute right to full reimbursement.”

Issue

Does ERISA Section 502(a)(3) allow courts to apply equitable principles to refuse to order a participant to reimburse the plan for medical coverage where the contract provides the plan with an absolute right to full reimbursement?

Background

Early in 2007, a young driver lost control of her car and crashed into James McCutchen’s vehicle. The accident left McCutchen functionally disabled as McCutchen, who has a history of back surgeries and pain, continues to suffer from chronic pain that he cannot relieve with medication.

Prior to the accident, McCutchen entered into a Health Benefit Plan administered and self-financed by his employer, US Airways. The Plan paid McCutchen \$66,866 to cover the medical expenses incurred from the accident. After receiving the Plan payout McCutchen, with the assistance of counsel, sued the driver who caused the crash. Because the young driver was underinsured and the accident killed

or seriously injured three other people, McCutchen only recovered a \$10,000 settlement from the young driver. McCutchen also subsequently recovered \$100,000 in underinsured motorist coverage. From his \$110,000 net recovery, McCutchen paid his lawyers 40% in contingency fees and legal expenses and retained less than \$66,000.

Subsequently, US Airways demanded full reimbursement for the \$66,866 it paid to cover McCutchen’s medical expenses. US Airways based its suit on Section 502(a)(3) of the Employee Retirement Security Act of 1974 (“ERISA”), which allows plan fiduciaries to sue for “appropriate equitable relief.” Relying on a subrogation clause in the Plan, which required reimbursement for “any monies recovered from a third party,” the trial court decided that US Airways was entitled to the entire \$66,866, regardless of legal expenses. On appeal, the Court of Appeals for the Third Circuit decided that Section 502(a)(3) requires courts to provide relief in a manner that is equitable to both parties. The court ruled that McCutchen need not reimburse US Airways for the entire amount of his medical expenses, and US Airways has appealed to the Supreme Court of the United States to reverse the Third Circuit’s ruling.

Implications

On appeal, US Airways, argues that the language of Section 502(a)(3) of the Employment Retirement Security Act of 1974 (ERISA) requires courts to enforce the exact terms of health benefit contracts, including terms guaranteeing full reimbursement. James McCutchen argues that the Third Circuit properly applied equitable doctrines to provide a remedy that is fair for both parties. The two sides disagree on the impact allowing courts to use equitable principles

in reimbursement actions will have on both ERISA litigation and on health plan management.

Effect on ERISA Litigation

The Blue Cross Blue Shield Association (“Blue Cross”) contends that allowing courts to consider equitable doctrines will increase the burden of ERISA litigation. Blue Cross argues that equitable doctrines would require courts and health plan providers to investigate and answer numerous complicated factual questions, rather than purely relying on the contract terms. Moreover, the Chamber of Commerce claims that applying equitable principles to ERISA litigation will encourage all beneficiaries to take disputes to court. Central States Funds argue that, rather than negotiate with plan administrators, participants will litigate disputes, hoping to avoid the plan terms.

The Pennsylvania Association for Justice counters that ensuing cases involving reimbursement rights will define how courts apply equitable principles. The Pennsylvania Association for Justice maintains that allowing plan administrators to recover 100% of their reimbursements will discourage participants from suing third parties if they expect the recovery will be the same or less than their medical expenses. Further, the Pennsylvania Association for Justice maintains that an equitable approach will incentivize plan participants to file good claims against third parties because participants can expect to receive some portion of any recovery.

Implications for Health Benefit Plan Management

Next, Blue Cross contends that allowing courts to use equitable principles to change health plan terms will lead to rising costs for beneficiaries and over-

all reductions of health plan benefits. Specifically, Blue Cross argues that plan administrators rely on specific contract terms to calculate their costs, and plan administrators will struggle to determine their likely reimbursement if courts decide plan terms on a case-by-case basis. The Chamber of Commerce argues that this loss of funds—plus the higher costs of litigation—would be unfair to other participants, forcing plan administrators to raise premiums or cut benefits, or may even make health benefit plans insolvent.

United Policyholders counters that because state law historically limited reimbursement rights, plan administrators have no experience in calculating reimbursements. Thus, United Policyholders contends that future reimbursements are too remote for courts to consider as a factor for setting plan rates. Moreover, because reimbursement funds will not flow to a plan's assets, United Policyholders argues that there is no evidence indicating that allowing courts to change plans terms will lead to higher premiums or insolvency.

Legal Arguments

McCutchen argues that courts have the authority to determine what constitutes “appropriate equitable relief” within the meaning of ERISA Section 502(a)(3) and are not required to enforce express insurance plan terms. US Airways maintains that the term “appropriate” in ERISA Section 502(a)(3) refers to the requirement that the type of “equitable relief” a plaintiff seeks be suitable under the circumstances to enforce the benefit plan and, thus, does not grant courts unbridled discretion to rewrite contractual terms.

Consistency with Congressional Intent

McCutchen argues that Congress purposely limited courts to granting “appropriate equitable relief” in Section 502(a)(3) because the purpose of ERISA is not to enforce plan terms, but to protect plan administrators and beneficiaries. McCutchen supports this assertion by noting that ERISA Section 502(a)(1)(B) allows beneficiaries to sue to enforce plan terms, but specifically bars fiduciaries from recovering under the same provision. Thus, McCutchen maintains that

the plain language of Section 502(a)(3) overrides any policy requiring the strict enforcement of plan terms.

US Airways maintains that appropriate equitable relief should be used to enforce the express terms of the health plan and cites to the Supreme Court's decision in *Curtiss-Wright Corp. v. Schoonejongen* and 29 U.S.C. § 1132(a)(1). In *Curtiss-Wright*, the Supreme Court held that ERISA's statutory framework relies on written plan documents and was not intended to facilitate beneficiaries' efforts to amend plan terms. Moreover, 29 U.S.C. Section 1132(a)(1) authorizes plan administrators to file suit to enforce their rights under the terms of the plan. US Airways argues that the language of Section 1132(a)(1) indicates that Congress intended courts to grant Section 1132(a)(1) claims to enforce, rather than override, explicit contractual language.

Compliance with Supreme Court Precedent

McCutchen argues that the Third Circuit's application of equitable principles reflects a proper reading of Supreme Court precedent because the term “appropriate” is a term of limitation that restrains the availability of relief based upon traditional equitable principles. McCutchen cites to numerous Supreme Court opinions supporting the court's discretion in applying equitable rules instead of legal rules in ERISA cases. McCutchen relies heavily on the Supreme Court's decision in *CIGNA Corp. v. Amara* that determined courts should exercise discretion to determine “appropriate” relief for 502(a)(3) claims. The Third Circuit applied the *CIGNA* holding in this case to determine that plans may be subject to modification or equitable reformation under Section 502(a)(3).

US Airways contends that the Third Circuit's holding was based on a mistake of law because the court applied equitable principles pertaining to an equitable lien imposed to avoid unjust enrichment to US Airways' equitable lien by agreement. In *Sereboff v. Mid Atlantic Medical Servs., Inc.*, the Supreme Court distinguished an equitable lien from an equitable lien by agreement, which the parties establish when forming an agreement with the purpose of enforcing the agreement. The *Sereboff* Court con-

cluded that a reimbursement provision creates an enforceable equitable lien by agreement. US Airways argues that, since the Plan's subrogation provision creates an enforceable equitable lien by agreement, McCutchen must fully reimburse the Plan with his third-party recovery.

Courts' Discretion to Determine Equitable Relief

McCutchen argues that the Third Circuit was correct in applying the principle of unjust enrichment to this case and in finding that any requirement to reimburse US Airways fully would be inequitable because McCutchen would be in a worse position than if he had not sought third-party recovery. In *Sereboff v. Mid Atlantic Medical Servs., Inc.*, the Supreme Court held that Section 502(a)(3) authorizes reimbursement claims that are “equitable,” but did not determine whether the term “appropriate” modifies the amount of relief available to an ERISA plan for an equitable claim of reimbursement. Moreover, in *CIGNA Corp. v. Amara*, the Supreme Court determined that the courts must limit the availability of relief to those “traditionally considered equitable remedies,” and look further to equitable treatises when fashioning “appropriate” relief.

US Airways maintains that Section 502(a)(3) does not empower courts to use “free-floating equitable principles” to rewrite benefit plans because the provision requires courts to enforce plan terms when equitable mechanisms are available to do so. In *Mertens v. Hewitt Assocs.*, the Supreme Court held that Section 502(a)(3) only authorizes appropriate relief to redress violations or to enforce ERISA provisions. US Airways argues that the lower court's interpretation of *CIGNA* is overbroad because in *CIGNA*, the Court considered the equitable remedies available in cases of fraud and misrepresentation. Thus, although the *CIGNA* Court recognized that equity courts have the power to reform contracts, US Airways maintains that the Court limited that power to cases in which the plan was not being enforced according to its express terms by one of the parties.

Conclusion

In this case, the Supreme Court will consider the meaning of “appropriate equitable relief” within the meaning of ERISA Section 502(a)(3) to determine whether the act authorizes courts to use equity to rewrite health-benefit plan contracts. McCutchen argues that the term “appropriate” grants courts the discretion to override the contractual provisions of health plans in situations where strictly enforcing a plan’s terms would be inequitable to one of the parties. US Airways contends that the term “appropriate” relates only to whether or not a claim is appropriate to enforce the terms of the benefit plan and does not grant courts broad discretion to rewrite benefit plan terms. This case may have significant implications for both plan beneficiaries and plan administrators because it may affect the frequency of ERISA litigation, the financial viability of health benefit plans, and further define the legal rights of employers and employees participating in these plans. ☉

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LOS ANGELES CNTY. FLOOD CONTROL DIST. V. NATURAL RES. DEF. COUNCIL, INC. (11-460)

Appealed from the U.S. Court of Appeals for the Ninth Circuit

Oral argument: Dec. 4, 2012

Questions Presented

“The Clean Water Act regulates the addition of pollutants to the navigable waters of the United States, including pollutants stemming from municipal stormwater systems. 33 U.S.C. §1342(p).

“The questions presented by this petition are:

“1. Do “navigable waters of the United States” include only “naturally occurring” bodies of water so that construction of engineered channels or other man-made improvements to a river as part of municipal flood and storm control renders the improved portion no longer a “navigable water” under the Clean Water Act?

“2. When water flows from one por-

tion of a river that is navigable water of the United States, through a concrete channel or other engineered improvement in the river constructed for flood and stormwater control as part of a municipal separate storm sewer system, into a lower portion of the same river, can there be a “discharge” from an “outfall” under the Clean Water Act, notwithstanding this Court’s holding in *South Florida Water Management District v. Miccosukee Tribe of Indians*, 541 U.S. 95, 105 (2004), that transfer of water within a single body of water cannot constitute a “discharge” for purposes of the act?”

Issue

If water from an interstate river travels through a human-engineered stormwater channeling system before it returns into a lower portion of the same river, does the addition of polluted stormwater constitute a “discharge” from an “outfall” as defined under the Clean Water Act, even though the Supreme Court has previously decided that there can be no “discharge” when water is transferred within a single body of water?

Background

Under the Clean Water Act, the federal government controls the discharge of pollutants into navigable waters. A person or entity seeking to discharge pollutants must comply with the National Pollutant Discharge Elimination System (NPDES), which requires obtaining permits that limit the type and quantity of pollutants that can be discharged. The Clean Water Act imposes numerous requirements on permit holders, including that the permit holders comply with water quality standards, water monitoring obligations, public reporting obligations, and discharge requirements. In California, the interconnected network of ms4s (MS4) channels stormwater to rivers including the Los Angeles River, the San Gabriel River, the Santa Clara River, and Malibu Creek. Between 2002 and 2008, the monitoring stations for the four waterways identified hundreds of violations of water quality standards.

In 2008, Natural Resources Defense Council and Santa Monica Baykeeper (collectively, NRDC) filed a citizen-enforcement action against the district

and county in the Central District of California, alleging a violation of the NPDES permit and a violation of the Clean Water Act. The court denied motions for summary judgment because evidence did not show whether the waterways below the monitoring stations are distinct bodies of water from the MS4 above the monitoring stations and thus, failed to establish whether there had even been a “discharge” from a “point source” within the statutory meanings of those terms. The district court granted summary judgment for the district and county on all the Watershed Claims.

The Court of Appeals for the Ninth Circuit reversed in part, finding that NRDC was entitled to summary judgment on its claims pertaining to the Los Angeles and San Gabriel Rivers because the monitoring stations are located within the MS4. The Ninth Circuit affirmed the other two grants of summary judgment for the district and county because the monitoring stations for the Santa Clara River and Malibu Creek were located within the waterways, meaning that NRDC had not linked the presence of water quality violations in the waterways to the MS4’s discharge of pollutants.

The Supreme Court granted the district’s petition for writ of certiorari, limiting its review to Question 2.

Implications

The parties dispute whether the Clean Water Act (CWA), whose permit system regulates the addition of pollutants, imposes liability on the district as principal permit-holder for exceeding allowed pollution levels. The district argues that it has not violated its permit because it did not “add” pollutants under the term as it is defined in the CWA. In opposition, NRDC argues that because the district’s self-monitoring of its MS4 has shown consistent permit violations, the CWA imposes liability on the district.

Impact on Municipal Decision-Making

The district maintains that if the Supreme Court finds that the NPDES permit system applies to engineered improvements in a river, municipalities will face increased costs of flood control planning, regulatory compliance, and potential liability for alleged pollutant discharges. According to the

International Municipal Lawyers Association (IMLA), if a municipality can be held responsible for pollutants found in improved portions of a river, regardless of whether the municipality has added the pollutants or just transported them, it will bear significant costs and face uncertainty about its liability.

NRDC counters that the district exaggerates the costs it would incur to achieve compliance under the NPDES permit program if the Court finds the district liable. In support of NRDC, Heal the Bay asserts that green infrastructure represents a cost-effective, efficient stormwater management option that is a worthwhile investment for municipalities seeking to comply with permit restrictions. Further, Heal the Bay notes, municipalities may subsidize permit compliance costs by funding implementation of green infrastructure through bond issues, general fund allocations, and state and federal loans.

Interpreting Lawmakers' Intent

The National Governors Association (NGA) contends that if the Supreme Court imposes liability on the district for permit violations under the federally-enacted CWA, it will disrupt the partnership that Congress intended to create between federal and state regulation of water quality and water use. NGA notes that the CWA purposely delegates to states the authority to oversee their own management of water pollution and does not require states to implement the NPDES permit program. To impose liability under the CWA for permit violations would undermine the authority that Congress has intentionally delegated to the states.

In opposition, the National Wildlife Federation (NWF) argues that the Supreme Court will override congressional intent if it fails to impose liability on the District under CWA. NWF reasons that if the District may defend itself against liability by challenging the terms of its NPDES permit, other permit-holders will attempt to raise similar defenses to their own permit violations. The result of challenges by permit-holders, according to NWF, is delayed compliance with water quality standards and further damage to wildlife habitats, public health, and safe use of national waters.

Legal Arguments

Petitioner, Los Angeles County Flood Control District argues that this case is resolved by the Supreme Court's decision in *South Florida Water Management District v. Miccosukee Tribe of Indians*, which recognized that transferring water within a single water body does not add anything. Respondents, National Resource Defense Council and Santa Monica Baykeeper (NRDC), argue that Miccosukee does not apply because the district's NPDES permit presupposes that the district discharges pollutants.

South Florida Water Management District v. Miccosukee Tribe of Indians

The district argues that it does not "discharge" any pollutants into the San Gabriel and Los Angeles Rivers pursuant to the statutory definition of "discharge" in the CWA. The district asserts that the CWA defines "discharge" as "any addition of any pollutant to navigable waters from a point source." Here, the district contends that the lower court did not actually find the addition of pollutants at a point source. Also, the district argues that the rationale discussed in *Miccosukee*, where the Supreme Court held that the transfer of water from one part of a water body through an engineered improvement to another portion of the same water body does not "add" anything, is applicable in the present case. The district asserts that the channelized portion of a river is navigable like the rest of the river, and thus, they are a single body of water. Therefore, the district claims that its channels do not discharge into waters of the United States, but "are waters of the United States."

NRDC responds that *Miccosukee* does not apply because the District already has a NPDES permit which regulates the District's discharge of pollutants. NRDC asserts that *Miccosukee* does not prevent the CWA from regulating discharges from MS4s. Moreover, NRDC contends that the issue is not whether the district discharged pollutants, but whether the district is liable based on data from monitoring stations indicating excessive pollutant levels. NRDC claims that the district has an NPDES permit because it discharges from its MS4 into navigable waters, so the relevant issue is how the district measured compliance under its

NPDES permit, and whether the district violated the permit.

How to Establish "Discharge" Under the CWA

The district argues that an NPDES permit alone without proof that the permit-holder "added" a pollutant does not constitute a discharge in violation of the CWA. To establish a CWA violation, the district contends that a plaintiff must show discharge from a point source. The district claims that the court mistakenly found discharge by reasoning that concrete channels in a river can be a point source. However, the district contends that its channels in the Los Angeles and San Gabriel Rivers are part of those rivers, and thus, not point sources. The district further argues that a plaintiff, to prove discharge, would have to show the addition of pollutants from one of the district MS4 outfalls.

NRDC responds that the excess pollutant levels recorded at the monitoring stations required by the EPA permit system are sufficient to show a CWA violation. The NRDC disputes the district's claim that compliance can only be measured at an outfall. Instead, NRDC claims that citizens and the government can enforce the permit system by comparing the samples at monitoring stations to the particular pollution limits in a permit-holder's permit. NRDC asserts that the district's permit includes a self-monitoring system that prohibits discharges that exceed water quality standards. Further, NRDC claims that samples from the District's instream stations in the Los Angeles and San Gabriel Rivers show more than 140 samples exceeding the district's permitted limits. NRDC concludes that even though the district's monitoring stations are "not located directly at the district's discharge points," under the EPA's regulatory scheme permitting representative sampling, these samples prove that the district violated its permit.

Conclusion

In this case, the Supreme Court will determine whether water that flows from a river into a man-made channel and back into the river can be a "discharge" as defined pursuant to the Clean Water Act. This decision will clarify the

relationship between the Environmental Protection Agency's National Pollutant Discharge Elimination System and the Supreme Court's recent decision in *South Florida Water Management District v. Miccosukee Tribe of Indians*, which recognized that the transfer of water between two points in a single water body does not "add" anything under the Clean Water Act. The Court's decision will impact parties who face water management issues, including state and local government agencies, environmental groups, and water suppliers. ☉

Written by Alexandra Cowen and Chanwoo Park. Edited by Jenny Liu.

CHAFIN V. CHAFIN

Appealed from the U.S. Court of Appeals for the Eleventh Circuit

Oral argument: Dec. 5, 2012

Jeffrey Lee Chafin, an American, prevented his separated Scottish wife, Lynn Hales Chafin, from leaving the United States with their daughter, E.C. Mrs. Chafin successfully obtained a return order from the U.S. District Court for the Northern District of Alabama pursuant to the International Children Abduction Remedies Act, an act passed by Congress as a result of the Hague Convention of the Civil Aspects of International Child Abduction. Mr. Chafin appealed the return order, but the Eleventh Circuit declared the case moot because Mrs. Chafin and E.C. had already returned to Scotland. On appeal to the Supreme Court of the United States, Chafin argues that a court's inability to enforce its judgment does not render a case moot. Mrs. Chafin counters that allowing an appeal after a return order would conflict with the purposes of the Hague Convention. This decision implicates issues of comity between nations, and rights of American parents. Full text is available at www.law.cornell.edu/supct/cert/11-1347. ☉

Written by Belinda Liu and Sarah O'Laughlin. Edited by Judah Druck.

DECKER, ET AL., V. NORTHWEST ENVIRONMENTAL DEFENSE CENTER (11-338)

GEORGIA-PACIFIC WEST, ET AL., V. NORTHWEST ENVIRONMENTAL DEFENSE CENTER (11-347)

Appealed from the U.S. Court of Appeals for the Ninth Circuit

Oral argument: Dec. 3, 2012

The Environmental Protection Agency (EPA) has interpreted the Clean Water Act (CWA) in such a way so that certain logging activities that cause polluted water to run off of forest roads and into ditches, culverts, or pipes are exempt from the permit process. Relying on §1365 of the CWA, the Northwest Environmental Defense Center (NEDC) brought a citizen's lawsuit in federal district court in an attempt to eliminate the exemption from the permit process. The petitioners argue that a citizen's lawsuit was impermissible in this case because of § 1369 of the CWA. The parties also do not agree on the level of deference that the EPA should have been given in interpreting its regulations. Furthermore, the NEDC takes issue with the way EPA interprets several key phrases in the CWA, which affects the substance of the EPA's decision. The Supreme Court's decision can clarify the ability of citizens to bring an action to change the EPA's course of action under the CWA. These procedural and administrative questions could ultimately have an effect on the environment and water quality as well as the procedures loggers must follow to ensure they comply with the CWA. Full text is available at www.law.cornell.edu/supct/cert/11-338. ☉

Written by Michaela Dudley and Allison Nolan. Edited by Brooks Kaufman.

FEDERAL TRADE COMMISSION V. PHOEBE PUTNEY HEALTH SYSTEM, INC. (11-1160)

Appealed from the U.S. Court of Appeals for the Eleventh Circuit

Oral argument: Nov. 26, 2012

Phoebe Putney Health Systems (PPHS) leased and operated one of two

hospitals in Dougherty County, Georgia. PPHS then leased the other county hospital, Palmyra Medical Center, from the Hospital Corporation of America (HCA). In April 2011, the Federal Trade Commission (FTC) filed a complaint against PPHS, alleging that by leasing Palmyra, PPHS violated the Clayton Act and the FTC Act by acting with anticompetitive effect. PPHS argues that it should be exempt from federal antitrust law under the state action doctrine. The Eleventh Circuit found for PPHS, stating that a private actor falls within the state action doctrine when its anticompetitive activity is foreseeable by the state legislature. The FTC urges a more stringent standard where the anticompetitive effect must be intrinsic to the state's authorization. How the Supreme Court decides this case will dictate how state legislatures delegate power to local government entities, and whether or not they must formally articulate authorization for such an entity to act with anticompetitive effect. Full text is available at www.law.cornell.edu/supct/cert/11-1160. ☉

Written by Jeremy Amar-Dolan and Zachary Zemlin. Edited by Brooks Kaufman.

GENESIS HEALTHCARE CORP. V. SYMCZYK (11-1059)

Appealed from the U.S. Court of Appeals for the Third Circuit

Oral argument: Dec. 3, 2012

In a putative collective action, Laura Symczyk alleged that Genesis Healthcare Corporation violated the Fair Labor Standards Act by automatically deducting break time from her and other employees' pay, regardless of whether they performed compensable work during their breaks. Before any other plaintiffs joined the action, Genesis made an offer of judgment for full relief of Symczyk's claims. Symczyk did not accept the offer, but the district court dismissed the case because the offer of judgment left Symczyk without a personal stake in the litigation. Symczyk argues that she continues to have a personal stake and that the interests of plaintiffs yet to join the action creates jurisdiction. Genesis argues that a complete offer to satisfy a lone plaintiff's claim renders the case moot. In resolving the ques-

tion presented, the Supreme Court will decide whether an unaccepted offer of judgment can render a case moot and whether courts may consider the interests of unnamed, hypothetical parties in determining whether the parties have a personal stake in the litigation. The decision will affect collective-action trial practices for both plaintiffs and defendants, including plaintiffs' use of the discovery process to join class members and defendants' use of individual offers of judgment to forestall or avoid collective actions. Full text is available at www.law.cornell.edu/supct/cert/11-1059. ©

Written by Thomas Santoro and Stephen Wirth. Edited by Brandon Bodnar.

HENDERSON V. UNITED STATES (11-9307)

Appealed from the U.S. Court of Appeals for the Fifth Circuit

Oral argument: Nov. 28, 2012

Petitioner Armarcion Henderson pled guilty in district court to being a felon in possession of a firearm. The district court judge gave Henderson a longer sentence than required to ensure that he could participate in a drug treatment program and Henderson did not object to the sentence. The district court denied Henderson's later motion to correct his sentence and he appealed to the Fifth Circuit. The Fifth Circuit reviewed the district court's decision for plain error under Federal Rule of Criminal Procedure 52(b) and, finding no substantial mistake by the district court, upheld the district court's sentencing. Henderson now argues that the Fifth Circuit should have reversed for plain error because, following Henderson's trial, the Supreme Court decided that judges cannot base a sentence on a defendant's rehabilitative needs. The United States argues that because the law pertaining to sentencing was not settled at the time of his trial and the defendant did not object to his sentence, Henderson's claims do not meet the Rule 52(b) standard. The Supreme Court's decision in this case will affect criminal defendants who use Rule 52(b) to appeal trial court decisions and will also impact judicial efficiency. Full text is available at www.law.cornell.edu/supct/cert/11-9307. ©

Written by Sherry Jarons and Z. Lu. Edited by Judah Druck.

SEBELIUS, SEC. OF HEALTH AND HUMAN SERVICES V. AUBURN REGIONAL MEDICAL CENTER

Appealed from the U.S. Court of Appeals for the D.C. Circuit

Oral argument: Dec. 4, 2012

Since 1983, hospitals have received reimbursement for treating Medicare patients with the option of receiving additional compensation for treating low-income individuals. It was recently discovered that the Center for Medicare and Medicaid Services (CMS) miscalculated rates in the 1990s, causing certain hospitals to receive less than they were entitled to receive. Several hospitals challenged these underpayments under 42 U.S.C. 1395oo(a)(3), arguing that the 180-day deadline for challenging payments should be "equitably tolled," or extended for reasons of fairness. Although the agency that receives these challenges, the Provider Reimbursement Review Board (PRRB), concluded that the decision to extend the filing deadline was beyond its authority, the United States Circuit Court of Appeals for the D.C. Circuit held that this deadline may be extended. Here, Petitioner Sebelius of the Department of Health and Human Services contends that Congress intended to give her the authority to decide when to toll a statute and that this is not one of those cases. In contrast, Respondents Auburn Regional Medical Center, et al., argue that a court may extend this filing deadline. If hospitals are able to challenge underpayments beyond the 180-day deadline, the caseload of PRRB may drastically increase and thereby slow down the process of compensating hospitals. Full text is available at www.law.cornell.edu/supct/cert/11-1231. ©

Written by Dillon Horne and Matthew Soares. Edited by Charlotte Davis.

VANCE V. BALL STATE UNIVERSITY

Appealed from the U.S. Court of Appeals for the Seventh Circuit

Oral argument: Nov. 26, 2012

Petitioner Maetta Vance contends that Saundra Davis, a catering specialist, had made Vance's life at work contentious through physical acts and racial harassment. Vance sued her employer, respondent Ball State University, for workplace harassment by a supervisor. To win a lawsuit for co-worker harassment under Title VII of the Civil Rights Act of 1964, it is necessary to show that the employer is negligent in responding to complaints about harassment; however, to win a lawsuit for harassment by a supervisor, the employer does not have to be negligent because Title VII imputes the supervisor's acts to the employer. Vance asserted that Davis was a supervisor although Ball State claimed Davis was not actually Vance's supervisor. The district court and Court of Appeals for the Seventh Circuit determined that Davis was not Vance's supervisor because Davis did not have the power to direct the terms and conditions of Vance's employment. If Vance wins, the definition of supervisor under Title VII will expand to include more than just those who can hire, fire, demote, promote, or discipline an employee. If Ball State wins, the definition of supervisor under Title VII may expand; however, it would likely be limited to persons who actually control an employee's daily activities. Full text is available at www.law.cornell.edu/supct/cert/11-556.

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