

*Editor's Note: The previews are contributed by the Legal Information Institute, a non-profit activity of Cornell Law School. This department includes an in-depth look at two cases plus executive summaries of other cases before the Supreme Court. The executive summaries include a link to the full text of the preview.*

## **KSR International Co. v. Teleflex Inc. (04-1350)**

*Appealed from the U.S. Court of Appeals for the Federal Circuit (Jan. 6, 2005)*

**Oral Argument: Nov. 28, 2006**

This case has the potential to be one of the most important patent law cases in decades. The Supreme Court will review the 20-year-old definition of one of the most important components of patent validity: nonobviousness. To decide this case, the Court must determine whether the Federal Circuit's "teaching, suggestion, or motivation" test contradicts 35 U.S.C. § 103(a) and the Supreme Court cases that apply this test. A change in this definition could drastically affect what subject matter may be patented in the United States. Broadening this test could invalidate patents on more than just the adjustable automotive brake pedals at issue in the case; it could invalidate patents for any number of devices that combine pre-existing elements, including many pharmaceuticals and computer software codes. Without patents on such devices, their inventors will be forced to cede their rights to the public and face competition that could change the pace at which technology is developed in their industries.

### **Facts**

American scientists and artisans have the right to seek patents and licensing for their unique innovations. The U.S. Constitution grants Congress the exclusive authority "to promote the science and useful arts, by securing for limited times to authors and inventors, the exclusive right to their respective writings and discoveries." In addition, the

federal courts have original jurisdiction for all patent infringement claims.

Since the nation's founding, Congress has passed several patent acts to protect inventors by ensuring that they enjoy exclusive rights to the use, production, and marketing of their inventions. Nonetheless, Congress has also been mindful of the need to place some restrictions on the scope of patenting, recognizing that some imitation and refinement of others' prior discoveries may be necessary in order to promote innovation and progress and to fuel a competitive economy.

In the Patent Act of 1952, the federal statute regulating contemporary patent law, Congress limited the scope of patentable subject matter by establishing a standard of "nonobviousness." Under the act, an inventor may not patent certain subject matter if it is so similar to subject matter established by a prior innovation that creating the new subject matter would be considered "obvious" to a person of ordinary skill in the relevant field. Hence, only innovations that expand upon a prior innovation in a way that would not be considered "obvious" are patentable under federal law.

KSR International Inc., the petitioner, supplies brake and gas pedals to automobile companies, such as General Motors. Teleflex, a patent holder, sued KSR in the U.S. District Court for the Eastern District of Michigan on the grounds that KSR's adjustable pedal assembly production infringed Teleflex's patent for electronic adjustable floor pedals. KSR insists that Teleflex's patent does not satisfy the nonobviousness standard and should be invalidated, because the item does not consist of any authentic or unique technology but, rather, uses a combination of pre-existing adjustable pedal and adjustable control technology. Thus, because Teleflex's patent did not contain any unique innovations, its patent should be invalidated and the suit dismissed. The trial court agreed and granted KSR's motion for summary judgment.

On appeal, the U.S. Court of Appeals for the Federal Circuit reversed the dis-

trict court, holding that the trial court erred in granting summary judgment in favor of KSR, because the patent was not automatically invalidated by reasons of nonobviousness. Hence, triable issues of fact existed as to whether KSR infringed the Teleflex patent. The court reached this decision by invoking the "teaching, suggestion, or motivation" test to establish obviousness. According to the court, KSR failed to provide clear and convincing evidence that some "teaching, suggestion, or motivation" would have led a person of ordinary skill in the field of pedal technology "to combine the relevant prior art teachings" to create Teleflex's innovation. Thus, the technology was patentable.

In its petition for certiorari to the Supreme Court, KSR argues that the "teaching, suggestion, or motivation" test invoked by the Court of Appeals is a judicially created standard that is inconsistent with the statutory language and intent behind 35 U.S.C. § 103(a) as well as Supreme Court precedents that apply 35 U.S.C. § 103(a). In this case, the Court will address not only the question of whether the pedal technology claimed by Teleflex should be patentable but also what test should be used to determine whether an invention is nonobvious.

### **Discussion and Analysis**

The Supreme Court's decision will affect the property rights of all individuals and corporations involved in the business of intellectual property. In addition, the ruling should set clearer guidelines regarding what, specifically, patent holders and seekers must prove to establish that a certain subject matter is nonobvious and patentable under federal law.

### **Relevant Law**

The provision in question, 35 U.S.C. § 103(a), denies patentability to "subject matter as a whole that would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The Supreme Court first interpreted the statutory nonobvi-

ousness provision in *Grabam v. John Deere*, holding that patent obviousness was determined by examining: (1) “the scope and content of the prior art,” (2) the “differences between the prior art and the claims at issue,” and (3) “the level of ordinary skill in the pertinent art.” Later, the Supreme Court ruled that, when an alleged invention consists of a compilation of previously existing inventions, the Court in *Sakraida v. Ag Pro Inc.* must decide obviousness by determining whether the claimed invention “only unites old elements with no change in their respective functions” or whether the combined elements interact to produce a “new or different function” or “an effect greater than the sum of the parts.” Following the Supreme Court’s ruling in *Sakraida*, the Federal Circuit added that a claimed invention that consists entirely of pre-existing inventions is obvious under 35 U.S.C. § 103(a) only if there is clear and convincing evidence in the prior art of “teaching, suggestion, or motivation” to combine the previously existing inventions in the manner combined by the claimed invention.

### **KSR’s Argument Against the “Teaching, Suggestion, or Motivation” Test**

KSR’s challenge to the Federal Circuit’s “teaching, suggestion, or motivation” test is grounded in the argument that the test has no textual basis in 35 U.S.C. § 103(a) and conflicts with the Supreme Court’s interpretations of that section. Moreover, § 103(a) clearly makes obviousness a condition of patentability and does not mention or imply that patents are presumed nonobvious absent clear and convincing evidence of “teaching, suggestion, or motivation” in the prior innovation. In addition, the Supreme Court has applied § 103(a) in six cases since Congress enacted the statute and, in those cases, has never applied the “teaching, suggestion, or motivation” test. Specifically, KSR explains that, in *Sakraida*, the Court held that the validity of combination of patents is guided by the principle that one cannot obtain a patent for something that a person having ordinary skill in the art could “readily” make or do in pursuing the same result. Thus, the Court’s determi-

nation of obviousness pertains to what a person skilled in the art “could” readily make or do, not what that person would be “motivated” to make or do.

KSR reasons further that the test defines subject matter that is nonobvious and patentable too liberally, thereby undermining Congress’ intention that the Patent Act entitles inventors to the exclusive use of their unique innovations, although Congress did not intend for inventors to benefit from trivial inventions that merely expand upon pre-existing technology. KSR also claims that patent law, unlike copyright law, requires an extremely high threshold for what subject matter may be considered patentable, because chilling the innovations of other inventors has a direct impact on the economy. Thus, an overly liberal construction of nonobviousness invites inventors to seek patents for trivial developments, which opens a patenting floodgate that curbs, rather than promotes, economic productivity. Moreover, the “teaching, suggestion, or motivation” test constitutes a dramatic departure from previously established case law and arguably invites international criticism of the American patenting system.

Finally, KSR believes that the “teaching, suggestion, or motivation” test is, in practice, a poor implementation of the intent of 35 U.S.C. § 103(a), because it not only forces the U.S. Patent and Trademark Office to issue patents that may differ from prior innovations in only minor ways but also compels the courts to uphold the issuance of those patents. Because the “teaching, suggestion, or motivation” test rejects § 103(a) as a condition of patentability—making it a condition for challenging patentability instead—the test encourages patent applicants to file patent applications with large numbers of slightly different claims so that the Patent and Trademark Office will be unlikely to find the clear and convincing proof of motivation in the prior innovation to successfully argue each of those claims.

### **Teleflex’s Support for the Federal Circuit’s Test**

Teleflex maintains that § 103(a) and

the Supreme Court precedents that apply it do not mention the “teaching, suggestion, or motivation” test, because they fail to expressly define *any* test for nonobviousness. As such, the Federal Circuit’s “teaching, suggestion, or motivation” test creates a standard for nonobviousness that incorporates the factors specified by the Supreme Court in *Grabam* to apply the prohibition of obvious patents that is contained in § 103(a).

Furthermore, the Federal Circuit’s “teaching, suggestion, or motivation” test is completely in line with Congress’ intent when it established the nonobviousness requirement for patents under 35 U.S.C. § 103(a). Because the test is the only effective safeguard against hindsight-biased obviousness analysis and properly balances the interests of the patentees and the public. Teleflex also argues that KSR failed to identify any empirical evidence that would suggest that the “teaching, suggestion, or motivation” test encourages over-patenting. In addition, the “teaching, suggestion, or motivation” test is now a well-established standard in U.S. patent law, and any deviation from the test would lead to serious confusion and inconsistencies in patent determinations.

### **Potential Implications of the Court’s Decision**

Because the Supreme Court’s decision will have serious implications on the standard used to establish patentable subject matter, several corporations—including Microsoft, Cisco Systems, and Hallmark Cards—have filed amicus briefs in favor of KSR. These corporations hope to narrow the scope of patentable material and, consequently, limit their liability, because they frequently need to defend themselves against patent infringement claims. The core of these corporations’ argument is that the Federal Circuit’s lenient test for patentability hurts innovation by clouding “the public’s free use of information in the public domain.” Furthermore, the Federal Circuit’s current standard stifles economic growth by forcing innovators to spend too much time pursuing

**PREVIEWS** *continued on page 62*

patents for each type of subject matter, rather than focusing on inventing new products. Cisco Systems, in particular, claims to have been forced to engage in defensive patenting as a result of the Federal Circuit's test and recently obtained hundreds of patents in order to reduce its liability. The United States and several top patent law professors have also filed amicus briefs in support of narrowing the Federal Circuit's nonobviousness standard, arguing that the "teaching, suggestion, or motivation" test invites useless over-patenting, which narrows the free exchange of public knowledge and rewards non-innovative subject matter.

Nonetheless, Teleflex has also received strong support in favor of maintaining the Federal Circuit's "teaching, suggestion, or motivation" test for nonobviousness. The American Bar Association filed an amicus brief in support of Teleflex stressing the need to uphold established precedent in order to protect the reliability and recognition of established patent law. Teleflex's supporters stress that a departure from the "teaching, suggestion, or motivation" test would "reduce objectivity and predictability" in patenting determinations, and this would "burden the courts, the Patent and Trademark Office, inventors, litigants, and the public as a whole." Advocates for inventors and property owners, such as the American Intellectual Property Law Association and the Intellectual Property Owners Association, also support Teleflex, stating that the Federal Circuit's standard is well-settled as the appropriate test for nonobviousness. Moreover, there is some speculation that pharmaceutical companies have expressed "silent support" in favor of Teleflex so that they will continue to receive royalties from their patented products. Needless to say, the Supreme Court's decision has the potential to have repercussions on many players in the patents game, not only the parties to the suit. **TFL**

---

*Prepared by Tim Birnbaum and Peter Milligan.*

**Rockwell International Corp. v.**

**U.S. (05-1272)**

*Appealed from the U.S. Court of Appeals for the Tenth Circuit (March 4, 2004)*

**Oral Argument: Dec. 5, 2006**

The U.S. False Claims Act (FCA) permits private citizens and company employees, known as relators, to bring suit in the name of the United States (known as a qui tam suit) against a corporation that has committed fraud against the government and to share in any judgment thereon. James Stone, a former engineer at Rockwell International Corp., brought a qui tam suit against Rockwell for environmental health and safety violations at the weapons facility in Rocky Flats. Rockwell claimed that Stone was ineligible to bring suit, because he did not have "direct and independent" knowledge to qualify him as an "original source" under the statute. The Court's decision will resolve a split among courts regarding precisely what level of "direct and independent knowledge" a potential qui tam plaintiff must have to qualify as an original source. The ruling will ultimately affect any business that has contracts with the federal government or participates in government programs by either making it easier or substantially more difficult for potential whistle-blowers to bring suit under the False Claims Act.

**Facts**

The Rocky Flats weapons production facility, near Denver, Colo., manufactured plutonium triggers for nuclear weapons from 1953 to 1988. Between 1975 and 1989, Rockwell International, the petitioner, operated the site for the U.S. Department of Energy (DOE) under a management and operating contract. During this time, Rockwell's compensation from the DOE came in several forms, but the most significant was a twice-yearly "award fee" based on the DOE's evaluation of Rockwell's performance in areas such as management and production, as well as environmental, health, and safety operations.

In 1980, James Stone began working

for Rockwell as a principal engineer and continued to work at Rocky Flats until he was laid off in 1986. About a year later, Stone contacted the FBI about environmental misconduct that had occurred at Rocky Flats while he was working for Rockwell. Stone claimed that he had "unlimited access" at Rocky Flats, and that, contrary to public knowledge, Rocky Flats had accepted nuclear and hazardous waste from other DOE facilities. He also alleged that, since 1981, Rocky Flats had continued to incinerate hazardous waste, including plutonium, on a daily basis, despite the failure of the incinerators at the facility to pass safety testing at that time. Finally, Stone informed the FBI that he believed the groundwater at Rocky Flats was contaminated from previous waste burial, and hazardous waste evaporation ponds tended to overflow during and after substantial rainfalls. Stone had worked on an engineering project that addressed the manufacturing process for "pondcrete," a mixture of cement and toxic waste sludge from the ponds intended to immobilize the waste, and he "concluded that the suggested process would result in an unstable mixture that would later deteriorate and cause unwanted release of toxic wastes to the environment."

Using this information, the FBI obtained a search warrant for the Rocky Flats facility and carried out a search in 1989. Three days after the search, the FBI's affidavit was unsealed and media coverage of the environmental violations at Rocky Flats exploded. Shortly thereafter, Stone filed a complaint under the qui tam provisions of the False Claims Act, alleging that Rockwell had committed numerous environmental, health, and safety violations at Rocky Flats since at least 1980 and that Rockwell had knowingly concealed these violations from the DOE in order to "induce the government to make payments or approvals."

**Procedural Posture**

In 1992, Rockwell attempted to dismiss Stone's complaint, alleging that

he was not an “original source” under the FCA. Under 31 U.S.C. § 3730(e)(4), an original source must be “an individual who has direct and independent knowledge of the information on which the allegations are based,” but Rockwell asserted that Stone was not an original source, because he filed his complaint after the extensive media coverage had occurred. On the basis of an additional affidavit submitted by Stone, the trial judge held that Stone had satisfied the FCA’s definition of an original source, and his case was allowed to proceed.

Extensive litigation continued until 1999, when the district court held in favor of Stone and the United States on the FCA claims. Rockwell then appealed to the Tenth Circuit, which held in favor of Stone’s claim and stated that an original source only needs to have knowledge of “information underlying or supporting the fraud allegations contained in the plaintiff’s *qui tam* complaint.” The Supreme Court granted certiorari on the issue of the meaning of “original source” under 31 U.S.C. § 3730(e)(4) in order to resolve a split among the circuit courts.

### Discussion and Analysis

Whistle-blower cases are big news. Because the idea of the “little guy” bringing a big corporation to its knees appeals to our sense of justice and independent spirit, these cases make headlines, cause scandals to erupt, and even form the subject of movies. However, the legal underpinnings of whistle-blower cases can be extremely complicated, and not just anyone can be an Erin Brockovich. Under the FCA, relators can bring a *qui tam* suit against a corporation that has committed fraud against the government. In order to be a relator, the person bringing suit must be an “original source” under 31 U.S.C. § 3730(e)(4). An original source must have “direct and independent knowledge” of the activities on which his or her claim is based; the knowledge cannot come from public sources, such as the media reports or judicial proceedings.

The courts currently disagree on what exactly constitutes an original source. The Third Circuit has held that the relator must have actual knowl-

edge of the fraud. The Ninth Circuit, in contrast, has taken the position that an original source’s accusation must be based on “information” as opposed to “speculation.” The D.C. Circuit has defined an original source differently, requiring that the relator have knowledge of the true state of affairs that the defendant has falsely represented. The Tenth Circuit’s definition of an original source in *Rockwell* is particularly loose and flexible, because of the determination that an original source only needs to have knowledge of information related to the fraud allegations contained in the relator’s *qui tam* complaint. The Supreme Court’s decision in this case will settle the question once and for all.

### Rockwell’s Argument Against the Tenth Circuit’s Interpretation

Rockwell International first argues that the Tenth Circuit’s holding that Stone was authorized to bring the action rested on an interpretation of the original source rule that departs from the text of the statute and conflicts with the legal standards adopted by five other circuits. Specifically, Stone conceded that he lacked direct and independent knowledge of fraudulent statements. His prediction that the pondcrete design that he had reviewed would fail is precisely the sort of “speculation or conjecture” that does not suffice according to the Ninth Circuit’s ruling. Moreover, the Tenth Circuit’s decision that Stone’s production of his 1982 Engineering Order met his burden of voluntary disclosure also conflicts with the laws in the District of Columbia and with rulings made by the Eighth Circuit, which require that a relator know the facts that made a statement false. If a relator must know an “essential element of the underlying fraud transaction,” then he or she also must adequately disclose an essential element. Stone did neither, yet the Tenth Circuit held that his speculation about design flaws in the pondcrete system was sufficient.

### United States Argument that No Circuit Split Exists

The United States, on the other hand, argues that petitioner’s claim of a conflict among the circuit courts

is unfounded. In *United States ex rel. Mistick PBT v. Housing Authority*, the Third Circuit held that a relator cannot qualify as an “original source,” because the relator had learned of the defendant’s alleged misrepresentations to the federal government through public release under the Freedom of Information Act, and therefore the relator lacked “direct and independent” knowledge of those misrepresentations. The United States contends that that holding is consistent with the Tenth Circuit’s decision in this case, in which Stone was a company insider aware of the petitioner’s willingness to misrepresent relevant facts in order to increase its compensation under its contract with the government.

Moreover, the respondent contends that the Tenth Circuit’s decision in this case is consistent with the Eleventh Circuit’s holding in *Cooper v. Blue Cross & Blue Shield of Florida*, in which the Court of Appeals held that the relator qualified as an original source, because the information obtained through the relator’s own efforts was “more than background information.” In *Cooper*, the court did not describe the categories of information that a relator must acquire directly and independently in order to satisfy the requirements of 31 U.S.C. § 3730(e)(4)(B) and did not, therefore, exclude the kind of information that Stone had acquired. Furthermore, the respondent claims that there is no basis for concluding that the Ninth Circuit would have reached a different outcome in this case. Even though, in *United States ex rel. Aflatooni v. Kitsap Physicians Services*, the Ninth Circuit stated that an “original source” must base the charge on information, as opposed to speculation, the court did not announce any test for distinguishing between the two.

Finally, the respondent claims that the Tenth Circuit’s decision in this case does not conflict with the D.C. Circuit’s ruling in *United States ex rel. Springfield Terminal Railway Co. v. Quinn* or the Eighth Circuit’s ruling in *Minnesota Ass’n of Nurse Anesthetists v. Allina Health System Corp.* Both of these circuits rejected the contention that an “original source” must have “direct and

**PREVIEWS** *continued on page 64*

independent” knowledge of the specific content of the defendant’s misrepresentations. Rather, both courts ruled that it is sufficient for the relator to have “direct and independent” knowledge of the true state of affairs that the defendant has falsely represented. Those holdings are consistent with the Tenth Circuit’s determination that Stone had satisfied the requirements of 31 U.S.C. § 3730(e)(4)(B), because “he obtained, through his own efforts and not through the labors of others, direct and independent knowledge that Rockwell’s designs for manufacturing pondcrete blocks would result in the release of toxic waste.”

If the Supreme Court upholds the Tenth Circuit’s more relaxed interpretation, the evidentiary barriers that keep potential relators from bringing qui tam suits will be substantially lowered. Individuals will be able to bring whistle-blower cases on the basis of publicly disclosed, broad, and unspecific information, potentially leading to an enormous increase in the number of businesses held liable under the False Claims Act. If, however, the Court elects to follow a stricter definition of “original source,” potential relators could be barred from bringing qui tam suits because they do not have the requisite knowledge, and businesses could more easily continue committing fraud against the government.

The outcome of *Rockwell* has major implications for any business that participates in government contracts or programs. The U.S. Chamber of Commerce is particularly concerned, claiming that the qui tam provisions of the False Claims Act “threaten every federal government contractor, health care provider, and grant recipient in the United States.” The rule concerning an original source sets up an important barrier to those who would file unfounded claims; therefore, a relaxation of that rule would permit more potential relators to file. Health care providers will be particularly affected, because the federal government “funds in full or in part” a large percentage of health care services through Medicare and Medicaid. The defense industry is also intimately linked to federal fund-

ing and contracts and will be substantially affected by the Court’s ultimate decision in this case. **TFL**

---

*Prepared by Kiernan Joliat and Emily Green.*

### **Ledbetter v. Goodyear Tire & Rubber Co. (05-1074)**

*Appealed from the U.S. Court of Appeals for the Eleventh Circuit (Aug. 23, 2005)*

**Oral Argument: Nov. 27, 2006**

Ledbetter sued her employer, Goodyear Tire and Rubber Company, under Title VII of the Civil Rights Act of 1964, alleging illegal pay discrimination. Prior to filing suit, Ledbetter filed a complaint with the Equal Employment Opportunity Commission, thereby setting the statutory period of her suit to 180 days before she filed the complaint. At trial, Ledbetter relied on evidence of discriminatory salary reviews that had occurred before the statutory period in order to prove that the pay she had received within the statutory period was discriminatorily low. Goodyear appealed the jury’s verdict, arguing that the company had not illegally discriminated against Ledbetter and that the statutory time period mandated by Title VII should limit Ledbetter’s evidence to the two incidents of allegedly discriminatory conduct that had occurred within the statutory period. The Eleventh Circuit agreed and dismissed the case. The Supreme Court must now determine how the statutory period affects the evidence employees can introduce under Title VII claims. Full text is available at [www.law.cornell.edu/supct/cert/05-1074.html](http://www.law.cornell.edu/supct/cert/05-1074.html). **TFL**

---

*Prepared by Kelly Cooke and Heidi Guetschow.*

### **Bell Atlantic Corp. v. Twombly (05-1126)**

*Appealed from the U.S. Court of Appeals for the Second Circuit (Oct. 3, 2005)*

**Oral Argument: Nov. 27, 2006**

Twombly brought a class action antitrust suit against local telephone and Internet providers, including Bell Atlantic, alleging that the defendants had agreed not to compete with one another and had conspired to prevent the entry of competitors into their respective territories. The district court granted Bell Atlantic’s motion to dismiss on the grounds that Twombly’s complaint failed to include a factual allegation that would “tend to exclude” independent self-interest as an explanation for the defendants’ parallel conduct. On appeal, the Second Circuit reversed the district court’s ruling and remanded the case on the grounds that a heightened pleading standard does not apply in the context of antitrust litigation. Bell Atlantic argues that application of the “tend to exclude” standard is necessary to filter frivolous lawsuits, whereas Twombly responds that the “tend to exclude” standard is contrary to the Federal Rules of Civil Procedure and would unfairly block meritorious antitrust suits, because generally respondents (not complainants) have exclusive access to evidence of conspiracies. Full text is available at [www.law.cornell.edu/supct/cert/05-1126.html](http://www.law.cornell.edu/supct/cert/05-1126.html). **TFL**

---

*Prepared by Clinton Becker and Samantha Kim.*

### **Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co. Inc. (05-381)**

*Appealed from the U.S. Court of Appeals for the Ninth Circuit (May 31, 2005)*

**Oral Argument: Nov. 28, 2006**

Ross-Simmons, a sawmill, went out of business after Weyerhaeuser, a giant in the forest industry, used its market share to drive up the price of sawlogs. At issue is whether the jury, after finding for Ross-Simmons and awarding the company \$70 million, used the proper standard when it found

that Weyerhaeuser had violated the antitrust provisions of the Sherman Act. Weyerhaeuser argues that the Brooke Group standard should have applied, thereby forcing the plaintiff to show that the defendant (1) had paid so much for raw materials that the price at which it sold its products did not cover its costs and (2) had faced a “dangerous probability” of subsequently recouping those losses. Ross-Simmons advocates for the Ninth Circuit’s less demanding standard, wherein the plaintiff may establish liability by showing that the defendant purchased more raw materials “than it needed” or paid a higher price for those inputs “than necessary” as a way to prevent competitors from buying the materials at a “fair price.” The Court’s decision could result in a dramatic shift of burdens between small businesses and large corporations, which can make a significant difference in antitrust suits involving treble damage. Full text is available at [www.law.cornell.edu/supct/cert/05-381.html](http://www.law.cornell.edu/supct/cert/05-381.html). **TFL**

---

*Prepared by Michael Fornasiero and Dylan Letrich.*

### **Massachusetts v. Environmental Protection Agency (05-1120)**

*Appealed from the U.S. Court of Appeals for the District of Columbia Circuit (July 15, 2005)*

**Oral Argument: Nov. 29, 2006**

In October 1999, several environmental groups petitioned the U.S. Environmental Protection Agency (EPA) to use its power to regulate carbon dioxide and other greenhouse gases emitted by new motor vehicles. According to these groups, greenhouse gases should be classified as “air pollutants,” which can be regulated under the Clean Air Act if they “can be reasonably anticipated to endanger public health or welfare.” Among the possible “dangers” to welfare, the Clean Air Act lists effects on “weather” and “climate.” However, almost four years later, the EPA officially denied the petition, saying that the Clean Air Act did not give the EPA the authority to regulate greenhouse gas emissions and, even if it did,

the EPA would not exercise such authority. According to the EPA, the causal link between greenhouse gases and global warming has not been proven conclusively. Clearly, the Court’s decision in this case will have a significant effect on federal, state, and local efforts to curb greenhouse gas emissions. Furthermore, the Court’s decision could determine the amount of deference that a federal agency should receive in its determinations and could lend credibility to a particular side of the scientific argument concerning the linking of greenhouse gases to global warming. Full text is available at [www.law.cornell.edu/supct/cert/05-1120.html](http://www.law.cornell.edu/supct/cert/05-1120.html). **TFL**

---

*Prepared by Heidi Abreu and Miguel Loza.*

### **Watters v. Wachovia Bank (05-1342)**

*Appealed from the U.S. Court of Appeals for the Sixth Circuit (Dec. 19, 2005)*

**Oral Argument: Nov. 29, 2006**

National banks are governed by the National Bank Act and the Office of the Comptroller of the Currency (OCC). Under § 484(a) of the National Bank Act, national banks are not subject to state regulation, and in 12 C.F.R. 7.4006 the OCC expanded the reach of § 484 to cover subsidiaries of national banks. Wachovia Mortgage, a state-chartered nonbank subsidiary of Wachovia Bank, a national bank, operates in Michigan, which seeks to exercise regulatory power over the entity. Both lower courts held that the OCC’s expansion of § 484 was valid and that Michigan could not exercise regulatory power over the subsidiary. In this case, the Court will determine whether the OCC has the authority to equate state-chartered national bank subsidiaries with their national parents to exempt them from state oversight and whether this action violates the Tenth Amendment. Some argue that states are better equipped to protect local consumers against unfair lending practices, while others believe all national banks should be subject to federal regulation as federally insured depository institutions. Full text is available at [www.law.cornell.edu/supct/cert/05-1342.html](http://www.law.cornell.edu/supct/cert/05-1342.html). **TFL**

[supct/cert/05-1342.html](http://www.law.cornell.edu/supct/cert/05-1342.html). **TFL**

---

*Prepared by John Schultz and Elizabeth Cusack.*

### **Parents Involved in Community Schools v. Seattle School District No. 1 (05-908)**

*Appealed from the U.S. Court of Appeals for the Ninth Circuit (Oct. 20, 2005)*

**Oral Argument: Dec. 4, 2006**

Seattle School District No. 1 uses an “open choice” plan that allows students to rank their preferred schools. When the district cannot accommodate a student’s first choice, race is used as a tiebreaker to achieve a desired racial balance at each school. Parents Involved in Community Schools, a nonprofit organization, argues that the district’s policy amounts to unconstitutional racial balancing under the Supreme Court’s 2003 decisions in *Grutter v. Bollinger* and *Gratz v. Bollinger*. The school district stresses that its consideration of race furthers the compelling state interest of achieving racial diversity. The Ninth Circuit Court of Appeals held that the district had a compelling state interest in achieving the benefits of racial diversity and that its plan was narrowly tailored to that goal. The Court must now determine whether, in light of its decisions about equal protection in *Grutter* and *Gratz*, racial diversity in high schools is a compelling state interest. Full text is available at [www.law.cornell.edu/supct/cert/05-908.html](http://www.law.cornell.edu/supct/cert/05-908.html). **TFL**

---

*Prepared by Cecelia Sander and Breanne Atzert.*

### **Meredith v. Jefferson County Board of Education (05-915)**

*Appealed from the U.S. Court of Appeals for the Sixth Circuit (July 21, 2005)*

**PREVIEWS** *continued on page 66*

**Oral Argument: Dec. 4, 2006**

Kentucky's Jefferson County Public School District requires that 15–50 percent of all students in each school be African-American. Petitioner Crystal Meredith *claims* that the district had violated the Fourteenth Amendment when it rejected her application to enroll her son at a nearby school on the basis of race. To decide this case, the Supreme Court will have to determine whether racial diversity in K–12 public education is a compelling state interest and whether the district's racial range mandate is narrowly tailored to further that interest. The decision will determine the extent to which schools are permitted to consider race in school assignment policies. Full text is available at [www.law.cornell.edu/supct/cert/05-915.html](http://www.law.cornell.edu/supct/cert/05-915.html). **TFL**

*Prepared by Ferve Ozturk and Jamie Rogers.*

**Gonzales v. Duenas-Alvarez (05-1629)**

*Appealed from the U.S. Court of Appeals for the Ninth Circuit (Apr. 13, 2006)*

**Oral Argument: Dec. 5, 2006**

In 2002, Duenas-Alvarez, a Peruvian national, was found guilty of a violation of California Vehicle Code § 10851(a), which makes it illegal to take a vehicle without the owner's consent or to aid or abet in such a taking. The Department of Homeland Security sought Duenas-Alvarez's deportation based on the Immigration and Nationality Act, which allows the government to deport aliens convicted of an "aggravated felony," a category that includes "theft offenses." The Ninth Circuit Court of Appeals overturned the deportation order, reasoning that, because the California statute allows for convictions based solely on aiding and abetting, conviction under the statute did not necessarily mean that Duenas-Alvarez had committed a "theft offense." Nonetheless, the Department of Homeland Security contends that, although accomplice liability implies less involvement in the offense, the felony remains a "theft offense." The Court's decision in this case will affect the immigration status of more than 8,000 resident aliens who currently face deportation for theft offenses. Full text is available at [www.law.cornell.edu/supct/cert/05-1629.html](http://www.law.cornell.edu/supct/cert/05-1629.html). **TFL**

*Prepared by Angela Winfield and Richard Beaulieu.*

| *Letter to the Editor* |

**Confederate Judiciary**

I just finished reading Judge Gustavo A. Gelpi's article "The Federal Judiciary of the Confederate States of America During the Civil War Period (1861-1865), in the October issue of *The Federal Lawyer*. I had known nothing about the CSA courts and

found the article extremely interesting and well-written. Kudos to Judge Gelpi and to *The Federal Lawyer* for being willing to expose FBA members to illuminating legal history.

*Henry Kantor  
FBA Oregon Chapter*

**NEED EXTRA  
MONEY FOR YOUR  
CHAPTER'S PUBLIC  
SERVICE OR PRO**

**Each year the Younger Lawyers Division awards a grant in the amount of \$2,500 to a local chapter. The grant is made possible by the generous contributions of Ilene and Michael Shaw. The grant is awarded for the purpose of funding public service projects and pro bono law-related services.**

**The deadline for nominations is July 17, 2007. Applications can be downloaded from the YLD Web site at [www.fba-yld.org](http://www.fba-yld.org). Please send your completed application forms to the Federal Bar Association, Attn: YLD Shaw Grant, 2215 M Street, NW, Washington, D.C. 20037.**

**Don't miss this excellent opportunity to obtain much needed extra funding for your worthy public programs. Apply now!**

