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American Needle Inc. v. National Football League et al. (08-661)

Appealed from the U.S. Court of Appeals for the Seventh Circuit (Aug. 18, 2008)

Oral argument: Jan. 13, 2010

Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, provides that “[e]very contract, combination ... or conspiracy, in restraint of trade or commerce ... is declared to be illegal.” However, § 1 does not apply to purely unilateral conduct. See *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 761 (1984). In *Copperweld v. Independence Tube*, the Supreme Court held that no “contract, combination ... or conspiracy” within the meaning of the Sherman Act is possible between a parent company and its wholly owned subsidiary, because the entities are subject to unitary control and constitute a single entity. 467 U.S. 752 at 771–72 (1984). In this case, the Court will address whether the 32 teams in the National Football League (NFL) should be considered a single entity in jointly licensing to a single supplier intellectual property that is individually owned by each team.

Background

The National Football League is an unincorporated association comprised of 32 professional football teams. In 1963, the NFL teams formed a separate entity called NFL Properties (NFLP) to license and market the teams’ intellectual property and to promote the league. NFLP is responsible for granting licenses to manufacturers and vendors of consumer products that feature the logos of the NFL teams. For years, NFLP granted licenses simultaneously to several vendors who produced headwear, such as caps and knit hats. American Needle Inc. was one such

vendor, holding a headwear license for 20 years before it expired in 2000. In 2000, the NFL authorized NFLP to solicit bids from vendors for an exclusive headwear license. Reebok International Ltd. won the bid and in 2001 received an exclusive license to produce headwear featuring NFL team logos for 10 years. Thus, NFLP did not renew American Needle’s license or the licenses of any other headwear vendors.

American Needle filed an antitrust lawsuit in the U.S. District Court for the Northern District of Illinois against the NFL, NFLP, the individual NFL teams, and Reebok, claiming that the exclusive headwear license violated § 1 of the Sherman Act. *Am. Needle Inc. v. Nat’l. Football League*, 538 F.3d 736, 738 (2008). One year later, the defendants moved for summary judgment on the § 1 claim, arguing that the NFL was immune from § 1 liability as a “single entity.” In response, American Needle sought a continuance and asked the district court to allow discovery. Discovery ensued and upon completion, American Needle renewed its motion for discovery, claiming that it had not received the materials requested in the first motion. The district court denied American Needle’s motion and granted the defendants’ motion for summary judgment on the § 1 claim, holding that “the NFL and the teams act as a single entity in licensing their intellectual property.” *Id.* at 739 (quoting *Am. Needle Inc. v. New Orleans Louisiana Saints*, 496 F. Supp. 2d. 941, 944 (N.D. Ill. 2007)).

The Seventh Circuit affirmed the judgment, ruling that the NFL and the teams could be considered a single economic entity and that the agreement among the teams was therefore immune from § 1 claims. *Am. Needle*, 538 F.3d at 744. American Needle peti-

tioned the Supreme Court for certiorari, which the Court granted on June 29, 2009.

Impact

The Court’s ruling may affect other professional sports leagues as well as “joint ventures” in other industries, such as banking and utilities. If the Court holds that the NFL is a single entity, American Needle argues, consumers will be adversely affected. American Needle notes that the price of a baseball cap featuring an NFL team logo increased 50 percent after the NFL granted the exclusive headwear license to Reebok. Furthermore, American Needle alleges that the single entity approach allows professional sports teams to put restrictions on the broadcasting of games, thus increasing the cost to the viewer. Amici such as the NFL Coaches Association and the NFL Players Association argue that treating the NFL as a single entity could adversely affect the value and availability of the contracts for coaches and athletes, because NFL teams could collectively agree not to hire or restrict the wages of coaches or players. Economists writing in support of American Needle contend that sports leagues in other countries are not structured around a central organization like the NFL and that these alternative models are quite successful. Thus, they conclude that the NFL does not need to be considered a single entity to be economically viable.

In response, the NFL contends that treating the league as a single entity leads to better economic benefits for everyone. In support, VF Imagewear Inc., another manufacturer of products featuring the logos of sports teams, argues that the exclusive license contract model is more efficient for vendors than individual negotiations with each of the 32 NFL teams. This centralized process, VF Imagewear contends, leads to greater selection and lower prices for consumers. Finally, several economists in support of the NFL argue that joint ventures can be economically efficient and should not be discouraged by the Sherman Act.

Legal Arguments

The Supreme Court has consistently applied § 1 of the Sherman Act to entities involved in joint ventures, even when cooperation between the entities is necessary for the joint venture to succeed. See, for example, *Copperweld*, 467 U.S. at 768; *Associated Press v. United States*, 326 U.S. 1, 11–15 (1945). Generally, when applying § 1 to a joint venture, the Court applies a “rule of reason” analysis, finding a violation only if the anti-competitive economic effects outweigh the pro-competitive benefits of the agreement. See *Broad. Music Inc. v. Columbia Broad. Sys. Inc.*, 441 U.S. 1, 24 (1979). The Court has held that a legitimate joint venture’s internal decisions regarding the best way to sell its products are not per se violations of § 1 of the Sherman Act. See *Texaco Inc. v. Dahger*, 547 U.S. 1, 6–7 (2006).

Does § 1 Apply to the NFL’s Licensing Agreement?

American Needle argues that § 1 of the Sherman Act should apply to the exclusive licensing agreement, because each NFL team is separately owned and operated, and the Court has consistently found that § 1 applies to all agreements between separately owned entities operating in interstate commerce. Despite the Court’s holding in *Copperweld* that a parent company and its wholly owned subsidiary are not subject to § 1, American Needle argues that *Copperweld* also affirmed that § 1 applies to all agreements between separately owned and operated entities. Although the NFL teams act as a joint venture and cooperate in various aspects of the league’s operations, the teams also act as competitors in many ways, including in licensing and merchandising activities. American Needle argues that, because the NFL teams do not uniformly act with unitary interest, the logic of *Copperweld* cannot extend to apply to NFL teams.

In contrast, the NFL and Reebok contend that § 1 should not apply to the licensing agreement, because an internal agreement between the NFL teams to jointly license their intellectual property is not the type of agreement the Sherman Act is meant to prohibit. The NFL argues that the determination of whether the NFL teams act as a single

entity should focus on economic realities rather than on a formal determination of the league’s structure. Given the fact that individual NFL teams would be inherently unable to produce the NFL products independently, the NFL argues that the clubs are interdependent and must work as a collective source of economic power to produce a product. Consequently, although the NFL teams compete on the field, in an economic sense, the teams combine to form a single firm. The NFL argues that *Copperweld* explicitly held that a firm should be free to structure itself in a way that makes it possible to achieve the largest efficiencies without increasing its antitrust exposure. From Reebok’s perspective, the ability to conduct business transactions with the NFL teams as a single entity captures significant efficiencies and allows Reebok to produce goods that meet consumer demand. The NFL argues that, in order to ensure the success of NFL Football, the teams must be able to jointly promote the product by collectively licensing its intellectual property.

Precedent and Legislative Acts

American Needle asserts that the NFL does not constitute a single entity under the *Copperweld* doctrine, because the Court has never extended its single entity theory beyond the case of a parent company and its wholly owned subsidiary. In previous cases, the Supreme Court and federal circuit courts applied § 1 to agreements between the NFL teams and teams in other sports leagues, including the NCAA. In addition, American Needle contends that the NFL teams and other sports leagues should not be immune from antitrust scrutiny. American Needle notes four separate occasions in which Congress failed to pass bills that would have granted antitrust immunity to sports leagues, including the NFL.

The NFL counters that the Court’s previous decisions have not determined the proper analysis to apply when the challenged decision was made within a league as opposed to between separate sports leagues, and especially when the decision concerns promotion of the collective product of the league’s members. Furthermore,

the NFL claims that this case cannot be fairly compared with the precedent involving the NCAA, because, at the time of the relevant decision, *NCAA v. Board of Regents*, 465 U.S. 85 (1984), the NCAA was a collection of independent sports leagues, “each of which was separately capable of generating a season of athletic competition” that did not act interdependently “in any material way.” The NFL also argues that bills Congress failed to pass cannot provide insight into Congress’ view of the Sherman Act, especially because the bills in question exempted sports leagues from § 2 of the Sherman Act, rather than § 1. In addition, the NFL maintains that Congress has rejected legislation that would have affirmatively subjected sports leagues to antitrust scrutiny. Finally, Reebok contends that the courts have firmly established that the antitrust laws are meant to protect competition, not individual competitors such as American Needle, and that competition between companies for exclusive contracts is a well-established form of legitimate competition.

Conclusion

The Court will determine whether the single entity exemption to § 1 of the Sherman Act applies to a joint venture that acts with unitary interest in parts of its business or whether the exemption applies only to a parent company and its subsidiary. American Needle insists that joint ventures are subject to § 1 liability and that, because the NFL does not act with unitary interest in all of its functions, the league is capable of conspiring for antitrust purposes. The NFL counters that it must act interdependently in order to produce a competitive product and, consequently, should be exempt from antitrust liability for those limited actions. Full text available at topics.law.cornell.edu/supct/cert/08-661. **TFL**

Prepared by Samuel Farina-Henry and Kelly Vaughan. Edited by Joe Rancour.

***Briscoe v. Virginia* (07-11191)**

Appealed from the Supreme Court of Virginia (Feb. 29, 2008)

Oral argument: Jan. 11, 2010

In June 2009, in the case of *Melendez-Diaz v. Massachusetts*, the Supreme Court held that, under the Confrontation Clause of the Sixth Amendment, forensic certificates of analysis must be accompanied by an opportunity to cross-examine the analyst who prepared the report. Virginia Code allowed defendants to question a forensic analyst at trial by calling the analyst as a witness but did not require that the prosecution call the analyst as a witness during its case-in-chief. The petitioners, Mark Briscoe and Sheldon Cypress, argue that these provisions violate the Confrontation Clause by improperly shifting the burden of confrontation from the prosecution to the defendant. This case could affect trial strategy and the costs of forensic evidence and could also provide an opportunity for the Court to examine last year's 5-4 decision in *Melendez-Diaz*, in which recently retired Justice David Souter cast the deciding vote.

Background

Statutes at Issue

This case involves Virginia Code §§ 19.2-187 and 19.187.1, as written before Aug. 21, 2009. These statutes governed the admissibility into evidence of certificates of analysis and allowed a forensic expert to submit an analysis of evidence—such as DNA or drugs—without having to testify in person. Under § 19.2-187, the certificate must have been filed with the court at least seven days prior to trial. In *Melendez-Diaz v. Massachusetts*, the Supreme Court determined that, under the Sixth Amendment, certificates of analysis, such as lab reports confirming that a seized substance is an illegal drug, are “testimonial” and thus must be accompanied by an opportunity to cross-examine the forensic analyst who prepared the report. Old Section 19.2-187.1 provided that, whenever a certificate of analysis is admitted into evidence, the accused

will have the right to call the person who performed the examination as a witness “and examine him in the same manner as if he had been called as an adverse witness.” *Briscoe v. Virginia* addresses whether Virginia's provisions comply with the Court's reading of the Confrontation Clause in *Melendez-Diaz* by allowing the defendant to call the prosecution's forensic analyst as a witness, rather than requiring the analyst to be produced for cross-examination during the prosecution's presentation of its case-in-chief.

Facts of the Plaintiffs' Cases

Sheldon Cypress was arrested for drug possession after police found what appeared to be crack cocaine in a car in which he was a passenger. In an unrelated incident, Mark Briscoe was arrested for drug trafficking after police found a rock-like substance in his shorts while executing a search warrant.

The trials of both Cypress and Briscoe concerned the application of Virginia Code § 19.2-187. In each case, a forensic scientist determined that the confiscated substance was cocaine. In both cases, the forensic scientist prepared a written certificate of analysis confirming the amount of narcotics that had been found, which the prosecution then entered into evidence under § 19-187.1. Both Cypress and Briscoe objected at their trials, arguing that the evidence was “testimonial” in nature and therefore inadmissible without live testimony from the forensic analyst who had conducted the test. Both defendants relied on the Supreme Court's decision in *Crawford v. Washington*, 541 U.S. 36 (2004), which held that the Sixth Amendment's Confrontation Clause requires cross-examination of a witness producing “testimonial” evidence. Both trial courts denied their motions, noting that § 19.2-187.1 allowed the defendants to summon and call the forensic scientist as a witness. See *Magruder v. Commonwealth*, 657 S.E.2d 113, 116–17 (Va. 2008). Neither Cypress nor Briscoe called the forensic scientist as a witness, and both were found guilty.

The Supreme Court of Virginia con-

solidated both Cypress' and Briscoe's appeals challenging § 19.2-187. On Feb. 29, 2009, the court denied both appeals, holding that § 19.2-187.1 adequately protected the defendants' Sixth Amendment rights, because defendants could have either objected under the statute or called the analyst as a defense witness. *Magruder*, 657 S.E.2d at 121, 127. The court also ruled that the defendants had waived the right to confront the witness because the statute put the defendants on notice of the charges against them. *Id.* at 124. Cypress and Briscoe appealed their convictions to the U.S. Supreme Court, which granted certiorari on June 29, 2009.

Impact

The Commonwealth of Virginia argues that its forensic certificate statute is constitutional, because it allows the defendant to confront his accuser in court. Briscoe and Cypress argue that the statute is unconstitutional, because it shifts the burden of calling the analyst to the defendant, whereas the burden imposed by the Confrontation Clause is on the prosecution to present its witnesses, not on the defense to present witnesses adverse to the defendant.

Tactical Differences Between Cross-Examination and Direct Questioning

Briscoe and Cypress assert that requiring the defense to call an analyst would impose a number of tactical disadvantages on a defendant, because the requirement forces the defendant to bring an adverse witness during the defendant's own case, which can be disruptive and damaging, and also exposes the defendant to the risk of “no-shows” and delays that would not exist if the prosecution were required to call and question the witness first. Briscoe and Cypress note that there may be a gap between the time when the written testimony has been presented and the time when the analyst is cross-examined, undermining the effectiveness of the questioning. If this gap exists, the defense may have to remind the trier of fact of the adverse statement, thereby reiterating the damaging information.

Virginia responds that the purpose of the Confrontation Clause has noth-

ing to do with the order of questioning or the timing of presenting evidence at trial; rather, the purpose of the clause is to ensure that defendants have an opportunity to examine adverse witnesses in court. The United States, in support of Virginia, argues that Briscoe and Cypress' tactical concerns are not rights that are protected under the Sixth Amendment. Further, the United States claims that these concerns are overstated, because there are often time gaps between testimony resulting from court recesses or other scheduling issues that prevent immediate cross-examination of adverse witnesses.

Costs

The attorneys general of 26 states and the District of Columbia note that, since 2001, law enforcement officials have analyzed more than 1.7 million substances each year. The financial cost of this work is high: these states and the District of Columbia spent \$4.5 billion in 2005 fighting drug-related criminal offenses in state courts. The attorneys general note that, since *Melendez-Diaz*, forensic analysts have to spend more time away from their work sitting in court and that a decision for Briscoe and Cypress would threaten many of the cost-saving and time-saving measures introduced by their states in response to *Melendez-Diaz*, such as video conferencing and testimony by surrogates.

Briscoe and Cypress assert that a "notice-and-demand" system, in which the defendant can demand that the prosecutor call the forensic analyst as a witness, is a cost-efficient solution that is consistent with *Melendez-Diaz*, because a defendant will invoke this option only when cross-examination is worth the risk that the analyst's live adverse testimony would be presented "far more vividly than in a paper report." Briscoe and Cypress note that numerous states require a notice-and-demand system with no apparent detriment to the criminal justice system. The Public Defender Service for the District of Columbia argues that, even if there is an increased cost in reversing the ruling handed down by the Supreme Court of Virginia, states must bear the additional cost in order to protect a defendant's constitutional rights.

Legal Arguments

Briscoe and Cypress claim that the Virginia statutes at issue violate the Confrontation Clause of the Sixth Amendment, which provides that, "In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witness against him [and] to have compulsory process for obtaining witnesses in his favor." U.S. Const. Amend. VI. The Supreme Court of Virginia held that the statutes did not violate the Confrontation Clause, because they provided the opportunity for the defendant to question the forensic analyst as an adverse witness and that Briscoe and Cypress waived their Sixth Amendment right to confrontation by failing to secure and call the analyst at trial. *See Magruder*, 657 S.E.2d at 115.

Application of *Melendez-Diaz v. Massachusetts*

In *Melendez-Diaz*, the Court determined that the "power [to subpoena analysts] whether pursuant to state law or the Compulsory Process Clause is no substitute for the right of confrontation." 129 S. Ct. at 2540. Briscoe and Cypress argue that *Melendez-Diaz* therefore resolves the question presented in this case in their favor, because the Virginia statutes conferred subpoena power to the defendant rather than ensuring proper their right to confront the analyst.

However, Virginia contends that *Melendez-Diaz* did not resolve whether the Confrontation Clause "requires the prosecution to present the witness's testimony during the prosecution's case-in-chief." Virginia claims that *Melendez-Diaz* holds that the prosecution must present or produce the witness to allow the defendant the opportunity to cross-examine the analyst, not that the prosecution must call the analyst during its own case-in-chief.

Shifting the Burdens and Risks

Briscoe and Cypress argue that Virginia's "subpoena system" shifts the risk that an analyst will not appear as a witness at trial onto the defendant. Therefore, Virginia does not guarantee that the defendant will be able to confront the witness at all. Briscoe and Cypress note that, in the *Melendez-Diaz* ruling, the Court stated that "the Con-

frontation Clause imposes a burden on the prosecution to present its witnesses, not on the defendant to bring those adverse witnesses into court." 129 S. Ct. at 2540.

Virginia counters that the statutes in question *require* the prosecution to produce the analyst if the defendant properly demands that this be done. Virginia argues that, "[o]nce the analyst is produced, the defendant might be required to question the analyst during the defense's case-in-chief, or the prosecution may take the initiative and adduce the testimony during the prosecution's case-in-chief." Virginia argues this structure does not violate the Confrontation Clause, because the defendant receives all the protections offered by the Confrontation Clause: the oath, the opportunity to question the witness, and the opportunity for the jury to observe the witness' demeanor.

Issue of Waiver

Virginia contends that Briscoe and Cypress waived their right to confront the witness, because they neither subpoenaed the analyst nor requested the prosecution to produce the analyst at trial as they were entitled to do. Furthermore, Virginia claims that it is unclear what would have happened if Briscoe and Cypress had demanded production of the witness and then insisted to the trial court that the prosecution call the witness. Virginia claims that Briscoe and Cypress are attempting to secure an advisory opinion from the Court about "what might have happened had the analyst been present," even though they waived the right to confront the witness.

Briscoe and Cypress contend that, because the opportunity to call a witness to the stand without the prosecutor first examining the witness is of so little value, a defendant does not waive his or her Sixth Amendment right "by failing to invoke this inferior alternative." Briscoe and Cypress characterize the right to immediately cross-examine an adverse witness during the prosecution's case-in-chief and the ability to simply question an adverse witness without the prosecutor first examining the witness as drastically different from

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one another. Therefore, Briscoe and Cypress contend, far from waiving their confrontation right, they “vigorously demanded” it “and, at most, waived the inferior opportunity Virginia offered them in lieu of the right.”

Conclusion

This case addresses whether Virginia’s practice of allowing the defendant to call the prosecution’s forensic analyst as a witness, rather than requiring the analyst to be available for cross-examination during the prosecution’s case-in-chief, violates the Sixth Amendment’s Confrontation Clause. The Supreme Court’s decision in this case will signal whether the *Melendez-Diaz* decision will be circumscribed to a narrow holding, or whether it signals a strict approach to safeguarding rights under the Confrontation Clause. Full text available at topics.law.cornell.edu/supct/cert/07-11191. **TFL**

Prepared by Michelle Lynn and Chris Maier. Edited by Katie Worthington.

Alabama v. North Carolina (No. 132, Original)

Original Jurisdiction: On Motion of North Carolina to Dismiss Claims of the Southeast Interstate Low-Level Radioactive Waste Management Commission

Oral argument: Jan. 11, 2010

This case involves a lawsuit brought by several states and the Southeast Interstate Low-Level Radioactive Waste Management Commission against the state of North Carolina for its alleged breach of contract under the Southeast Interstate Low-Level Radioactive Waste Management Compact to license a waste disposal facility. In June 2002, the member states of the compact and the commission filed a bill of complaint, which the Supreme Court granted. The special master then filed his preliminary and second reports with this Court on April 2, 2009. The Supreme Court subsequently received these reports and ordered them to be filed. This case is now before the Supreme Court as both an original and exclusive jurisdiction case; it also ad-

resses issues of contract law. The Supreme Court’s decision in *Alabama v. North Carolina* may have significant ramifications for constitutional law, most notably the extent of the Court’s original and exclusive jurisdiction over a judicial case or controversy between states. Full text available at topics.law.cornell.edu/supct/cert/132orig. **TFL**

Prepared by Catherine Sub and Andrew Kaplan. Edited by Lara Haddad.

Abbott v. Abbott (08-645)

Appealed from the U.S. Court of Appeals for the Fifth Circuit (Sept. 16, 2008)

Oral argument: Jan. 12, 2010

Timothy Abbott, the petitioner, and Jacquelyn Abbott, the respondent, divorced in Chile. The Chilean court granted the mother custody of the couple’s son while allowing the father only visitation rights. At the mother’s request, the Chilean court issued a ne exeat order prohibiting either parent from removing the child from Chile without the agreement of both parents, but the mother brought her son to the United States without obtaining the father’s consent to do so. The father asks the Supreme Court to decide whether the ne exeat order constitutes a right of custody under the Hague Convention on the Civil Aspects of International Child Abduction. A right of custody ruling would mandate returning the child to Chile. This case will have an impact primarily on international child custody battles in which one parent abducts a child and takes the child to or from the United States. Full text available at topics.law.cornell.edu/supct/cert/08-645. **TFL**

Prepared by Rebecca Vernon and Mian Wang. Edited by James McConnell.

Berghuis v. Smith (08-1402)

Appealed from the U.S. Court of Appeals for the Sixth Circuit (Sept. 24, 2008)

Oral argument: Jan. 20, 2010

In 1993, an all-white jury convicted Diapolis Smith of second-degree murder and possession of a firearm during

a felony. A 1990 census showed that African-Americans made up 7.8 percent of eligible jurors in the relevant county and 18.1 percent of eligible jurors in the relevant city. Smith challenged the county’s system of jury selection, arguing that it violated his Sixth Amendment right to a jury drawn from a fair cross-section of the community. The Sixth Circuit ruled in his favor, rejecting Mary Berghuis’ proposed “absolute-disparity test,” which subtracts the percentage of adult members of a distinct group in the venire from the percentage of eligible jurors of that distinct group in the population. Instead, the court applied the “comparative-disparity test,” which divides the absolute disparity by the percentage of the distinct group in the community. The Supreme Court’s decision may have an impact on the composition of juries. Full text available at topics.law.cornell.edu/supct/cert/08-1402. **TFL**

Prepared by Lilian Balasarian and Tamilia Chiu. Edited by Lucienne Pierre.

Conkright v. Frommert (08-810)

Appealed from the U.S. Court of Appeals for the Second Circuit (July 24, 2008)

Oral argument: Jan. 20, 2009

Courts generally give deference to discretionary decisions made by administrators of ERISA pension plans. This case tests the limits of that deference and will decide if a court is obligated to defer to a plan administrator’s proposed remedy for an ERISA violation when the cause of the violation itself was the administrator’s prior interpretation. Petitioners and their amici argue that allowing judges to get involved in determinations about ERISA pension plans without deferring to decisions made by the plan administrator will increase the costs and uncertainty of maintaining pension plans. Respondents and their amici, on the other hand, argue that deferring repeatedly to a plan administrator will increase costs through more and prolonged litigation and will be unfair to plan participants, who justifiably rely on promised benefits when planning for retirement. Full

text available at topics.law.cornell.edu/supct/cert/08-810. **TFL**

Prepared by Kevin Jackson and Eric Johnson. Edited by Lucienne Pierre.

Granite Rock Company v. International Brotherhood of Teamsters (08-1214)

Appealed from: U.S. Court of Appeals for the Ninth Circuit (Oct. 22, 2008)

Oral argument: Jan. 19, 2010

The petitioner, Granite Rock, and the respondent, Teamsters Local 287, negotiated a new collective bargaining agreement that included no-strike and arbitration clauses. A dispute arose regarding the validity of the agreement after Local 287 initiated a strike with the support of the respondent, International Brotherhood of Teamsters (IBT). Granite Rock sued Local 287 and IBT under § 301(a) of the Labor-Management Relations Act. The district court found that the agreement including the arbitration clause was valid and, therefore, referred Granite Rock and Local 287 to arbitration. The court, however, dismissed the claim against IBT, holding that § 301(a) did not apply. The Ninth Circuit upheld IBT's dismissal but held that the district court should have also deferred the question of whether a contract was formed to arbitration. The Supreme Court must now decide if a federal court has initial jurisdiction to determine the validity of a contract containing an arbitration clause and whether § 301(a) allows plaintiffs to sue others who are not parties to the contract. Full text available at topics.law.cornell.edu/supct/cert/08-1214. **TFL**

Prepared by Joanna Chen and Oliver Riemers. Edited by James McConnell.

Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA et al. (08-1200)

Appealed from the U.S. Court of Appeals for the Sixth Circuit (Aug. 18, 2008)

Oral argument: Jan. 13, 2010

In 2006, the respondents, Carlisle, McNellie, Rini, Kramer & Ulrich, LPA et al. (Carlisle) served the petitioner, Kar-

en Jerman, with a notice of collection, which included a provision requiring the debtor to dispute the debt in writing. Carlisle based the provision on the firm's understanding of current Sixth Circuit case law interpreting the Fair Debt Collection Practices Act (FDCPA). The district court concluded that the FDCPA, which governs debt collection practices, does not require the plaintiff to dispute the debt in writing and consequently the notice violated the act. However, the court granted Carlisle immunity under the FDCPA's "bona fide error defense," which protects debt collectors from penalties for unintentional violations of the FDCPA. Jerman contends that the defense does not include violations resulting from legal errors, such as misinterpretations of the statute. Carlisle counters that the Sixth Circuit ruling should be upheld because the plain language of the statute includes legal errors under the defense. This decision will potentially resolve a split among circuit courts on this issue. The ruling may also affect professional responsibility standards for attorneys involved in collecting debts as well as the incentives of individuals to bring suit against debt collectors when areas of the law are unsettled. Full text available at topics.law.cornell.edu/supct/cert/08-1200. **TFL**

Prepared by Rob Trichinelli and Kevin Sholette. Edited by Lara Haddad.

Mac's Shell Service v. Shell Oil Products Co. (08-240); Shell Oil Products Co. v. Mac's Shell Service (08-372)

Appealed from the U.S. Court of Appeals for the First Circuit (April 18, 2008)

Oral argument: Jan. 19, 2010

The Petroleum Marketing Practices Act (PMPA) is a federal law regulating the relationship between oil companies and independent franchised gas retailers. In this case, Shell Oil assigned its rights under a number of existing franchise agreements to a third party. The plaintiffs, Mac's Shell Service and a group of gas station owners signed new modified franchise agreements with the third party "under protest" and brought suit on the theory that signing

the lease under protest amounted to a "constructive nonrenewal," which in turn allowed them to bring a claim for relief under the PMPA. In addition, the plaintiffs claimed that the assignment of the lease itself was a "constructive termination" of the contract. The First Circuit Court of Appeals held that there was no claim for "constructive nonrenewal" under the PMPA but upheld a jury verdict for the plaintiffs on their "constructive termination" claim. Both parties were granted certiorari, and their claims were consolidated. Full text available at topics.law.cornell.edu/supct/cert/08-240. **TFL**

Prepared by Tom Kurland and Matthew Benner. Edited by Katie Worthington.

United States v. Comstock (08-1224)

Appealed from the U.S. Court of Appeals for the Fourth Circuit (Jan. 8, 2009)

Oral argument: Jan. 12, 2009

The petitioner, the United States, argues that 18 U.S.C. § 4248, which authorizes the civil commitment of "sexually dangerous" persons, is a constitutional exercise of congressional power. The respondents, Graydon Earl Comstock Jr., et al., counter that civil commitment of an individual after the completion of a federal prison sentence exceeds congressional power, because it encroaches on states' authority and is neither necessary nor proper to operating a valid federal regulation. The Fourth Circuit rejected the United States' argument that § 4248 is necessary and proper to its ability to maintain the federal penal system. The Supreme Court must now decide whether § 4248 is incidental to Congress' Article I powers and whether civil commitment of individuals labeled "sexually dangerous" and already in federal custody or incompetent to stand trial is an encroachment on state power. Full text available at topics.law.cornell.edu/supct/cert/08-1224. **TFL**

Prepared by Kate Haijar and Barbara Bispham. Edited by Lauren Jones.