The previews are contributed by the Legal Information Institute, a nonprofit activity of Cornell Law School. The previews include 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.

AMGEN v. CONNECTICUT RETIREMENT PLANS (11-1085)

Appealed from the U.S. Court of Appeals for the Ninth Circuit
Oral argument: Nov. 5, 2012

Questions presented are (1) Whether, in a misrepresentation case under SEC Rule 10b-5, the district court must require proof of materiality before certifying a plaintiff class based on the fraud-on-the-market theory; and (2) Whether, in such a case, the district court must allow the defendant to present evidence rebutting the applicability of the fraud-on-the-market theory before certifying a plaintiff class based on that theory.

Issue(s) include (1) Whether a showing of materiality is required before a class action involving a fraud-on-the-market theory issue can be certified; and (2) Whether a defendant must be permitted to rebut the theory prior to class certification.

Facts

Respondent Connecticut Retirement Plans and Trust Funds' ("Connecticut Retirement") purchased securities offered by petitioner Amgen, Inc. ("Amgen"), a biotechnology company that manufactures pharmaceutical drugs. The Connecticut State Treasurer supervises the investments of Connecticut Retirement. Connecticut Retirement filed a lawsuit against Amgen in the Central District of California, alleging violations of the Securities Exchange Act and Securities and Exchange Commission Rule 10b-5. Connecticut Retirement alleged that Amgen represented that the drugs Aranesp and Epogen were safe despite knowing of evidence that these drugs could be very dangerous, possibly promoting tumor growth in some cancer patients. Additionally, Connecticut Retirement claimed that because the drugs were held out to be safe when it invested in Amgen, Amgen's stock was worth more at that time; however, when Amgen later disclosed the potentially dangerous effects of the drugs, the value of the stock plummeted. As a result of this, Connecticut Retirement alleged that investors suffered due to Amgen's misrepresentations of the drugs.

Connecticut Retirement moved for certification as a class action, in which Connecticut Retirement would represent others similarly harmed by Amgen's actions. The district court found that a class action would be appropriate here because the issues were common to all members of the class, and also refused to allow Amgen the chance to rebut evidence of materiality at the class certification hearing. The U.S. Ninth Circuit Court of Appeals affirmed the class certification as well as the district court's refusal. The Supreme Court granted Amgen's petition for writ of certiorari on June 12, 2012.

Discussion

In order to maintain a cause of action for securities fraud, a plaintiff must establish that the defendant made untrue statements on which the plaintiff relied; in a class action lawsuit, the plaintiff must show that the question of reliance is shared by an entire group or class of investors. Petitioner Amgen argues that to show a class of investors exists, a plaintiff must show that the entire group materially relied on the defendant's allegedly untrue statements. In contrast, respondent Connecticut Retirement Plans and Trust Funds (Connecticut Retirement) argues that to show a class exists, a plaintiff need not go beyond showing that the question of reliance is common to the group.

Wasting Judicial Resources

Amgen notes that if the court waits to decide on the question as to whether a class of investors materially relied on the defendant's statements, then a court risks spending judicial resources on cases that will ultimately prove unsuccessful. In support of Amgen, the Securities Industry and Financial Markets Association ("SIFMA") contends that a full examination of materiality to determine whether a class exists would facilitate the smooth management of justice by preventing meritless claims from proceeding.

In support of Connecticut Retirement, the National Association of Shareholder and Consumer Attorneys (NASCAT) argues that addressing materiality at class certification would only serve to drag out securities fraud litigation and require intensive discovery, which is inappropriate at the class certification stage. Similarly, Public Citizen, Inc. notes that requiring materiality for certifying a class would hinder the smooth management of justice by demanding the resolution of a question of fact before engaging in discovery for the other merits of the case.

Furtherance of Justice

Amgen cautions that allowing a class of investors to be certified without showing material reliance would loosen the requirements for class certification at the expense of businesses. In support of petitioner, the Chamber of Commerce of the United States of America (Chamber of Commerce) notes that the effect of coercive settlements may be felt hardest by smaller companies whose stock value tends to vary, making them vulnerable and less able to assume the costs of litigation than a more stable business. Moreover, the Washington Legal Foundation notes that because high-level executives generally must become involved in lawsuits, their absence may disrupt and so harm the day-to-day operations of their businesses.

Connecticut Retirement argues that adding hurdles to class certification will inhibit the enforcement of securities laws, as private lawsuits drive regulation of the securities industry. In support of respondent, AARP notes that small investors would be most hurt by the additional barriers to class certification, as individuals likely would not have the resources necessary to make a

full showing of materiality and therefore would not pursue class actions. NASCAT adds that, beyond ensuring compliance with securities laws, securities class actions also encourage better corporate governance.

Analysis

Petitioner Amgen argues that to sue in a class action under §10b-5 of the Securities Exchange Act of 1934 (1934 Act), which prohibits "untrue statements of material fact in connection with the purchase or sale of any security," plaintiffs must show that the allegedly untrue statements are "material," meaning that the statements actually affected the market price of the security. Conversely, Respondent Connecticut Retirement Plans and Trust Funds (Connecticut Retirement) argues that materiality is unnecessary to show that every single potential class member relied on the allegedly untrue statements.

Proof of Materiality to Establish a Class of Plaintiffs

Amgen notes that in a class action lawsuit, offering evidence of knowledge for every individual potential class member would depart from the requirements for bringing a class action lawsuit under Rule 23(b)(3) of the Federal Rules of Civil Procedure. According to Amgen, the U.S. Supreme Court in *Basic Inc. v. Levinson*, 485 U.S. 224 (U.S. 1988), resolved this tension between the 1934 Act and Rule 23 by allowing a presumption of reliance if the plaintiffs suing in a class action show that all the investors trading in that market for the security in question indirectly relied on the allegedly untrue statements. Amgen notes that successfully applying this fraud-on-the-market theory depends on showing the materiality of the allegedly untrue statements because immaterial information would not have affected the market at all.

In contrast, Connecticut Retirement contends that pursuing a class action under Rule 23 of the Federal Rules of Civil Procedure requires producing evidence that a proposed class of plaintiffs share common questions more than individual ones. Connecticut Retirement argues that although questions of materiality may affect the success of the claim at trial, requiring a class of plaintiffs to show material reliance on untrue statements would collapse the stages of litigation by considering the weight of evidence to decide the claim before considering whether common questions predominate over individual ones. Additionally, Connecticut Retirement asserts that any inquiry into materiality at the class certification stage must be in terms of how the class relied rather than whether each member relied at all.

Proof of Materiality to Establish the Market

Amgen argues that proof of materiality is necessary at the class certification stage because this evidence also provides essential information about the market itself. According to Amgen, recent economic research of markets shows that courts have been applying misleading tests for whether market efficiency exists to the extent sufficient for linking a statement about a security with the price for that security. Amgen notes that because market efficiency may exist for some pieces of information but not others, a court should consider proof of materiality for the purposes of defining and understanding the market within which a potential class of plaintiffs made transactions. Thus, Amgen argues that a court must decide on the effect of material information on efficiency as part of its determination of class certification.

Opposing the characterization of Amgen's analysis of class certification, Connecticut Retirement argues that proof of market efficiency meets the requirements of Rule 23 without any showing of materiality. Connecticut Retirement claims that because the class certification stage requires plaintiffs to show a common question of reliance and not actual proof of reliance, showing that the market is efficient sufficiently answers whether a class of plaintiffs shares the issue of reliance on the defendant's allegedly untrue statements. Additionally, Connecticut Retirement notes that proof of materiality would confuse the questions of whether a statement was true and whether a statement affected the information available to investors in that market.

Rebutting Reliance at Class-Certification Stage of Litigation

Amgen argues that before any trial may begin, when a court is determining whether a class of plaintiffs exists, a defendant of securities fraud should have the opportunity to refute evidence of misstatements or omissions that may have affected the stock price. According to Amgen, if a defendant successfully shows that a statement did not affect the stock price, then there is no common reliance that a class of plaintiffs shared. Furthermore, preventing defendants from rebutting evidence of reliance at the class certification stage allows classes of plaintiffs to pursue lawsuits that are doomed to fail at trial.

In contrast, Connecticut Retirement argues that the certification stage permits evidence that rebuts the plaintiffs' claims only if the evidence demonstrates that individual issues prevail over questions that the whole class shares. According to Connecticut Retirement, deciding whether information is material does not also answer whether the questions of individual plaintiffs outweigh the questions of class concern. Instead of challenging the presence of a class, Connecticut Retirement argues, evidence that rebuts materiality would undermine the claim in its factual allegations. Furthermore, evidence pertaining to the truth of statements would not concern whether a class action should be certified because it focuses instead on the merits or facts of the claim itself and not whether the plaintiffs share a common question.

Conclusion

This case has significant implications regarding the requirements for suing as a class of plaintiffs against defendants of securities fraud. Amgen argues that establishing that a class of plaintiffs materially relied on the allegedly untrue statements is essential for deciding whether a class of plaintiffs exists at all. In contrast, Connecticut Retirement asserts that materiality is a factual investigation that demands extensive discovery beyond the needs for showing that common questions predominate over individual ones. A holding for Amgen might dramatically constrict the ability of people to sue sellers of securities, whereas a holding for Connecticut Retirement might allow abusive negotiation tactics by plaintiff attorneys. ⊙

Written by Jonathan Goddard and Zachary Glantz. Edited by Charlotte Davis.

KIRTSAENG v. JOHN WILEY & SONS INC. (11-697)

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

Oral argument: Oct. 29, 2012

Questions Presented:

This case presents the issue that recently divided the Court, 4–4, in *Costco Wholesale*

Corp. v. *Omega, S.A.*, 562 U. S. ____ (2010). Under § 602(a)(1) of the Copyright Act, it is impermissible to import a work "without the authority of the owner" of the copyright. But the first-sale doctrine, codified at § 109(a), allows the owner of a copy "lawfully made under this title" to sell or otherwise dispose of the copy without the copyright owner's permission.

The question presented is how these provisions apply to a copy that was made and legally acquired abroad and then imported into the United States. Can such a foreign-made product never be resold within the United States without the copyright owner's permission, as the Second Circuit held in this case? Can such a foreign-made product sometimes be resold in this country without permission, but only after the owner approves an earlier sale here, as the Ninth Circuit held in *Costco*? Or can such a product always be resold without permission within the United States, so long as the copyright owner authorized the first sale abroad, as the Third Circuit has indicated?

Issue

Whether the first-sale doctrine codified in 17 U.S.C. § 109(a) applies to copyrighted works manufactured and purchased abroad and then resold in the United States without the copyright owner's permission.

Facts

The Respondent, Wiley, is an American company that publishes and sells textbooks. It sells such books to foreign countries through its subsidiary. The Petitioner, Kirtsaeng, is from Thailand and came to the United States. in 1997 to pursue an undergraduate degree in mathematics at Cornell University. During his time in the United States, Kirtsaeng received shipments of textbooks that his family purchased in Thailand. Kirtsaeng sold these textbooks on commercial websites such as eBay.com and used the profits to reimburse his family and to pay for his education.

Wiley alleges that Kirtsaeng's importation and distribution of the textbooks is a copyright infringement under 17 U.S.C. § 501. Kirtsaeng claims that he did not violate the Copyright Act because § 109(a), the first-sale doctrine, allows resale of textbooks without permission from the copyright owner. Wiley alleges that § 109(a) does not apply to goods manufactured in foreign countries.

The U.S. District Court for the Southern District of New York found Kirtsaeng in violation of the Copyright Act, and awarded statutory damages to Wiley the in the amount of $75,000 for each textbook sale. The Second Circuit Court of Appeals affirmed the District Court's ruling, and the Supreme Court granted writ on April 16, 2012.

Discussion

Petitioner Kirtsaeng refers to 17 U.S.C. § 109(a), the first-sale doctrine, to argue that he did not violate the Copyright Act because, after an item's first sale, its copyright owner loses any further right to control its distribution. Respondent Wiley contends that because its textbooks are manufactured abroad, § 602(a)(1) prohibits distribution of imports of its textbooks without permission from the corporation; therefore, the first-sale doctrine does not protect Kirtsaeng from copyright infringement.

The Effects on Free Markets and Distribution of Goods

Proponents of Kirtsaeng's argument assert that allowing Wiley's interpretation of the Copyright Act to prevail would inhibit commerce and the free flow of goods. Goodwill Industries (Goodwill) argues that Wiley's interpretation will hurt the American economy because it allows companies to retain rights over importation and distribution of foreign-made products and thereby to outsource their manufacturing to other countries to take advantage of cheap labor.

The Intellectual Property Owners Association (IPO) contends that if the Copyright Act were given Kirtsaeng's interpretation, then there would be broad importation and resale of textbooks that would undermine the Act's aim to prevent the commercial use of imported items. IPO also contends that if § 109(a) is applied to foreign-made products, then copyright owners will be hesitant to distribute their goods worldwide due to a lack of copyright protection and subsequent loss of the economic value of their products.

The Effects on Nonprofit Organizations and Cultural Institutions

Proponents of Kirtsaeng's argument state that Wiley's interpretation would give rise to a chilling effect on the operations of public institutions and charitable organizations. If Wiley's interpretation is upheld, Goodwill argues that its customers will be burdened with the task of investigating the origins of their goods, leading to a decrease of the benefits of Goodwill's operations. Moreover, museums, galleries, and libraries will have difficulty exhibiting foreign art or lending international materials because these institutions will have to obtain copyright licenses, which require extensive negotiations.

Opponents of Kirtsaeng's argument contend that Wiley's interpretation still allows for importation and distribution of foreign goods as long as the distributor obtains the copyright owner's permission. If and when the copyright owner authorizes the importation and sale of the goods in the United States, then the first-sale doctrine will apply, and the copyright owner will no longer hold exclusive rights to distribute the imported goods.

Analysis

The first-sale doctrine authorizes an owner of a copyrighted work to sell that work without the permission of the copyright owner. The issue in this case concerns the interpretation of this doctrine. Kirtsaeng contends that the doctrine applies to a copyrighted work manufactured and legally obtained abroad and then sold in the United States. Wiley asserts that this doctrine only pertains to copyrighted works manufactured in the United States and that 17 U.S.C. §602(a)(1) governs Kirtsaeng's actions.

Reconciling 17 U.S.C. § 109(A) with 17 U.S.C. § 602(A)(1)

Kirtsaeng claims, that the two statutes, § 109(a) and § 602(a)(1), can be reconciled by recognizing that § 602(a)(1) is subject to §§107-122, which include exceptions or limitations to the rights contained in the Act. Kirtsaeng bases this claim on the fact that § 602(a)(1) states that importing a copy without the copyright owner's permission is "an infringement of the exclusive right to distribute copies or phonorecords under section 106." Section 106 in turn, states that "subject to sections 107 through 122," a copyright owner has certain rights under the section. Therefore, following the chain from § 602(a)(1) to §106 to §§ 107–122, Kirtsaeng concludes, § 602(a)(1) is subject to the first-sale doctrine in §109(a)(1).

By contrast, Wiley notes that under §602(a)(1) copyright owners are protected from having their works imported into the United States without their permission. Wiley claims, however, that applying the first-sale doctrine to §602(a)(1) would override this

protection by giving the owner of a copyrighted work the power to import the work into the United States without the copyright owner's permission.

The Proper Construction of 17 U.S.C. § 109(A)'s Text

Based on this interpretation and a plain reading of the statute, Kirtsaeng argues that § 109 does not specifically distinguish between copies manufactured abroad and those manufactured in the United States. Specifically, Kirtsaeng argues that reading "lawfully made under this title" to mean "manufactured on United States soil," as he believes Wiley suggests, is illogical. Moreover, Kirsaeng asserts that his interpretation of the phrase is how the Supreme Court has understood the statute in previous cases, and is consistent with Congressional intent.

Wiley responds that the phrase in question is best interpreted to mean copies made according to the Copyright Act where the Act is in effect. Wiley argues that Kirtsaeng's interpretation is irrational because a copy cannot be "made under" the statute if the Act does not apply. The Act does not apply outside the United States and consequently, Wiley contends that § 109(a) does not apply to works manufactured abroad.

Understanding 17 U.S.C. § 109(A) in the Context of the Copyright Act

Noting that the phrase "under this title" appears 91 times in the Act, Kirtsaeng analyzes other Act sections that use this phrase and concludes that these other sections use the phrase the same way as he does. For example, § 106 states that "the owner of copyright under this title has the exclusive rights to do and to authorize any of the following." Using Kirtsaeng's interpretation, this statute means that an owner who has a copyright recognized by the Act has the rights that the Act grants copyright owners.

Wiley counters that Kirtsaeng's understanding of the phrase "under this title" in the other sections of the Act is actually consistent with Wiley's understanding of the phrase. It argues that the phrase means "pursuant to this title," and that this understanding demonstrates that the phrase only refers to works that have the Act's protection. Consequently, Wiley reiterates that because the Act does not apply abroad, it, and thus § 109(a), only offers protection in the U.S. Furthermore, Wiley claims that the Act's history and purpose prove that the first-sale doctrine does not apply to works manufactured abroad because the development of the current act reflects a desire to control the importation of copies into the United States.

Interpretation of 17 U.S.C. § 109(A) Under Quality King

Both Kirtsaeng and Wiley rely on the Supreme Court's decision in *Quality King Distributors, Inc. v. L'Anza Research International, Inc.* (*Quality King*) as precedent to support their interpretation of the first-sale doctrine. In *Quality King*, the Supreme Court held that the first-sale doctrine applies to copies manufactured in the United States, sold abroad, and then sold again in the United States.

Kirtsaeng asserts that in *Quality King* the Supreme Court concluded that § 602 is subject to § 109(a) and that the first-sale doctrine applies even if the work is first purchased abroad. Conversely, Wiley claims that Kirtsaeng misconstrues the decision in *Quality King* and that the Supreme Court actually determined that the first-sale doctrine does not apply to copies made under a foreign country's copyright laws.

Conclusion

The arguments in this case will focus on the interpretation of § 109(a) and § 602(a)(1) of the Copyright Act. The outcome will affect the applicability of the Act to foreign-made goods imported and distributed within the United States. The Petitioner, Kirstaeng, will argue that § 109(a) applies the first-sale doctrine to goods manufactured abroad. The Respondent, Wiley, will argue that § 602(a)(1) is not subject to § 109(a), and thus any distribution of foreign-made goods in the United States requires the copyright owner's permission. The Court's decision will impact the domestic and international availability of copyrighted products. ⊙

Written by Z. Lu and Sherry Jarons. Edited by Brooks Kaufman. The authors would like to thank former Supreme Court Reporter of Decisions Frank Wagner for his assistance in editing this preview.

ALREADY LLC v. NIKE INC. (11-982)

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

Oral argument: Nov. 7, 2012

Nike Inc. sued Already LLC d/b/a Yums for selling shoes that allegedly infringed on Nike's trademark covering the Air Force 1 shoe line. Yums counterclaimed to cancel Nike's trademark. Shortly after Yums' counterclaim, Nike dropped its claim and promised Yums that Nike would not assert its trademark against any of Yums' current or previous products. The district court dismissed Yums' counterclaim and the court of appeals affirmed. Yums argues that a controversy remains after Nike's promise not to sue because Nike's trademark continues to hinder Yums' ability to compete in the athletic footwear business. Nike argues that a court cannot hear a trademark claim without a controversy, and that Nike's promise not to sue eliminated any controversy involving the Air Force 1 trademark. The Supreme Court's decision here may determine whether intellectual property owners can drop infringement actions without having to defend counterclaims challenging their intellectual property rights. Full text is available at www.law.cornell.edu/supct/cert/11-982. ⊙

Written by Alexandra Cowen and Chanwoo Park. Edited by Brandon Bodnar.

BAILEY v. UNITED STATES (11-770)

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

Oral argument: Oct. 30, 2012

Chunon L. Bailey was detained approximately a mile from his residence after two police officers observed him leave his home. The officers brought Bailey back to his home and arrested him after the search turned up drugs and a gun. In this case, the Supreme Court must resolve a circuit split surrounding the application of *Michigan v. Summers*, which held that police may detain an occupant outside of the premises to be searched so long as the detention is reasonable. Bailey argues that *Summers* should not be extended to situations where the occupant has left the immediate vicinity of the premises. However, the United States argues that the reasoning underlying *Summers* justifies this detention and that the Fourth Amendment issue can be resolved by a reasonableness test. This case will affect the scope of police power to detain occupants prior to the execution of a search warrant. Full text is available at www.law.cornell.edu/supct/cert/11-770. ⊙

Written by Jeremy Amar-Dolan and Zachary Zemlin. Edited by Lisa Schmidt.

CHAIDEZ v. UNITED STATES (11-820)

Appealed from the U.S. Court of Appeals for the Seventh Circuit
Oral argument: Oct. 30, 2012

In 2003, Roselva Chaidez pleaded guilty to an "aggravated felony" under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), but her lawyer failed to inform her that her plea made her eligible for deportation. Subsequently, the Supreme Court held in *Padilla v. Kentucky* that the right to effective assistance of counsel includes a duty to inform defendants of deportation consequences of a plea deal. Nevertheless, the U.S. Court of Appeals for the Seventh Circuit held that *Padilla* did not apply retroactively to Chaidez's conviction. Chaidez argues that the Supreme Court should hold that *Padilla was* dictated by precedent (and therefore *not* a new rule) and is retroactively applicable to her case. In response, the United States counters that retroactively applying *Padilla* would allow defendants to avoid the consequences of their convictions based on a minor error by a lawyer. Full text is available at www.law.cornell.edu/supct/cert/11-820. ⊙

Written by Ethan Roman and Dan Youngblut. Edited by Charlotte Davis.

CLAPPER v. AMNESTY INTERNATIONAL USA (11-1025)

Appealed from the U.S. Court of Appeals for the Second Circuit
Oral argument: Oct. 29, 2012

Congress passed the Foreign Intelligence Surveillance Act Amendments of 2008, revising the procedures for authorizing certain foreign intelligence collection. Several organizations, including Amnesty International, challenged the act's constitutionality. The district court dismissed the lawsuit because it found the organizations lacked standing. The U.S. Court of Appeals for the Second Circuit reversed, and now the Supreme Court must decide if Amnesty International and other organizations have standing. The organizations argue that they have standing based on a reasonable fear that the government will monitor some of their communications and the costly methods used to prevent that monitoring. Director of National Intelligence James Clapper argues that they lack standing because their injuries are not imminent, they do not have ongoing or present injuries, and self-inflicted harms are not recognizable injuries. The decision in this case will likely result in a rebalancing of the competing interest in government transparency and safeguarding national security. Full text is available at www.law.cornell.edu/supct/cert/11-1025. ⊙

Written by Michaela Dudley and Allison Nolan. Edited by Brandon Bodnar.

COMCAST CORP. v. BEHREND (11-864)

Appealed from the U.S. Court of Appeals for the Third Circuit
Oral argument: Nov. 5, 2012

Respondent Caroline Behrend et al., cable television subscribers, brought an antitrust class action against petitioner Comcast Corporation alleging anticompetitive activity. For class certification, respondents had to present evidence that they suffered damages on a class-wide basis and they submitted a damages model prepared by their expert witness. Comcast challenges the district court's reliance upon that evidence, claiming that it is inadmissible according to Rule 702 of the Federal Rules of Evidence and *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). In this case, the Supreme Court will address whether evidence presented in support of class certification must be admissible under those standards. The decision will likely significantly impact the ability of plaintiffs to certify as a class under Rule 23 of the Federal Rules of Civil Procedure, and it may also affect underlying commercial conduct, such as the future use of territory-swapping and clustering agreements. Full text is available at www.law.cornell.edu/supct/cert/11-864. ⊙

Written by Thomas Santoro and Stephen Wirth. Edited by Brooks Kaufman.

EVANS v. MICHIGAN (11-1327)

Appealed from the Michigan Supreme Court
Oral argument: Nov. 6, 2012

A Michigan trial court granted defendant-petitioner Lamar Evans a directed verdict of not guilty after the state of Michigan charged him with burning property because the state of Michigan failed to prove that the property Evans allegedly burned was not a dwelling. Upon appeal, the Michigan Supreme Court determined that the trial court erred and held that the Double Jeopardy Clause of both the Fifth Amendment and the Michigan Constitution did not bar Evans' retrial for the same offense. The court held that the error did not relate to an actual factual element of the case and therefore failed to address Evans' guilt. Evans now appeals to the U.S. Supreme Court, arguing that the Michigan Supreme Court erroneously carved out a novel "Extra Element" exception to the Double Jeopardy Clause. This decision will further define the outer limits of protection that the Double Jeopardy Clause offers to defendants. Full text is available at www.law.cornell.edu/supct/cert/11-1327. ⊙

Written by Cristina Quinones-Betancourt and Nathan Taylor. Edited by Judah Druck.

FLORIDA v. HARRIS (11-817)

Appealed from the Florida Supreme Court
Oral argument: Oct. 31, 2012

Officer Wheetley stopped Clayton Harris' truck for expired tags and searched the vehicle after his drug detection dog alerted to the driver-side door handle. Officer Wheetley recovered precursors to methamphetamine, and at trial Harris alleged that Officer Wheetley did not have probable cause, or a reasonable basis, to search and violated his Fourth Amendment rights. On appeal, Harris argues that training alone cannot establish a dog's reliability because there are no certification standards for drug detection dogs, and dogs are likely to be influenced by outside factors that could affect their reliability. The state of Florida asserts that certification of a dog should be sufficient to prove reliability and provide adequate basis for a search. This decision implicates concerns of individuals' right to privacy in their possessions and raises concerns of costs associated with increased evidentiary burdens in drug possession cases, which could hamper the states' ability to prosecute drug offenders. Full text is available at www.law.cornell.edu/supct/cert/11-817. ⊙

Written by Belinda Liu and Sarah O'Laughlin. Edited by Jenny Liu.

PREVIEWS continued on page 91

† Daryl Bloomberg
* David M. Buckner
† Scott B. Cosgrove
† Andrew C. DeWeese
† Jason F. Emert
† Monique Garcia
† Elizabeth Goueti
† Darryl R. Graham
† Jonathan H. Groff
† Leora Herrmann
†* James W. Hicks
* Elizabeth B. Honkonen
* Dennis G. Kainen
† Robin E. Kaplan
† Yara Lorenzo
† Scott P. Mebane
† Curtis Miner
* Kevin J. Murray
* Michael Nachwalter
† John E. Page
* Michael A. Pineiro
* David C. Pollack
† Sabrina D. Puglisi
† Jenna R. Rassif
† Eduardo I. Sanchez
† Paul Siegel
* Neal R. Sonnett
* Brian F. Spector
†* Ann M. St. Peter-Griffith
† Bridgette N. Thornton Richard
* Roderick D. Vereen
† Robert T. Watson
† Erica Zaron

Southwest Florida
* Ludwig J. Abruzzo

Tampa Bay
* J. Daniel Clark
* Richard J. Cole
† Christopher L. DeCort
† Jeffrey B. Fabian
* Sean P. Flynn
* Robert A. Gualtieri
†* Erica T. Healey
* Kevin D. Johnson
* Nicholas E. Karatinos
* Patricia A. Kerwin
* Anthony J. LaSpada
* Mary A. Lau
† Eric Kuske Leanza
* Stuart C. Markman
† Ryan D. Maxey
* James A. Minix
†* Adam Mohammadbhoy
† Gianluca Morello
†* Clarisse M. Moreno
* Darrin J. Quam
† Elaine M. Rice
* William J. Schifino
† Isabel C Skipper
† Henry A. Stiles
† Brian Trimyer
* David B. Weinstein
* Katherine Earle Yanes

D.C. CIRCUIT

Capitol Hill
* Seymour Efros
* Kenneth A. Kraft
† Kelly M Lux
† Scott E. Miller
* Bruce L. Moyer
† Michael L. Platner
* Susan D. Sawtelle
† Leslie Wheelock
* Elizabeth Yadlosky

District of Columbia
* Clifford J. Alexander
* Robert E. Barnett
* David T. Beddow
* Alfred F. Belcuore
* David B. Blair
* Joan E. Boros
* Arthur L. Burnett
* James M. Cain
* John A. C. Cartner
† Halden Chairnoff
* Howard S. Cooper
† Ross Delston
† Lesley DeRenzo
† Maria Di Miceli
† William J. Donovan
* A. Patrick Doyle
† Carolyn M. Drouin
* Ralph C. Ferrara
* Mark D. Fitterman
* Jay W. Freedman
* Wilbur H. Friedman
* Edward L. Froelich
* James T. Halverson
* Mervyn Hamburg
* Winston M. Haythe
†* Marianne Hogan
* Sheila S. Hollis
* Paul M. Hyman
† Robert M. Kane
* Roger P. Kaplan
* Carrol H. Kinsey
* Chiswell D. Langhorne
* John F. LeFevre
* Lewis E. Leibowitz
* Pamela Jo Mazza
* Allan I. Mendelsohn
† Nicholas Metcalf
† Edward E. Moawad
† Tyler J. Mullen
* Jack H. Olender
* Craig B. Pettibone
* James B. Pittleman
† Kathryn E. Pittman
* Steven P. Quarles
* Leonard Rawicz
† Chris D. Saddock
† Rebecca C. Sager
* John D. Seiver
* James C. Sivon
† J. E. Sullivan
* Gaye L. Tenoso
† Theodore H. Waggner
* Consuela Marie Washington
* Troy S. Watkinson
* Thomas J. Whalen
* Richard E. Wiley
† Joy A. Williamson
* Thomas W. Winland
* David B. Witherspoon
* Donna Lee Yesner
† Frank J. Bewkes
† Daniel J. Conidi

Pentagon
* Dean S. Eveland
* LeRoy F. Foreman
* Gerald E. Gilbert
* Alan E. Goldsmith

OVERSEAS AT LARGE
* Linda Strite Murnane

PREVIEWS continued from page 78

MARX v. GENERAL REVENUE CORP. (11-1175)

Appealed from the U.S. Court of Appeals for the 10th Circuit

Oral argument: Nov. 7, 2012

Petitioner Olivea Marx defaulted on her student loans. Her debt was assigned to respondent General Revenue Corporation (GRC) for collection. Marx claims that GRC called her multiple times a day and sent a fax to her employer. Marx sued GRC under the Fair Debt Collection Practices Act (FDCPA), claiming that GRC's attempts to collect her debt were acts of harassment. The district court dismissed Marx's claims and ordered her to pay GRC the costs of its defense. Marx argues that the FDCPA allows only an award of costs to defendants only if the plaintiff filed the suit in bad faith. In response, GRC argues that a court may award costs under Rule 54 of the Federal Rules of Civil Procedure as there is no prohibition under the FDCPA. If Marx wins, consumers face less risk of carrying the costs of defendants in lawsuits against abusive debt collecting practices. Full text is available at www.law.cornell.edu/supct/cert/11-1175. ⊙

Written by Dean Caruvana and Claire Holton-Basaldua. Edited by Charlotte Davis.

SMITH ET AL. v. UNITED STATES (11-8976)

Appealed from the U.S. Court of Appeals for the District of Columbia Circuit

Oral argument: Nov. 6, 2012

Petitioner Calvin Smith was involved in a criminal drug distribution organization and imprisoned for a related murder in 1994. In 2000, a grand jury brought indictments against him for conspiracy. Smith defended his two conspiracy charges on the grounds that the statute of limitations barred his conviction because he had withdrawn from the conspiracy more than five years ago. Smith claims his participation in the conspiracy during the statutory period is a necessary element of his crime that the government must prove, and his withdrawal would negate an essential element of the government's case against him. The United States argues that withdrawal is an affirmative defense, and the burden of proof lies with the defendant. This case will define the boundaries of Due Process Protection in conspiracy cases and similar cases involving amorphous and ongoing criminal activity. Full text is available at www.law.cornell.edu/supct/cert/11-8976. ⊙

Written by Dillon Horne and Matthew Soares. Edited by Jenny Liu.

FLORIDA v. JARDINES (11-564)

Appealed from the Florida Supreme Court

Oral argument: Oct. 31, 2012

After receiving an anonymous tip that Joelis Jardines' home was being used to grow marijuana, Drug Enforcement Agency (DEA) officers used a drug detection dog that sniffed the exterior of the home and alerted to a smell of marijuana at the front door. Based on this positive alert, the officers were granted a search warrant. Jardines successfully moved to suppress evidence of the dog sniff outside his home by arguing that the sniff constituted an unreasonable search under the Fourth Amendment. The Florida Third District Court of Appeal reversed. The Florida Supreme Court ultimately reversed the appellate court's decision. The state of Florida subsequently filed a petition for a writ of certiorari with the U.S. Supreme Court. This decision could affect a crucial method used by DEA agents and police officers to detect and seize illegal substances and will clarify the right held by individuals such as Jardines in preventing invasions of privacy. Full text is available at www.law.cornell.edu/supct/cert/11-564. ⊙

Written by Alfonso Dulcey and Ali Paradis. Edited by Judah Druck.