Supreme Court Previews

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ATLANTIC MARINE CONSTRUCTION CO. V. U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS (12-929)

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

Oral argument: Oct. 9, 2013

Issues

1. Can forum-selection clauses render a statutorily proper venue improper?
2. How much weight should courts give forum-selection clauses under 28 U.S.C. § 1404(a)?

Questions as Framed for the Court by the Parties

Following the Court's decision in M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972), the majority of federal circuit courts hold that a valid forum-selection clause renders a venue "improper" in a forum other than the one designated by contract. In those circuits, forum-selection clauses are routinely enforced through motions to dismiss or transfer venue under Fed. R. Civ. P. 12(b)(3) and 28 U.S.C. § 1406. The Third, Fifth, and Sixth Circuits, however, follow a contrary rule. This petition presents the following issues for review:

1. Did the Court's decision in Stewart Organization, Inc. v. Ricoh Corp., 487 U.S. 22 (1988), change the standard for enforcement of clauses that designate an alternative federal forum, limiting review of such clauses to a discretionary, balancing-of-conveniences analysis under 28 U.S.C. § 1404(a)?
2. If so, how should district courts allocate the burdens of proof among parties seeking to enforce or avoid a forum-selection clause?

Facts

In April 2009, Atlantic Marine Construction Company (Atlantic) entered into a construction contract with the Army Corps of Engineers to build a child development center at Fort Hood, Texas. Related to this agreement, Atlantic subcontracted with J-Crew Management, Inc. (J-Crew), which agreed to provide construction materials and labor. The agreement between included a forum-selection clause, limiting the places where the parties could bring suit in the event of a dispute. The clause identified only two courts located in Virginia as possible venues.

J-Crew alleges it fully performed its obligations under the contract but claims that Atlantic breached the contract by not paying J-Crew for its services. J-Crew filed suit in the Western District of Texas. Contending that the forum-selection clause required J-Crew to bring the suit in one of the two specified Virginia courts, Atlantic moved to dismiss the case under Federal Rule of Civil Procedure 12(b)(3) or to transfer the case under 28 U.S.C. § 1406(a). Atlantic also moved in the alternative under 28 U.S.C. § 1404(a) to transfer the suit to Virginia. Rule 12(b)(3) and § 1406(a) cover issues of improper or wrong venue, while §1404(a) provides for transfers for reasons of convenience and justice where the forum is otherwise proper.

The district court decided that Atlantic should attempt to enforce the forum-selection clause through §1404(a), not §1406(a) or Rule 12(b)(3). The district court further held that under § 1404(a), Atlantic bore the burden of proof and that it failed to show that transfer was justified. In an attempt to compel the district court to dismiss or transfer the case to Virginia, Atlantic petitioned the Fifth Circuit Court of Appeals for a writ of mandamus. The Fifth Circuit denied the writ, upholding the district court's use of § 1404(a).

Discussion

Atlantic contends that courts should enforce contracts as written, including forum-selection clauses. In opposition, J-Crew argues that a privately drafted forum-selection clause cannot negate statutorily sound venues. The Supreme Court's decision will affect the manner in which parties may enforce forum-selection clauses, including attempts by private parties to contract around federal venue statutes and dictate the choice-of-law governing a case by filing their case first.

Forum Shopping

Atlantic contends that enforcement of forum-selection clauses solely under § 1404(a) would encourage parties to forum shop, potentially breaching contracts that contain forum-selection clauses. Forum shopping occurs when a party attempts to bring suit in a court that it believes will treat its claims favorably. Forum-selection clauses, however, limit the possible venues in which a party may bring suit. Atlantic argues that by filing in a venue not included in the forum-selection clause, a party breaches the contract. In addition, Atlantic argues that failing to enforce a forum-selection clause will cause a race to the courthouse, in which a party might prematurely initiate litigation for fear of being sued in a less hospitable forum.

On the other hand, J-Crew argues that allowing § 1404(a) to govern the transfer of forums, where the original forum is proper under the federal venue statute but not under the private contract, will actually curtail and reduce forum shopping. As J-Crew sees it, forum-selection clauses are really just forum shopping by the party with superior bargaining power. J-Crew argues that enforcing these clauses through the § 1404(a) balancing test—used by judges to determine whether or not a case should be transferred to a different venue—will force parties to contemplate the public interest at the drafting stage and limit the forums contracted to those approved by Congress.

Private Contracting Around Federal Statutes

Atlantic argues that, because venue

is primarily a matter of convenience, and because objections to venue can be waived, parties' prior contractual agreements should be enforced as written and trump statutory venue provisions. Atlantic points out that state and federal courts have recognized the right to determine venue via contract and argues that the strong presumption in support of enforcing a forum-selection clause places a high burden on a party trying to argue against its enforcement.

In opposition, J-Crew argues that the enforcement of forum-selection clauses under § 1406(a) or Rule 12(b)(3) would effectively allow private parties to invalidate federal statutes defining proper venue. There is no evidence, in J-Crew's view, that Congress had any intention of allowing private parties to disregard the venue statute's provisions. Thus, according to J-Crew, Atlantic's argument begins from a faulty premise.

Analysis

In this case, the Court will resolve a circuit split regarding the impact of forum-selection clauses on venue. Several of the courts of appeals, as well as the parties in this case, disagree as to whether a forum-selection clause may render an otherwise proper venue wrong for the purposes of 28 U.S.C. § 1406(a). If not, then the forum-selection clause may be only one of several factors a court weighs when considering a change of venue under 28 U.S.C. § 1404(a). In addition, the Court will determine which party bears the burden of motions to transfer venue.

Enforcement of Forum-Selection Clauses

Atlantic argues that the practice of selecting venue by contract is well-established and reflects the purpose of venue statutes, which it suggests are designed to enhance the convenience of litigation for both parties and protect defendants from unreasonable forums. Atlantic notes the pervasiveness of forum-selection clauses, which are now common features of a wide array of contracts. It suggests they are appearing with such frequency in response to the Court's decision in M/S Bremen v. Zapata Off-Shore Co., which clearly establishes a strong presumption in favor of enforcement. In addition to these practical and precedential arguments, Atlantic argues that a plain language reading of wrong or improper would include a lawsuit filed in violation of a contractually agreed upon location. Accordingly, Atlantic argues, when a party files a suit in any forum other than the one specified in the contract, it has filed the suit in the wrong venue for purposes of § 1406(a). According to Atlantic, § 1406(a) and Rule 12(b)(3) require the court to either dismiss or transfer the case.

In contrast, J-Crew points out that Congress has directed that 28 U.S.C. § 1391 provides guidance on whether or not a venue is proper and argues that private agreements may not make improper a venue that is proper under that statute. J-Crew notes that neither party in this case suggests that J-Crew filed the suit in a statutorily improper venue as defined by 28 U.S.C. § 1391, which allows for lawsuits to be brought in one of three venues: (1) the judicial district where the defendant resides; (2) the "judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated"; or (3) if there is no other available district, any district where any defendant is subject to the personal jurisdiction of the federal courts regarding the action. J-Crew argues that because the case was filed in the district where a substantial part of the relevant events took place, the venue was valid according to the provisions of § 1391(b). Thus, J-Crew insists that the correct approach is to consider a forum-selection clause as one of several factors in determining whether to transfer, dismiss, or retain the case under § 1404(a), which allows courts to transfer "for the convenience of parties and witnesses, in the interest of justice" when a lawsuit has been filed in a proper venue.

Burden in Motions to Transfer Venue

The question of burden arises in several different contexts in the case. First, Atlantic argues that a forum-selection clause forms part of a contract between the parties on the matter of venue and as such, can only be avoided under the standards the Supreme Court elaborated in Bremen; namely, the party seeking to avoid the forum-selection clause must meet a heavy burden to demonstrate that the clause itself is unenforceable. Atlantic thus argues that an analysis under § 1404(a) skips the crucial step of forcing J-Crew to meet its burden in demonstrating that departure from the contractually chosen forum was appropriate. J-Crew contends that this argument is misguided because private parties do not have the right to contractually limit proper venue established by statute and that the question of burden only arises in regard to the relative weighting of factors under the § 1404(a) analysis.

Instead, J-Crew argues that the most significant question of burden is the one regarding the appropriate application of a § 1404(a) motion to transfer. J-Crew points out that, on the question of who bears the burden, the circuits are split—the Fifth and Ninth Circuits place the burden on the movant to justify transfer, while the Third and Eleventh Circuits shift the burden to the party looking to escape transfer. Atlantic joins the Third and Eleventh Circuits in maintaining that the party seeking to avoid the forum-selection clause must bear the burden in proving that transfer is warranted and that venue contrary to the forum-selection clause is appropriate. In this view, a party must prove that the clause itself is unenforceable, not simply inconvenient. J-Crew joins the Fifth and Ninth Circuits in arguing that the courts below properly placed the burden on the moving party to demonstrate that transfer away from a statutorily proper venue was appropriate under the § 1404(a) balancing test.

Conclusion

This case will resolve the circuit split regarding the enforceability of forum-selection clauses in private contracts. Specifically, the Supreme Court will determine whether a § 1404(a) or § 1406(a) transfer is appropriate when a lawsuit is filed in a forum other than one specified in a forum-selection clause. This implicates the ability of private parties to contract around federal statutes, raising questions about the limits on the freedom of contract, the ability of plaintiffs to forum shop, and the capacity for parties to secure a favorable choice-of-law by filing the case first. ⊙

Written by Jennifer Breen and L. Alyssa Chen. Edited by Jeremy Amar-Dolan. The authors would like to thank former Supreme Court Reporter of Decisions Frank Wagner for his assistance in editing this preview and Professor Kevin Clermont of Cornell Law School for his insight into the issues in this case.

MADIGAN V. LEVIN (12-872)

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

Oral argument: Oct. 7, 2013

Issue

Does the Age Discrimination in Employment Act (ADEA) provide the sole vehicle for age-discrimination claims under federal law or are the claims covered under the Equal Protection Clause via 42 U.S.C. § 1983?

Question as Framed for the Court by the Parties

Did the Seventh Circuit err in holding, in an acknowledged departure from the rule in at least four other circuits, that state and local government employees may avoid the federal ADEA's comprehensive remedial regime by bringing age-discrimination claims directly under the Equal Protection Clause and 42 U.S.C. § 1983?Facts

In 2000, at the age of 55, Harvey N. Levin began working as an assistant attorney general (AAG) for the state of Illinois. After six years and a promotion to senior AAG, Lisa Madigan's office terminated his employment, during which Levin had received performance reviews stating he met or exceeded expectations. Madigan also fired 11 other attorneys at the same time. According to the office, Levin was terminated for "excessive socializing, inferior litigation skills, and poor judgment," which were brought to his attention. Levin points to the subsequent hiring of younger attorneys as showing that he was really fired because of his age, a contention that the parties still dispute.

Levin responded to his termination with a lawsuit in the District Court for the Northern District of Illinois alleging age and sex discrimination under the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, and the Equal Protection Clause through 42 U.S.C. § 1983. After the defendants filed motions to dismiss, the court held that Levin was an employee for ADEA purposes. It also granted the individual defendants' motion to dismiss the § 1983 age-discrimination claim, finding that the ADEA did not preclude a § 1983 claim, but that the individual defendants were entitled to qualified immunity.

Upon the assigned judge's retirement, the case was reassigned to a new judge, who granted in part and denied in part the two motions for summary judgment. The court did not reconsider the decision that the ADEA did not preclude a § 1983 claim. However, it determined that Levin was not an employee for ADEA purposes and held that the individual defendants were not entitled to qualified immunity because the Fourteenth Amendment clearly prohibits arbitrary age discrimination.

Madigan and the other defendants appealed this holding to the Seventh Circuit on the grounds that they were entitled to qualified immunity and that the ADEA is the sole remedy for age-discrimination claims. The Seventh Circuit affirmed the lower court's decision. Contrary to other circuits that have addressed the ADEA's preclusive effect, the Seventh Circuit ruled that it does not preclude a § 1983 claim. The court based this determination on the lack of clear Congressional intent in the legislative history and the lack of clear statutory language precluding constitutional claims in the ADEA itself.

The defendants petitioned to the U.S. Supreme Court, which granted certiorari on March 18, 2013.

Discussion

This case presents the Supreme Court with the opportunity to consider whether a state employee can bring an age-discrimination claim under both the ADEA and 42 U.S.C. § 1983. Madigan argues that the ADEA is the sole vehicle for age-discrimination claims. However, Levin's position is that the ADEA does not apply to him and further, that it was not meant to be the sole remedy for age discrimination in the workplace.

Exposure of State and Municipal Employers

The International Municipal Lawyers Association (IMLA), in support of Madigan and the other petitioners, argues that upholding the Seventh Circuit's ruling will expose municipal and state governments to increased litigation costs due to the lack of safeguards against illegitimate age-discrimination claims. If § 1983 allows employee age-discrimination claims, the IMLA argues that federal courts may functionally replace the Equal Opportunity Employment Commission (EEOC). Under the ADEA, potential plaintiffs must first have the EEOC evaluate their claims and try to resolve them without court action. However, if plaintiffs can bring a claim under § 1983, they would be able to bypass the EEOC.

The AFL-CIO counters this argument by noting that the ADEA and § 1983 "differ in terms of the categories of age-related discrimination claims covered, who may bring suit, and who may held legally responsible for violations." Further, it contends that federal litigation will not increase because of a heavier burden on proving unconstitutional age discrimination rather than age discrimination under the ADEA.

Employees' Right to Redress

Levin contends that viewing the ADEA as the sole remedy for age-discrimination claims is patently unconstitutional because it leaves certain individuals without remedy. In support of Levin, AARP argues that the ADEA leaves "elected officials and certain members of their staff, appointees, law enforcement officers, and firefighters," without rights to claim age discrimination in the employment context. Additionally, AARP feels that § 1983 is a necessary vehicle because it allows plaintiffs to bring employment age-discrimination lawsuits against individuals rather than just the employer and allows claims for damages, which the ADEA does not.

Michigan suggests at the very least that where the ADEA protects a state or municipal government employee, § 1983 actions should be displaced. This would allow those who do not fall under the ADEA's protection to bring § 1983 claims, rather than leaving them without remedy if the ADEA is the sole vehicle for redress.

Analysis

Does the ADEA Preclude a Cause of Action Under the Equal Protection Clause?

Section 1983 allows a person to bring a civil action against a state official who has violated the person's statutory or constitutional rights. If a right is secured under a statute containing a sufficient alternative remedy, a claimant may be precluded from pursuing a § 1983 action. The primary determinant is whether Congress intended the statutory remedy to be exclusive.

Levin argues that the comprehensiveness of a remedial scheme only matters because it indicates Congress's intent to make that scheme the exclusive method to enforce a pre-existing right. He contends that the ADEA would not preclude a § 1983 claim unless Congress intended the ADEA's remedial scheme to be the exclusive method of enforcing a claim of age discrimination in employment. He asserts that Congress had no such

intent with respect to age discrimination in violation of the Equal Protection Clause. Levin notes that the scope of the ADEA's protection is much narrower than that of the constitutional protection because the ADEA excludes individuals under the age of 40. Levin also notes that the ADEA prohibits many otherwise constitutional employment practices.

Madigan asserts that the ADEA contains a comprehensive remedial scheme that prevents Levin from bringing a claim for age discrimination in employment under § 1983. She argues that the ADEA's remedial scheme contains requirements inconsistent with § 1983. For example, under ADEA, an employee must first attempt to resolve disputes informally through the EEOC and submit a claim within 180 days of an alleged age discrimination. It prohibits the employee from filing a lawsuit within 60 days of filing with the EEOC. Madigan argues that allowing Levin to pursue a claim under § 1983 would allow him to circumvent the ADEA's procedural requirements, making § 1983 incompatible with the ADEA.

What Does the ADEA Mean for the Employment Discrimination Claim of Someone Who Is Not an Employee Under the ADEA's Definition?

Levin notes that he is not considered an employee within the ADEA, which excludes from its definition of protected employees elected officials and their "appointee[s] on the policymaking level," 29 U.S.C. § 630(f). Thus, he asserts, even if the ADEA precludes state and local government employees from bringing age-discrimination claims under § 1983, he is not so precluded because he does not fall within the ADEA's protections. Because there is no dispute that he is not an employee under the ADEA, Levin suggests that "the Court may wish to dismiss the petition as improvidently granted."

Madigan argues, however, that the Government Employee Rights Act of 1991 (GERA), which entitles previously exempt high-ranking state and local government employees to ADEA remedies, 42 U.S.C. § 2000e-16(b)(2), includes appointees such as Levin. She asserts that allowing appointees to proceed under § 1983 would enable them to circumvent the GERA, which was passed specifically to provide ADEA coverage to individuals such as Levin.

Levin asserts that the GERA only covers individuals not covered by the ADEA, and therefore, the ADEA and the GERA are mutually exclusive. He argues that the Court's decisions regarding Title VII cases should control the Court's decision in the instant case and notes that the Court has ruled that Title VII does not preclude a person from pursuing a § 1983 equal protection claim for discrimination based on race, gender, or national origin.

Madigan argues that the legislative history of Title VII clearly shows that Congress did not intend the act's remedial scheme to displace that of § 1983. Second, Madigan argues that Title VII and the ADEA offer substantially different remedies; the ADEA prohibits punitive and compensatory damages, but Title VII allows them.

Conclusion

In this case, the U.S. Supreme Court will consider whether state and municipal employees may bring an age-discrimination claim under § 1983 where the ADEA provides an alternative remedy for age-discrimination claims. The Court's ruling will not only impact state and municipal employees' right to redress for age discrimination under the Constitution, but it will also impact the government's ability to defend age-discrimination claims. ⊙

Written by Kalson Chan and Alex Kerrigan. Edited by Allison Nolan. The authors would like to thank former Supreme Court Reporter of Decisions Frank Wagner for his assistance in editing this preview.

DAIMLERCHRYSLER AG V. BAUMAN (11-965)

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

Oral argument: Oct. 15, 2013

During the Argentine "Dirty War" of the 1970s, between 10,000 to 30,000 left-wing sympathizers disappeared. In 2004, Bauman and 22 Argentine citizens or residents sued DaimlerChrysler AG (DCAG) for violations under the Alien Tort Claims Act, claiming that its subsidiary in Argentina ordered state security forces to rid the plant of left-wing sympathizers. DCAG is a German public stock company that does not manufacture or sell products, own property, or employ workers in the United States. Bauman brought suit in the Northern District of California, stating that general personal jurisdiction existed by imputing the contacts of Mercedes Benz USA to DCAG. DCAG claims that the Ninth Circuit should not have found general personal jurisdiction because the alter ego test and the agency theory do not apply to establish the necessary minimum contacts. Bauman argues that the Ninth Circuit properly found general personal jurisdiction because the agency theory did apply to establish the necessary minimum contacts. The Supreme Court's decision will determine whether the contacts with the forum state of an indirect corporate subsidiary can be imputed to confer personal jurisdiction over the parent company. Full text is available at www.law.cornell.edu/supct/cert/11-965. ⊙

Written by Paul Kang and Oscar Lopez. Edited by Angela Lu.

SCHUETTE V. COALITION TO DEFEND AFFIRMATIVE ACTION (12-682)

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

Oral Argument: Oct. 15, 2013

In November 2006, 51 percent of Michigan voters approved Proposal 2, which created Section 26 of the Michigan Constitution, banning public universities and schools from using race criteria in admissions. On March 18, 2008, a Michigan District Court ruled the amendment constitutional. In 2011, an en banc panel of the Sixth Circuit reversed the decision, ruling the amendment unconstitutional because it violated the political-restructuring doctrine. Petitioner Bill Schuette, the attorney general of Michigan, argues that because there is no discriminatory purpose or intent in Section 26, there is no racial classification. However, the respondent, the Coalition to Defend Affirmative Action, Integration, and Immigration Rights and Fight for Equality By Any Means Necessary, contends that Section 26 contains racial classifications because it is aimed at racially conscious public school admissions plans. The Court›s decision may affect affirmative action practices across the United States, and at the very least, the right of individual states to ban affirmative action within state institutions. Full text is available at www.law.cornell.edu/supct/cert/12-682. ⊙

Written by Gabriella Bensur and Jennifer Brokamp. Edited by Angela Lu.

UNITED STATES V. WOODS (12-562)

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

Oral argument: Oct. 9, 2013

In November 1999, two business partners claimed a significant overstatement of adjusted basis in assets that allowed them to overstate financial losses by nearly $43 million. The partners claimed tax deductions on those losses, thereby significantly underpaying federal income taxes. After conducting an audit, the Internal Revenue Service filed a notice of Final Partnership Administrative Adjustment to the respondent, Gary Woods. Woods then filed a petition with the court for a readjustment of the partnership items. The district court concluded, and the court of appeals affirmed, that the overstatement penalty was inapplicable because of a lack of economic substance. The Supreme Court will decide whether the district court had jurisdiction to consider the penalty and whether the overstatement penalty applies to a transaction that lacks economic substance. This case implicates the use of tax shelters and the possible penalties faced by alleged tax dodgers. Full text is available at www.law.cornell.edu/supct/cert/12-562. ⊙

Written by Melanie Senosiain and Paul Rodriguez. Edited by Stephen Wirth.

KALEY V. UNITED STATES (12-464)

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

Oral argument: Oct. 16, 2013

Kerri and Brian Kaley were indicted by a federal grand jury in 2007 for stealing prescription medical devices and selling them on the black market. The United States also obtained an order to restrain assets traceable to the alleged crime. Because those assets were needed to retain the Kaleys' counsel of choice, the Kaleys contested the order as violative of their Fifth Amendment right to due process and their Sixth Amendment right to counsel of choice. Those rights, the Kaleys argued, entitled them to a full pretrial, adversarial hearing at which to challenge the validity of the forfeiture. The Eleventh Circuit Court of Appeals ruled that the Kaleys are entitled only to a hearing at which to challenge the assets' traceability to the crime. The Supreme Court's decision will impact not only the scope of pretrial asset-restraint hearings, but also the ease with which the government may seize assets and defendants' ability to retain counsel of their choice. Full text is available at www.law.cornell.edu/supct/cert/12-464. ⊙

Written by Daniel Rosales and Jordan Manalastas. Edited by Stephen Wirth.

KANSAS V. CHEEVER (12-609)

Appealed from the Supreme Court of Kansas

Oral Argument: Oct. 16, 2013

After he shot and killed Sheriff Matthew Samuels, Scott Cheever argued that his habitual use of methamphetamine prevented him from forming the necessary mental intent to commit capital murder. The case went to federal court after Kansas temporarily abolished the death penalty and Cheever argued to voluntary intoxication, which is not recognized as a mental disease or defect defense in Kansas. When the death penalty was reinstated, the case went back to the state court. The state used the mental health exam ordered by the federal court to present rebuttal testimony. Cheever argues that this evidence should not have been presented because he did not intend to waive his Fifth Amendment right against self-incrimination when he presented his mental status defense. Kansas argues that by presenting mental health testimony, Cheever voluntarily opened the door to rebuttal testimony based on the court-ordered mental health exam. The outcome in this case will help determine the role of state law in the waiver of the federal constitutional right against self-incrimination. Full text is available at www.law.cornell.edu/supct/cert/12-609. ⊙

Written by Brett Mull and Sean Mooney. Edited by Jeremy Amar-Dolan.

MCCUTCHEON V. FEDERAL ELECTION COMMISSION (12-536)

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

Oral Argument: Oct. 8, 2013

The Federal Election Commission (FEC) regulates contributions to political campaigns through base limits—the amount one contributor can give to a single candidate—and aggregate limits—the total amount an individual can give to any number of candidates or political committees. Shaun McCutcheon, a contributor to various politicians and organizations, sued the FEC alleging that aggregate limits placed on individual donors infringes his First Amendment right to freedom of expression and association. McCutcheon maintains that aggregate limits only prevent affluent donors from associating themselves with candidates. The FEC contends that they prevent circumvention of the base limits and the appearance of corruption. The District Court for the District of Columbia upheld the aggregate limits, finding that it is a constitutional exercise of the government's important purpose of preventing circumvention of the base limits. How the Supreme Court decides this case will determine the permissible constitutional balance between the exercise of First Amendment rights through political contributions and the government's interest in regulating campaign finance law. Full text is available at www.law.cornell.edu/supct/cert/12-536. ⊙

Written by Katherine Hinderlie and Rose Petoskey. Edited by Chanwoo Park.

CHADBOURNE & PARKE LLP V. TROICE (12-79)
WILLIS OF COLORADO INC. V. TROICE (12-86)
PROSKAUER ROSE LLP V. TROICE (12-88)

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

Oral Argument: Oct. 7, 2013

The Securities Litigation Uniform Standards Act (SLUSA) applies when a misrepresentation is made "in connection with the purchase or sale of a covered security." These three cases address a circuit split as to the scope and meaning of this standard. The Fifth Circuit has adopted the Ninth Circuit standard, rejecting conflicting Second, Sixth, and Eleventh Circuit standards for construing the "in connection with" requirement. The Court's ruling will implicate the scope and application of SLUSA and SLUSA's impact on state-law class actions and the U.S. securities markets. Full text is available at www.law.cornell.edu/supct/cert/12-79.

Written by So Yeon Chang, Madeline Weiss, Chihiro Tomioka, and Holly Tao. Edited by Chanwoo Park and Dillon Horne.

HEIMESHOFF V. HARTFORD LIFE INSURANCE (12-729)

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

Oral Argument: Oct. 15, 2013

Julie Heimeshoff was a longtime Walmart employee who became ill and applied for long-term disability benefits from Hartford Life & Accident Insurance Company, but Hartford denied her claim. She filed suit under the Employment Retirement Income Security Act (ERISA) to challenge the insurance determination, but the district court granted the respondent's motion to dismiss because Heimeshoff had missed the filing deadline, a ruling which the Second Circuit then affirmed. The Supreme Court will now consider when the statute of limitations starts to run for an ERISA disability claim. Heimeshoff argues that a bright-line rule is necessary under federal law so that potential plaintiffs will be able to understand the filing deadline. Hartford contends that the statute of limitations should be what is directed in the plan's accrual provision unless it is unreasonable. This case will implicate how much control insurance companies have over the statute of limitations for claims. Full text is available at www.law.cornell.edu/supct/cert/12-729. ⊙

Written by Jacob Brandler and T. Sandra Fung. Edited by Allison Nolan.

BURT V. TITLOW (12-414)

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

Oral Argument: Oct. 8, 2013

On August 12, 2000, police officers found Donald Rogers dead on his kitchen floor. As would later be revealed, Donald's wife and his niece had engaged in burking, a practice of inebriating a person with alcohol to the point of unconsciousness and then smothering him or her to death. Donald's niece, Vonlee Nicole Titlow, went on to accept a plea deal in exchange for testifying against Donald's wife but later withdrew. As a result, the prosecutor charged Titlow with murder rather than manslaughter, and a jury subsequently found her guilty of second-degree murder. On appeal, Titlow argued that her trial attorney, whom she had hired to replace another just days before withdrawing from the plea, had been ineffective for allowing Titlow to withdraw. The Michigan State Court of Appeals rejected this argument and affirmed the trial court's decision, and Titlow subsequently filed for habeas relief. The District Court for the Eastern District of Michigan denied Titlow's petition, but the Sixth Circuit reversed and ordered the prosecutor to re-offer the plea. At stake are concerns regarding the integrity of the country's plea-bargaining system as well as the evidentiary standards defendants must meet to be successful on ineffective-assistance-of-counsel claims. Full text is available at www.law.cornell.edu/supct/cert/12-414. ⊙

Written by Craig Steen and Jordan Kobb. Edited by Dillon Horne.

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mine that a transfer is inappropriate. *Id.* at 828.

[69]*Rivera v. Centro Médico de Turabo, Inc.,* 575 F.3d 10, 15 (1st Cir. 2009).

[70]*Id.*

[71]*Id.* at 16.

[72]246 F.3d 289, 298 (3d Cir. 2001).

[73]*Id.* at 299.

[74]*Id.* at 298-99.

[75]*Tradecomet.com LLC v. Google, Inc.,* 647 F.3d 472, 475 (2d Cir. 2011).

[76]*Id.* (citations omitted).

[77]*Id.*

[78]*Id.* (quoting *Asoma Corp. v. SK Shipping Co., Ltd.,* 467 F.3d 817, 822 (2d Cir. 2006)) (citation omitted).

[79]*Lighthouse MGA v. First Premium Ins.,* 448 F. App'x 512, 514 n.3 (5th Cir. 2011).

[80]*In re Atlantic*, 701 F.3d at 741.

[81]*Id.* at 740.

[82]*Rainforest Cafe, Inc. v. Eklecco, L.L.C.,* 340 F.3d 544, 545 n.5 (8th Cir. 2003).

[83] *Id.* at 849.

[84]*Marra v. Papandreou,* 216 F.3d 1119, 1123 (D.C. Cir. 2000).

[85]*Id.* at 1124.

[86]*Sucampo Pharms., Inc. v. Astellas Pharma, Inc.,* 471 F.3d 544 (4th Cir. 2006).

[87] *Id.* at 548–49.

[88]The court referenced a Ninth Circuit opinion stating that 12(b)(6) was not a Supreme Court–approved tool to use for enforcement of forum-selection clauses. *Id.* at 549.

[89]*Id.*

[90]*Id.*

[91]*Albemarle Corp. v. AstraZeneca UK Ltd.,* 628 F.3d 643, 649 (4th 2010).

[92]*Frietsch v. Refco, Inc.*, 56 F.3d 825, 830 (7th Cir. 1995).

[93]637 F.3d 801, 803–04 (7th Cir. 2011).

[94]*Id.* at 804.

[95]*Id.* at 809–11.

[96]*Riley v. Kingsley Underwriting Agencies, Ltd.,* 969 F.2d 953, 956 (10th Cir. 1992).

[97]*Id.* at 957.

[98]*Lipcon v. Underwriters by Lloyd's, London,* 148 F.3d 1285, 1290 (11th Cir. 1998).

[99]*Id.* at 1295–96.

[100]*Doe v. AOL LLC,* 552 F.3d 1077, 1081 (9th Cir. 2009).

[101]*See Murphy v. Schneider Nat'l, Inc.,* 362 F.3d 1133, 1137–38, 1140 (proceeding to evaluate a diversity suit under a motion 12(b)(3) and establishing the circuit's standard of review for the motion while noting the heavy burden in not enforcing a forum-selection clause).

[102]*In re Atl. Marine Constr. Co.*, 701 F.3d 736, 740 (5th Cir. 2012).

[103]*Id.*

[104]*Id.*

[105]*Id.*

[106]*Atl. Marine Constr. Co. v. U.S. Dist. Ct.*, 133 S. Ct. 1748 (2013).