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### **KIMBLE V. MARVEL ENTERPRISES (13-720)**

Court below: U.S. Court of Appeals for the Ninth Circuit

Oral argument: March 31, 2015

#### **Issue**

Can royalty payments from a patent licensing contract extend beyond the life of the patent?

#### **Questions as Framed for the Court by the Parties**

Should the U.S. Supreme Court overrule *Brulotte v. Thys Co.*, 379 U.S. 29 (1964)?

#### **Facts**

Stephen Kimble's patent on a Spider-Man toy was set to expire in May 2010. Importantly, "[a] patent grants the patent holder the exclusive right to exclude others from making, using ... and selling the patented innovation for a limited period of time." In December 1990, pending patent approval, Kimble met with Lou Schwartz, president of Toy Biz to discuss the toy. Toy Biz was the predecessor to Marvel Enterprise (Marvel).

In December 1990, Schwartz expressed no interest in the toy, but Kimble claims that Schwartz verbally agreed to compensate Kimble if Marvel appropriated any of the toy design. Subsequently, Marvel produced the Web Blaster, a toy similar to Kimble's design. As a result, in 1997 Kimble filed suit in the U.S. District Court for the District of Arizona against Marvel, including a claim for a breach of contract. Kimble asserted that Marvel, in creating the Web Blaster, breached the oral agreement by appropriating Kimble's toy design without paying him.

The jury in the Arizona district court sided with Kimble on the contract claim, and Marvel appealed the jury's verdict. Nonetheless, in 2001, the parties agreed to settle and dismiss the case. Under the settlement agreement, Kimble assigned his patent to Marvel. Marvel paid Kimble \$516,214.62 and agreed to pay Kimble a continuing 3 percent

royalty on "net product sales." The settlement agreement did not include an expiration date regarding Marvel's commitment to pay Kimble the 3 percent royalty.

In 2006, Marvel entered into a licensing agreement with Hasbro, providing Hasbro the right to produce the Web Blaster. Soon after, Kimble and Marvel disagreed regarding the royalty amount Marvel owed Kimble arising from Web Blasters produced by Hasbro. Kimble thus sued Marvel in Arizona state court, and Marvel subsequently removed the case to the Arizona district court. Marvel also counterclaimed, requesting a declaration that it was not required to pay royalties beyond the expiration date of Kimble's Spider-Man toy patent.

Both Marvel and Kimble moved for summary judgment, and the Arizona district court consulted a magistrate judge to suggest a ruling. The magistrate judge determined that under the settlement agreement, Kimble was not entitled to royalties past the patent's expiration date. The magistrate judge relied on *Brulotte v. Thys Co.*, which holds that "a royalty agreement that projects beyond the expiration date of the patent is unlawful *per se*." Kimble objected to the magistrate judge's recommendation, but despite Kimble's objection, the Arizona district court implemented the magistrate judge's recommendation and granted Marvel's summary judgment motion, holding that the royalties terminated upon the patent's expiration.

Kimble appealed to the U.S. Court of Appeals for the Ninth Circuit. The Ninth Circuit applied *Brulotte* and affirmed the Arizona district court's ruling that post-expiration royalties were unlawful. Kimble appealed to the Supreme Court. The Supreme Court granted certiorari on Dec. 12, 2014, to determine if it is permissible for a patent holder to collect post-expiration royalties stemming from a patent-licensing agreement.

#### **Discussion**

This case presents the Supreme Court with the opportunity to reexamine an intel-

lectual property precedent, *Brulotte*. In *Brulotte*, the Court held that patent royalty agreements could not extend beyond a patent's expiration date. Kimble urges the Supreme Court to overturn *Brulotte*, contending that it not only conflicts with the goals of patent law but also that the motivations behind *Brulotte* have disappeared. Nevertheless, Marvel disagrees and maintains that *Brulotte* should not be overturned, because Kimble has failed to show sufficient reasons to ignore stare decisis—the doctrine of adhering to previous decisions. If the Court overrules *Brulotte*, the decision will change the analysis of patent agreements and may affect the public's ability to utilize patented inventions.

#### **Unnecessary Complexity and Confusion?**

Biotime, a biotechnology company writing in support of Kimble, argues that *Brulotte*'s *per se* bar on royalties past a patent's expiration date causes complexity and confusion. Biotime believes that patent license agreements are too complex to be dictated by *Brulotte*'s *per se* rule, which currently forces parties to guess how much a patent-licensing agreement is worth often before the value of the patent is known. Biotime states that patent-license agreements contain uncertainties that cannot be resolved during the creation of a patent-license agreement. Therefore, Biotime claims that parties need to be able to adopt "flexible" royalty agreements that can account for the difficulty in evaluating a patent at the formation of an agreement.

However, in support of neither party, the American Intellectual Property Law Association (AIPLA) worries that allowing royalty agreements that extend beyond the lifetime of the patent will result in confusion and forgo the clarity offered by *Brulotte*'s *per se* rule. Specifically, AIPLA argues that *per se* rules are "clear and easy to understand"—a principle particularly important in the context of contracts "where parties need a clear understanding of what provisions they may include and whether they will be enforced."

## Harm To the Public?

The Center for Intellectual Property Research of the Indiana University Maurer School of Law and other scholars (collectively, the Center), in support of Kimble, argue that allowing royalty agreements that extend beyond the lifetime of a patent harms the public. Specifically, the Center worries that *Brulotte* deters commercialization and stifles incentives for inventors to disclose their new inventions. The Center states that *Brulotte* inhibits innovation by prohibiting flexible licensing agreements, which are vital to the commercialization of inventions because these agreements allow for pro-competitive royalty contracts. The Center highlights that *Brulotte*'s per se rule restricts a patent holder's ability to collect royalties after the patent's expiration date even when such arrangements are advantageous to both parties. The Center states that a rule restricts the patent holder's ability to engage in pro-competitive licensing agreements, which results in less commercialization to the detriment of the public.

Conversely, AIPLA argues that *Brulotte* protects the public against abuse of the patent system by allowing the public "unfettered access to patented inventions after the expiration of the patent." AIPLA worries that without *Brulotte*, the public will not be able to freely modify and experiment with expired patents. AIPLA also stresses that *Brulotte* promotes scientific exploration by giving inventors the opportunity to expand upon their patented inventions. *Brulotte*, AIPLA states, advances science by granting inventors the right to alter and build upon expired patents. Finally, AIPLA argues that "post-expiration royalties increase the cost of using the invention in the post-expiration period and thus create a disincentive for the licensee to attempt to build upon the invention even after the patent has expired."

## Analysis

In this case, the Supreme Court must decide whether to follow its holding under *Brulotte*—which limits royalties stemming from patent-licensing agreements to the life of the patent—or to overturn *Brulotte* and create more flexibility in patent licensing contracts.

Kimble contends that the Supreme Court should overturn *Brulotte*, arguing that *Brulotte*'s per se prohibition on patent holders collecting royalties after a patent has expired is "fundamentally misguided and economically unsound." Furthermore, Kimble believes that *Brulotte* conflicts with the underlying policies of the patent system.

On the other hand, Marvel argues that Supreme Court's existing case law—culminating in *Brulotte*—still provides incentive for inventors and prevents patent holders from leveraging monopoly power beyond the life of the patent. Additionally, Marvel argues that Kimble has not met the standard needed for the Court to shift away from its rule under *Brulotte*; thus, abandoning the rule would undermine *stare decisis*—the doctrine of adhering to previous precedent.

## Should the Supreme Court Apply *Stare Decisis* and Uphold *Brulotte*?

Marvel argues that Kimble has not made a sufficient argument for the Supreme Court to reverse its previous holding under *Brulotte* and depart *stare decisis*. According to Marvel, "*stare decisis* promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." Marvel contends that in *Brulotte*, the Supreme Court created "a narrow and workable rule" that acts as a shield to patent licensees. Thus, Marvel maintains that *stare decisis* will preserve this practical rule without affecting the rights of patent holders. Moreover, Marvel contends that in *Brulotte*, the Court interpreted a statute and thus Congress could have overruled *Brulotte* when passing patent legislation. However, Marvel notes that Congress, when redrafting rules on patents, did not change the rules and policies underlying *Brulotte*. Marvel argues, therefore, that Congress effectively upheld *Brulotte* by not interfering with the Court's rule. Lastly, Marvel argues that Congress, not the Court, should alter *Brulotte* because *Brulotte* relies heavily on policy implications—something that Congress is well-suited to handle. For all of these reasons, Marvel believes that the Supreme Court should not shy away from *stare decisis*.

Conversely, Kimble argues that—although *stare decisis* creates a presumption against the Court overturning its precedent—the Court can still reconsider its previous holding here. In disagreement with Marvel, Kimble maintains that *Brulotte* did not interpret the language of any congressional statute; thus, the Court can reexamine the precedent's holding. Additionally, Kimble contends that the Supreme Court has never failed to reconsider a previous holding simply due to a potential congressional response to Court action, because Congress faces substantial challenges to passing a law. Specifically, Kimble argues that allowing royalty agreements that extend beyond the patent's expiration date are

economically efficient, because allowing post-expiration royalties will "lower prices and raise output during the patent term." Further, Kimble argues that post-expiration royalties will increase competition by encouraging "new entrants." In short, Kimble argues that although Congress could have drafted new rules regulating patent royalties, it is up to the Supreme Court to reduce limitations royalty fees in patent contracts by overturning *Brulotte*.

## Conclusion

In this case, the Supreme Court will decide if royalties in patent license contracts can extend beyond the lives of the underlying patents. Kimble argues that a more flexible rule than the per se rule in *Brulotte* will encourage companies to license more patents and produce more products—especially for patents protecting early-stage technologies. However, Marvel asserts that by lifting the per se rule in *Brulotte*, the Supreme Court will permit inventors to continue exploiting their market power beyond the life of the patent, harming consumers of new products and technologies (as well as innovators creating new generations of technology). Furthermore, Marvel argues that Kimble has not overcome the presumption against overturning *Brulotte* under the doctrine of *stare decisis*. Conversely, Kimble argues that Supreme Court should overturn its holding in *Brulotte* in light of new evidence of the harm created by the rigid rule of *Brulotte*. Ultimately, the Supreme Court must decide if greater flexibility in patent licensing offsets the potential additional costs imposed on companies that license patents and consumers who purchase products. The Supreme Court's decision here will demonstrate the careful balance between rewarding inventors and preserving free market competition—considerations at the heart of the patent system. ☉

Prepared by Neil O'Donnell and Agbeko Petty. Edited by Alyssa Chen.

## WALKER V. SONS OF CONFEDERATE VETERANS (14-144)

Court below: U.S. Court of Appeals for the Fifth Circuit

Oral argument: March 23, 2015

## Issues

Do the messages and symbols on state-issued specialty license plates qualify as government speech, and has Texas engaged in viewpoint discrimination by rejecting the

license-plate design proposed by the Sons of Confederate Veterans (SCV)?

### **Questions as Framed for the Court by the Parties**

1. Do the messages and symbols on state-issued specialty license plates qualify as government speech immune from any requirement of viewpoint neutrality?

2. Has Texas engaged in “viewpoint discrimination” by rejecting the license-plate design proposed by SCV, when Texas has not issued any license plate that portrays the Confederacy or the Confederate battle flag in a negative or critical light?

### **Facts**

Texas provides drivers with the opportunity to purchase and utilize specialty license plates. One possible method for the creation of such a license plate is if the Texas Department of Motor Vehicles Board (Board), by its own initiative or after an application is filed by a nonprofit organization, issues a new plate. If a nonprofit files such an application, the plate will be issued only if the design gains the Board’s approval. The Board may “refuse to create a new specialty license plate if the design might be offensive to any member of the public.”

SCV is a nonprofit organization dedicated to preserving the memory and reputation of Confederate Civil War veterans. In August 2009, SCV applied for a specialty license plate featuring a logo of the Confederate battle flag. The Texas Department of Transportation (TxDOT), responsible for approving specialty license plates in 2009, voted two different times on SCV’s application and ultimately denied it. Subsequently, the TxDOT transferred its license-plate-approval power to a new nine-member Board. In November 2011, the Board unanimously denied SCV’s renewed specialty license-plate application. More specifically, the Board explained that comments submitted by the public reveal that a significant portion of the public associated the Confederate flag with the expression of hate toward certain people or groups.

SCV filed a claim against various public officials, including Board Chairman John Walker III (collectively, Walker), on the grounds that the Board’s denial violated the First Amendment. The district court entered a judgment for Walker, and SCV appealed to the U.S. Court of Appeals for the Fifth Circuit. The Fifth Circuit reversed the district court’s ruling and entered a judgment for SCV. Walker filed a

petition for writ of certiorari requesting the Supreme Court resolve two circuit splits concerning the practice of government-speech and viewpoint-discrimination in state specialty license-plate programs. In response, SCV argued that the two circuit splits Walker referenced are not applicable to the facts of this case and therefore asked the Supreme Court to uphold the decision of the Fifth Circuit.

### **Discussion**

The Supreme Court has the opportunity to decide if the messages and symbols on state-issued specialty license plates constitute government speech that does not require viewpoint neutrality and whether Texas committed viewpoint discrimination in rejecting SCV’s specialty license-plate application. Walker argues that state-issued specialty plates represent government speech and are therefore not subject to viewpoint-neutrality requirements. In opposition, SCV argues that specialty license-plate messages constitute private speech and, by rejecting their application, Texas violated SCV’s First Amendment right to free speech. A finding that the Board did not engage in viewpoint discrimination may present a threat to the liberty of speech. On the other hand, a ruling that the Board violated the First Amendment may make it unworkable for Texas to uphold viewpoint neutrality when issuing specialty license plates.

### **First Amendment Rights**

In support of Walker, several states argue that Texas is not prohibiting speech but is simply choosing not to promote speech. The states explain that Texas is not in violation of an individual’s freedom of speech because Texas does not have to subsidize speech. They claim that if the Supreme Court rules that the Board violated the First Amendment by denying SCV’s application, states will be forced to either eliminate their specialty license plate programs or face the possibility of litigation every time state agencies approve or deny an application. Also supporting Walker, the Justice and Freedom Fund argues that license plates are not a place used to exchange ideas but are rather government-owned vehicle identifiers. The Justice and Freedom Fund further contend that Texas is not violating freedom of speech, because people have the freedom to choose from a wide variety of messages to display on their license plates.

In support of SCV, the American Civil Liberties Union (ACLU) argues that the Texas specialty license-plate program violates the

First Amendment, because, regardless of how repugnant a viewpoint may be, a state cannot discriminate against it. Also supporting SCV, the Becket Fund for Religious Liberty argues that Texas is violating the First Amendment by creating a specialty license-plate program and excluding only certain viewpoints. The Becket Fund explains that Texas created a space for people to express their points of view and cannot exclude only selected viewpoints without controlling public discourse.

### **Analysis**

The Supreme Court will address whether the messages and symbols on state-issued specialty license plates constitute government speech, which does not require viewpoint neutrality, and whether Texas committed viewpoint discrimination in rejecting SCV’s specialty license plate. Walker argues that the government-speech doctrine permits Texas to regulate the content and design of state-issued license plates and that Texas did not commit viewpoint discrimination in refusing to issue SCV’s design by not approving any specialty license plates disparaging the Confederacy. SCV counters that specialty license-plate messages are private speech, meaning Texas cannot discriminate between license plates based on viewpoint without violating the First Amendment, and that it engaged in viewpoint discrimination by rejecting its Confederate-flag license-plate design.

### ***Do Specialty License Plate Messages and Symbols Constitute Government or Private Speech?***

Walker argues that Texas is permitted to determine the content of state-issued license plates under the government-speech doctrine, which recognizes the government’s right to speak. He asserts the government-speech doctrine allows states to restrict speech that occurs within the scope of government-created programs. He also claims the messages and symbols that appear on specialty license plates are within the scope of Texas’s specialty license-plate program, meaning Texas may exclude Confederate messages and symbols regardless of whether the speech comes from private parties. He claims the lower court erred in applying the reasonable observer standard to the government-speech doctrine because the Supreme Court has never accepted it as a legitimate test, and a reasonable observer would view the messages and symbols on a specialty license plate as the speech of the state and the driver. Finally, Walker ar-

gues that the rejection of a specialty plate is comparable to the *Pleasant Grove City v. Summum* decision rejecting a proposed monument for exhibit in a public park. *Summum*, according to Walker, held that messages are government speech if a state exercises final approval authority and effective control over proposed messages, even where messages were designed or proposed by private parties. Here, Walker maintains, the specialty license plates are government speech because Texas holds final approval authority and effective control over all specialty-plate designs.

SCV counters that the messages and symbols on specialty plates are private speech that implicate the driver's First Amendment rights. According to SCV, specialty plates proposed and designed by state legislatures may be considered government speech, but all previous specialty license-plate cases have considered plates created by private parties to constitute private speech. It argues that the Supreme Court's holding in *Summum* does not control here because specialty license plates are transitory and closely identified with the car's driver. Moreover, it claims, the driver exercises final approval authority in purchasing and affixing the license plate to the car. SCV also argues that this case is distinguishable from *Johanns v. Livestock Marketing Association*, where the Supreme Court held that the promotional campaigns created under the Beef Promotion and Research Act of 1985 were government speech. Here, SCV claims, the Texas Transportation Code does not specify what messages should be conveyed, and the citizens express their own personal messages. The specialty-plate program, SCV argues, was intended to promote free expression by private parties, and the SCV plate falls within the scope of the program.

#### **Did Texas Engage In Viewpoint Discrimination?**

Walker contends that, even if Texas were not permitted to engage in viewpoint discrimination, it did not do so in rejecting SCV's specialty license plate. Walker supports his assertion by reading the Seventh Circuit's holding in *Choose Life Illinois v. White* that a state does not engage in viewpoint discrimination if it does not authorize a pro-choice or pro-life license plate. Moreover, he argues that the license plate was rejected under Texas Transportation Code § 504.801(c) because the plate would offend "member[s] of the public." Walker maintains that the Board's refusal to grant a specialty license plate does not mean that the Board dismisses the license plate cre-

ator's viewpoint; such a refusal is simply based off a factual inquiry into whether the license plate would likely offend a member of the public. Finally, Walker argues that Fifth Circuit's complaint that the Board has "unbridled discretion" in approving specialty license plates under § 504.801(c) is misguided, because the factual inquiry does not depend upon the Board's subjective feelings, and members of the public are likely to be offended by statements relating to politics or race.

SCV counters that Texas's specialty license-plate program created a forum for private citizens to speak, and the First Amendment right to freedom of speech prohibits Texas from differentiating between speakers based on a speaker's viewpoint. SCV argues that the Seventh Circuit's holding in *Choose Life Illinois* is inapposite here due to the differences between each state's specialty license plate program. It asserts that Texas has never abstained from issues related to the Confederacy, as evidenced by the state's celebration of Confederate Heroes Day. Moreover, SCV claims, Texas's written denial states the reason for denial as offensiveness rather than Texas's desire to exclude the entire subject of the Confederacy. Finally, SCV argues that the "might be offensive to any member of the public" standard is unconstitutional, because it unduly constrains citizens' First Amendment right to free speech and creates an amorphous test with no objective standard.

#### **Conclusion**

The Supreme Court will determine whether the messages and symbols on state-issued specialty license plates qualify as government speech and whether Texas engaged in viewpoint discrimination by rejecting the license plate design proposed by the SCV. Walker argues that Texas is permitted to determine the content of state-issued license plates under the government-speech doctrine. SCV counters that specialty license-plate messages constitute private speech and that by rejecting their application, Texas violated SCV's First Amendment rights. If the Court upholds Walker's claim, there may be negative First Amendment repercussions, and if SCV prevails, states may have to dismantle or alter their specialty license-plate programs. ©

*Prepared by Aida Nieto and Cesar Sanchez. Edited by Dan Rosales.*

### **BANK OF AMERICA, NA V. CAULKETT (13-1421); BANK OF AMERICA, NA V. TOLEDO-CARDONA (14-163)**

*Court below: U.S. Court of Appeals for the Eleventh Circuit*

**Oral argument: March 24, 2015**

The U.S. Supreme Court will determine whether 11 U.S.C. § 506(d) permits bankruptcy courts to "strip off" junior liens on property if the value of the property used as collateral is less than the amount the debtor owes to the senior lienholder—in other words, if the junior mortgage lien is completely underwater. Bank of America asserts that junior liens should not be "stripped off," or treated as unsecured loans, because § 506 only strips off claims from property that are disallowed and because the Supreme Court's ruling in *Dewsnup v. Timm*, disallowing stripping down of primary liens to the value of the underlying property, should extend to this case. Caulkett and Toledo-Cardona argue that second liens should be treated as unsecured, and hence disallowed, loans when the value of the collateral exceeds the amount owed on the first mortgage and that the Supreme Court's ruling in *Dewsnup* is limited to stripping down and should not extend to these circumstances. The Court's ruling impacts the right of junior lienholders to collect on loans in the event of a debtor's declaration of bankruptcy and the treatment of previously secured, but subordinate, debt in bankruptcy proceedings. Full text available at [www.law.cornell.edu/supct/cert/13-1421](http://www.law.cornell.edu/supct/cert/13-1421). ©

*Prepared by Carolina Morales and Shaun Martinez. Edited by Jacob Brandler.*

### **BRUMFIELD V. CAIN (13-1433)**

*Court below: U.S. Court of Appeals for the Fifth Circuit*

**Oral argument: March 30, 2015**

The U.S. Supreme Court will determine the extent to which indigent prisoners sitting on death row are entitled to government resources to present new claims of mental incompetency in post-conviction proceedings. Brumfield argues that the Louisiana state court violated federal law by interfering with his due process rights. In contrast, Cain argues that the state court did not violate any of Brumfield's clearly established rights under federal law. This case raises questions about the extent to which federal courts may rely



on states' pre-*Atkins* proceedings to uphold death sentences imposed on prisoners now offering evidence that they were mentally incompetent. Determining this question implicates the extent to which a state's quality or reliability of review should factor into the federal courts' deference to the previous state court determination. This case will have implications for indigent prisoners sentenced to death prior to the Court's decision in *Atkins*. Full text available at [www.law.cornell.edu/supct/cert/13-1433](http://www.law.cornell.edu/supct/cert/13-1433). ☉

*Prepared by Mary Beth Picarella and Andrew Huynh. Edited by Gabriella Bensur.*

### **COMMIL USA, LLC V. CISCO SYSTEMS, INC. (13-896)**

Court below: U.S. Court of Appeals for the Federal Circuit

**Oral argument: March 31, 2015**

The U.S. Supreme Court will determine whether a defendant with a good-faith belief that a patent is invalid can be found liable for induced infringement. Commil argues that a good-faith belief defense of a patent's invalidity is irrelevant to the intent requirement to establish infringement by inducement under § 271(b). In opposition, Cisco argues that a good-faith belief defense of a patent's invalidity is crucial to determining culpability and thus is relevant in establishing infringement by inducement. The ruling in this case will impact the scope of a patent owner's rights and the availability of a new defense to patent infringement by inducement. Additionally, the decision in this case could have important consequences for the sale and marketing of generic-drug counterparts. Full text available at [www.law.cornell.edu/supct/cert/13-896](http://www.law.cornell.edu/supct/cert/13-896). ☉

*Prepared by Alice Chung and Allison Eitman. Edited by: Jacob Brandler.*

### **HARRIS V. VIEGELAHN (14-400)**

Court below: U.S. Court of Appeals for the Fifth Circuit

**Oral argument: April 1, 2015**

The Supreme Court will determine whether undistributed funds in a Chapter 13 trustee's possession must be returned to the debtor upon conversion to Chapter 7 or whether creditors have a right to those funds. Harris argues that the Fifth Circuit's rule is right in that a debtor's post-petition wages become part of the property of the estate and thus revert back

to the debtor upon conversion. Viegelaahn, however, counters that the Fifth Circuit's rule is correct, because funds belong to creditors, as the Bankruptcy Code creates an escrow relationship between the trustee and creditors. The resolution of this case has the potential to affect the incentives a debtor has to file under Chapter 13 and may also implicate the balance of equitable considerations between debtor and creditor. Full text available at [www.law.cornell.edu/supct/cert/14-400](http://www.law.cornell.edu/supct/cert/14-400). ☉

*Prepared by Christa Maiorano and Matthew Valenti. Edited by Oscar Lopez.*

### **LOUIS B. BULLARD V. BLUE HILLS BANK (14-116)**

Court below: U.S. Court of Appeals for the First Circuit

**Oral argument: April 1, 2015**

The U.S. Supreme Court must determine whether a bankruptcy court's denial of a debtor's Chapter 13 reorganization plan is "final" within the meaning of 28 U.S.C. § 158 and thus immediately appealable by a debtor. Petitioner Louis B. Bullard argues that his Chapter 13 plan's denial was "final" and thus appealable, because the denial amounted to a court's adjudication of a discrete issue within the bankruptcy process. In contrast, looking at an entire bankruptcy case as a "single judicial unit," respondent Blue Hills Bank argues that Bullard's plan was not final and thus not appealable, because Bullard's plan was denied with leave to amend. The Court's decision in this case will implicate practical considerations within the bankruptcy process and the appropriate balance between the bargaining power of debtors and creditors. Full text available at [www.law.cornell.edu/supct/cert/14-116](http://www.law.cornell.edu/supct/cert/14-116). ☉

*Prepared by Mateo de la Torre and Jee H. Kim. Edited by Paul Kang.*

### **MICHIGAN V. ENVIRONMENTAL PROTECTION AGENCY (14-46); UTILITY AIR REGULATORY GROUP V. ENVIRONMENTAL PROTECTION AGENCY (14-47); NATIONAL MINING ASSOCIATION V. ENVIRONMENT PROTECTION AGENCY (14-49)**

Court below: U.S. Court of Appeals for the District of Columbia

**Oral argument: March 25, 2015**

The U.S. Supreme Court will consider whether the Environmental Protection Agen-

cy (EPA) acted reasonably based on the agency's interpretation of its obligations under the Clean Air Act when it did not consider the costs, during rule-making, of regulating the emissions of hazardous air pollutants from oil- and coal-fired electric utilities. The petitioners argue that because the EPA did not consider cost of compliance as a factor in its decision, the EPA's rule is an incorrect interpretation of the Clean Air Act and is unreasonable. The respondents counter that the EPA acted reasonably and correctly interpreted the Clean Air Act by not considering cost of compliance as a factor in its decision to regulate hazardous air pollutants from electric utility plants. The Court's decision will implicate the regulation of hazardous air-pollutant emissions from electric utilities and may have broader implications for the statutory interpretation of similar regulatory mandates to agencies. Full text available at [www.law.cornell.edu/supct/cert/14-46](http://www.law.cornell.edu/supct/cert/14-46). ☉

*Prepared by Johnny Kuang and Allison Hoppe. Edited by Rose Nimkiins Petoskey.*

### **SAN FRANCISCO V. SHEEHAN (13-1412)**

Court below: U.S. Court of Appeals for the Ninth Circuit

**Oral argument: March 23, 2015**

The U.S. Supreme Court will determine whether the Americans with Disabilities Act (ADA) requires police officers, when attempting an arrest, to reasonably accommodate a violent and armed, mentally ill suspect. San Francisco argues that Sheehan, the suspect in this case, posed a direct threat to others and, accordingly, the ADA did not apply. Moreover, San Francisco contends that, at the least, the officers did not violate a clearly established right and thus are protected from liability by qualified immunity. Sheehan counters that she posed a threat only to people who entered her room and that the officers' action violated her clearly established right to be free from unreasonable seizures. The Court's ruling will have an effect on the safety of the public, the mentally ill, and law enforcement officers. Full text available at [www.law.cornell.edu/supct/cert/13-1412](http://www.law.cornell.edu/supct/cert/13-1412). ☉

*Prepared by Michael Duke and Edward Flores. Edited by Oscar Lopez.*