A Primer on Vacatur of a Prior Court Order as Part of a Settlement Agreement; Recent Case Law

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A new Eleventh Circuit opinion put the issue of the propriety of vacatur of prior court orders in settlement agreements in focus and provides authority for parties seeking to vacate unfavorable orders as part of settlements. In *Hartford Casualty Insurance Co. v. Crum & Forster Specialty Insurance Co.*,[1] the Eleventh Circuit reversed a district court that declined to vacate prior orders on a Rule 60(b) motion for relief from judgment as part of a settlement. The lead case on the issue of vacatur is the U.S. Supreme Court's decision in *United States v. Munsingwear Inc.*[2]

United States v. Munsingwear Inc.

In *Munsingwear*, the United States filed suit against Munsingwear seeking equitable (injunctive) and legal (treble damages) remedies for alleged violation of a regulation setting the maximum price of commodities Munsingwear sold.[3] Under a stipulated pre-trial order, the count seeking treble damages was stayed pending a decision on the count seeking equitable relief.[4] The district court concluded that Munsingwear's prices complied with the price fixed by regulation and dismissed the United States' complaint.[5] During the pendency of the United States' appeal of that determination, the commodity subject of the regulation was decontrolled by executive order.[6] Munsingwear subsequently moved to dismiss the appeal on mootness grounds, which was granted by the Eighth Circuit.[7]

Munsingwear then successfully moved to dismiss the action based on the *res judicata* effect of the unreversed judgment in Munsingwear's favor on the United States' request for injunctive relief.[8] A divided panel of the Eighth Circuit affirmed.[9] On further appeal the Supreme Court affirmed, noting the "established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss" and holding that the United States did not move to have the adverse judgment vacated under that "established practice" (i.e., it sat on its rights).[10]

U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership

Some 44 years later in *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*,[11] the Supreme Court revisited the concept of vacatur in a high profile bankruptcy case over whether the new value exception to the absolute priority rule survived enactment of the Bankruptcy Code. In that case, Northtown Investments financed the construction of the Bonner Mall. Bonner Mall Partnership (BMP) purchased the mall, while U.S. Bancorp Mortgage Company (Bancorp) acquired the loan and mortgage.[12] BMP later defaulted and Bancorp scheduled a foreclosure sale.[13] Shortly before the sale BMP filed a Chapter 11 bankruptcy case and a plan of reorganization premised on what is referred to as the "new value exception" to the absolute priority rule.[14] Bancorp sought relief from the automatic stay to proceed with the foreclosure on the basis that the proposed plan was unconfirmable as a matter of law based, in part, on the unavailability of the new value exception.[15] The bankruptcy court modified the automatic stay, determining that the new value exception had not survived enactment of the Bankruptcy Code.[16] The district court reversed and the Ninth Circuit affirmed.[17] After the Supreme Court granted certiorari, Bancorp and BMP agreed to a plan of reorganization that the bankruptcy court approved.[18] The parties stipulated that the confirmed plan constituted a settlement that mooted the appeal, but they disagreed on whether the judgment of the Ninth Circuit should be vacated as requested by Bancorp.[19]

The Supreme Court first rejected the proposition that it lacked the power to entertain Bancorp's motion for vacatur after a determination that Article III jurisdiction was lacking, relying on 28 U.S.C. § 2106.[20] The issue before the Supreme Court was whether federal courts should vacate prior orders where mootness

comes into play based on a settlement, recounting the contention that its prior case law did not distinguish between types of moot cases, and citation to case law directing vacatur in the settlement context, *Lake Coal Co. v. Roberts & Schaefer Co.*,[21] as an example.[22] The Court stated that the reference to the "established practice" for vacatur in *Munsingwear* was *dictum*, was not applied consistently, and was set forth mostly in *per curiam* opinions.[23] The Court explained that "[t]he principal condition to which we have looked is whether the party seeking relief from the judgment below caused the mootness by voluntary action."[24]

The Court further stated that "[w]here mootness results from settlement, … the losing party has voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari, thereby surrendering his claim to the equitable remedy of vacatur. The judgment is not unreviewable, but simply unreviewed by his own choice."[25] The Court explained that, due to the equitable nature of vacatur, the public interest in maintaining law is an important consideration and the use of vacatur as a "refined form of collateral attack" should not be employed lightly.[26] The Supreme Court noted that "exceptional circumstances do not include the mere fact that the settlement agreement provides for vacatur."[27] The Supreme Court concluded that the determination of whether to vacate prior orders is equitable in nature and that there might be "exceptional circumstances" where vacatur is appropriate but such circumstances wouldn't be present based on a settlement alone.[28]

Hartford Casualty Insurance Co. v. Crum & Forster Specialty Insurance Co.

In its recent decision in *Hartford Casualty*, the Eleventh Circuit reviewed a district court's denial of a motion to approve a settlement that was conditioned upon vacatur of prior orders of that court granting summary judgment and awarding attorney's fees to one of the litigants.[29] On appeal, the Eleventh Circuit directed the parties to mediation, which was unsuccessful.[30] After conducting oral argument, the Eleventh Circuit again ordered the parties to mediation; this time the parties settled and made their settlement expressly conditioned on vacatur of the district court's prior orders.[31] On remand, the district court declined to approve the settlement, finding that "exceptional circumstances" contemplated by *U.S. Bancorp*, were not present to warrant vacatur because the settlement evidenced a "voluntary forfeiture of review" and was entirely their "own prerogative."[32]

The district court rejected the proposition that vacatur was appropriate on the basis that the orders were of limited precedential value (because a district court was construing state law), reasoning that the degree of precedential value was irrelevant.[33] On review, the Eleventh Circuit confirmed the equitable nature of the determination of the presence (or absence) of "exceptional circumstances," explaining that it contemplated balancing the benefits of settlements to the parties and judicial system and, by extension, the public versus the harm to the public resulting from "lost precedent."[34]

The Eleventh Circuit noted that it prompted the parties to settle by sending them to mediation twice, so it was not a case where the party that lost at trial voluntarily forfeited his right to appeal.[35] The Eleventh Circuit further noted that both of the settling parties sought vacatur because without it there would have been no settlement, stating as follows: "The parties' interests are best served through the voluntary disposition of this case, and further proceedings are curtailed, conserving judicial resources. On the other side of the balance is the public interest in reserving a district court ruling on questions of state contract law that has been appealed to this Court. The slight value of preserving that precedent to the public interest generally, however, is outweighed by the direct and substantial benefit of settling this case to [the parties] and to the judicial system (and thus to the public as well)."[36] The Eleventh Circuit expressly rejected what appeared to it to be a bright-line rule adopted by the district court that vacatur was never appropriate when presented in the context of a settlement, explaining that "[a]dopting such a reading of 'exceptional circumstances'—that is, categorically denying that any such 'exceptional circumstances' exist—would be inconsistent with the Supreme Court's express language in *U.S. Bancorp* and the equitable nature of that decision."[37]

The Eleventh Circuit also rejected the "too narrow" approach taken by the district court, based on language in *U.S. Bancorp* regarding the importance of precedent, that decisions should not be vacated unless the public interest would be served.[38] The Eleventh Circuit reasoned that "the public interest is not served only by the preservation of precedent," but also "by settlements when previously committed judicial resources are made available to deal with other matters, advancing the efficiency of the federal courts. When proper consideration is given to the interests of the parties, the judicial system, and the public taken together, vacatur may still prove an appropriate remedy even if the public's interest in the preservation of precedent is not affirmatively advanced when considered in isolation."[39]

The Eleventh Circuit, relying upon two circuit court opinions, *Major League Baseball Properties Inc. v. Pacific Trading Cards Inc.*[40] and *Motta v. District Director of Immigration Naturalization Services*,[41] each of which approved vacatur of prior orders as part of settlement agreements, held that the district court abused its discretion in determining that "exceptional circumstances" were not present. In so holding, the Eleventh Circuit reversed denial of the parties' Rule 60(b) motion, which sought vacatur, and vacated the summary judgment and fee orders.[42] Interestingly, the two circuit court cases relied upon by the Eleventh Circuit were relied upon by a district court within the Eleventh Circuit some five-and-a-half months prior to the Eleventh Circuit's decision in *Hartford*.

Board of Trustees of the University of Alabama v. Houndstooth Mafia Enterprises LLC

In *Board of Trustees of the University of Alabama v. Houndstooth Mafia Enterprises LLC*,[43] the U.S. Patent & Trademark Office's Trademark Trial and Appeal Board (TTAB) issued an administrative decision dismissing plaintiffs' opposition to registration of the "Houndstooth Mafia" mark sought by defendants.[44] The University of Alabama has licensed the Houndstooth pattern as a trademark in connection with various goods.[45] The TTAB decision held that defendants could register the mark.[46] Plaintiffs then appealed by filing suit in district court. While the case was pending before the district court, the parties reached a settlement that was expressly conditioned on vacatur of the TTAB's decision.[47] The district court entered a consent judgment that was submitted to the TTAB.[48] Apparently considering the consent judgment as a request, the TABB declined to vacate its prior decision.[49] Plaintiffs moved the district court to enforce its prior judgment.[50]

The district court granted the motion and, in so doing, rejected the TTAB's reasoning that under *U.S. Bancorp* its prior decision

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[2]*DIRECTV Inc. v. Nat'l Labor Relations Bd.*, 837 F.3d 25 (D.C. Cir. 2016).
[3]*MasTec Advanced Tech.*, 357 N.L.R.B. No. 17 (2011).
[4]*See* Talia Jane, *An Open Letter to My CEO*, Medium (Feb. 19, 2016), medium.com/@taliajane/an-open-letter-to-my-ceo-fb73df021e7a#.kuwd1nayd.
[5]Memorandum from the National Labor Relations Board, Office of the General Counsel No. OM 11-74, Report of the Acting General Counsel Concerning Social Media Cases (Aug. 18, 2011); Memorandum from the National Labor Relations Board, Office of the General Counsel No. OM 12-31, Report of the Acting General Counsel Concerning Social Media Cases (Jan. 24, 2012); Memorandum from the National Labor Relations Board, Office of the General Counsel No. OM 12-59, Report of the Acting General Counsel Concerning Social Media Cases (May 30, 2012); Memorandum from National Labor Relations Board, Office of the General Counsel No. GC 15-04, Report of the General Counsel Concerning Employment Rules (Mar. 18, 2015).
[6]*In re American Golf Corp.*, 330 NLRB No. 172 (2000).
[7]*Id.*
[8]*Sierra Publ'g Co. v. N.L.R.B.*, 889 F.2d 210, 217 (9th Cir. 1989).
[9]NLRB Memo. OM 12-31 at 7, 12 (statements reflecting employee's personal workplace issues not concerted activity).
[10]*Compare* NLRB Memo. OM 12-31 at 5, 21 (co-workers responded and engaged with Facebook posting), *with id.* at 32-33 (statement unprotected where it received no likes or responses from co-workers), NLRB Memo. OM 11-74 at 14-15 (same); NLRB Memo. OM 11-74 at 8 (post protected where it arose out of offline employee discussions).
[11]*Five Star Transp. Inc.*, 349 NLRB No. 8 (2007) (criticism of employer's safety record with respect to non-employee third parties was not protected concerted activity).
[12]*See Diamond Walnut Growers Inc. v. Nat'l Labor Relations Bd*, 113 F.3d 1259, 1277-78 (D.C. Cir. 1997) (describing trend in cases) (Wald, J., concurring in part and dissenting in part).
[13]*Five Star Transp. Inc. v. Nat'l Labor Relations Bd.*, 522 F.3d 46, 54 (1st Cir. 2008); *see also Cmty. Hosp. of Roanoke Valley Inc. v. Nat'l Labor Relations Bd.*, 538 F.2d 607, 609 (4th Cir. 1976) (nurse's comment linking lack of ability to care for all patients with pay and benefits levels was protected concerted activity).
[14]*New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).
[15]*Nat'l Labor Relations Bd. v. Knuth Bros. Inc.*, 537 F.2d 950, 956 (7th Cir. 1976).
[16]NLRB Memo. GC 15-04 at 4-6 (discussing permissible scope of confidentiality rules).
[17]NLRB Memo. OM 12-31 at 3 (use of expletives didn't forfeit protected activity status); NLRB Memo. OM 11-74 at 14-15 (personal insults toward supervisor did not cause statement to lose status).
[18]*Coors Container Co. v. Nat'l Labor Relations Bd.*, 628 F.2d 1283, 1288 (10th Cir. 1980).
[19]*E.g.*, *Hicks v. ABT Assocs. Inc.*, 572 F.2d 960, 970 (3d Cir. 1978) (complaint to government agency that funded employer's project).
[20]*Rollins v. State of Fla. Dept. of Law Enforcement*, 868 F.2d 397, 401 (11th Cir. 1989).

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was not rendered moot by the parties' settlement agreement.[51] The court distinguished the case from *U.S. Bancorp*, where the litigants agreed to vacatur as part of the settlement.[52] Thus, according to the district court, the issue in *U.S. Bancorp* was whether settlement of a case during an appeal constitutes sufficient grounds by itself for an appellate court to vacate a judgment of an inferior court.[53]

In its decision, the district court discussed *Major League Baseball Properties*, which involved alleged trademark violations.[54] In that case, the district court denied Major League Baseball (MLB) Properties' motion for injunctive relief, which was then appealed to the Second Circuit.[55] While on appeal, the parties reached a settlement that contemplated vacatur of the district court's order.[56] The Second Circuit explained, apropos to the matter before the district court in *Board of Trustees of the University of Alabama*, that "Pacific strongly desired a settlement to avoid [specific] financial consequences of [defending the appeal]" and that "MLB was agreeable to a settlement but needed a vacatur because, in the course of defending its marks, it ... had to be concerned about the effect of the district court's decision in future litigation with alleged infringers. Under trademark law, MLB must defend its mark against all users or be subject to the defense of acquiescence."[57] The Second Circuit further explained that "[t]he only damage to the public interest from such a vacatur would be that the validity of MLB's marks would be left to future litigation,"[58] which warranted the finding that "exceptional circumstances" contemplated by *U.S. Bancorp* were present.

As further recounted by the Second Circuit, in *Motta*, the First Circuit vacated a district court's decision finding the existence of "exceptional circumstances." In *Motta*, Immigration Naturalization Services (INS) had appealed from a judgment that stayed a deportation pending a decision on a motion to reopen deportation proceedings.[59] The First Circuit, like the Eleventh Circuit in *Hartford*, encouraged the INS to settle the case given that settlement was in the parties' interests.[60] However, the INS believed that it could not settle absent vacatur of the district court's decision given that it was a "repeat player before the courts" and could not relinquish its right to appeal a decision that might harm it in future litigation.[61] The First Circuit concluded that these facts constituted "exceptional circumstances," and that the interest in settlement outweighed the social value of precedent being vacated.[62]

After the district court rejected claimed distinctions with *Major League Baseball*—including a prescient hat tip to the Eleventh Circuit's decision in *Hartford* involving the court's suggestion of mediation—and noted that settlement was conditioned on vacatur, the defendants could not afford to continue litigating, the plaintiffs wanted to get whatever they could through settlement, and the TABB was bound by the district court's consent judgment. The district court therefore found that "exceptional circumstances" warranting vacatur existed.[63]

Conclusion

Although by no means universal, there is ample authority, including recent circuit court authority, supporting the proposition that where parties to litigation have valid reasons to settle, and make vacatur of a prior order(s) an express condition to settlement, they have a fair shot at convincing a federal court to approve the settlement and, in so doing, finding "exceptional circumstances" contemplated by *U.S. Bancorp* despite the Supreme Court's forceful language about the sanctity of precedent. The key is to focus on the equitable nature of

vacatur and the fact that, as pointed out by the Eleventh Circuit in *Hartford*, it is error to read *U.S. Bancorp* as drawing a bright-line rule prohibiting vacatur in the settlement context. One might also make the point that district court opinions are not binding precedent on other district judges in the same district[64] such that the loss of such precedent should not necessarily militate against a finding of "exceptional circumstances." ⊙

Endnotes

[1]*Hartford Cas. Ins. Co. v. Crum & Forster Specialty Ins. Co.*, No. 15-12781 and 12-13728, 2016 WL 3741972 (11th Cir. July 12, 2016).
[2]*United States v. Munsingwear Inc.,* 340 U.S. 36 (1950).
[3]*Munsingwear*, 340 U.S. at 37.
[4]*Id.*
[5]*Id.*
[6]*Id.*
[7]*Id.*
[8]*Id.*
[9]*Id.*
[10]*Id.* at 39-41.
[11]*U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship,* 513 U.S. 18 (1994).
[12]*Id*. at 19.
[13]*Id.*
[14]*Id.* at 19-20.
[15]*Id.* at 20.
[16]*Id.*
[17]*Id.*
[18]*Id.*
[19]*Id.* Bancorp moved for vacation under 28 U.S.C. § 2106, which provides as follows: "The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."
[20]*Id.* at 21. The Supreme Court explained that "… even in the absence of, or before considering the existence of, extraordinary circumstances, a court of appeals presented with a request for vacatur of a district court judgment may remand the case with instructions that the district court consider the request, which it may do pursuant to Federal Rule of Civil Procedure 60(b)." *Id.* at 29. Rule 60(b) authorizes relief from an order or judgment when, among other things, "applying the judgment order prospectively is no longer equitable" Fed. R. Civ. P. 60(b)(5) and Fed. R. Civ. P. 60(b)(6) or "for any other reason that justifies relief" Fed. R. Civ. P. 60(b)(5) and Fed. R. Civ. P. 60(b)(6). Thus, on remand from a federal circuit court a district court will apply Rule 60(b), not 28 U.S.C. § 2106, n. 17, *supra*, as a basis for vacatur. As explained in *Lundsten v. Creative Cmty. Living Servs. Inc.*, No. 13-C-108, 2016 WL 111431, *1 (E.D. Wis. Jan. 11, 2016), "[u] nlike the appeals court, [the district court's] discretion is not cabined by the 'exceptional circumstances' test set forth in *Bonner Mall. Marseilles Hydro Power LLC v. Marseilles Land & Water Co.*, 481 F.3d 1002, 1003 (7th Cir. 2007). Instead, the [district] court balances the various public and private interests at stake Including the effect on judicial precedent, the preclusive effect of the [district] court's opinion, and the impact on judicial resources. *Mayers v. City of Hammond*, 631 F.Supp.2d 1082, 1089 (N.D. Ind. 2008). (collecting cases). Given the fact-intensive nature of the inquiry required, it seems appropriate that a district court should enjoy greater equitable discretion when reviewing its own judgments than do appellate courts operating at a distance. *Am. Games Inc. v. Trade Prods. Inc.*, 142 F.3d 1164, 1170 (9th Cir. 1998)." *Id.* (internal quotation marks omitted). *Cf. In re Facebook Inc. IPO, Sec. & Derivative Litig.*, No. 12 MDL 2389, 2015 WL 7587357, at *_, n.2 *n.2 (S.D.N.Y. Nov. 24, 2015) ("Although *U.S. Bancorp* concerned vacatur of an appellate decision, the principles are also applicable to motions to vacate district court decisions, despite the different precedential rules involved.") (citing *ATSI Commc'ns Inc. v. Shaar Fund Ltd.*, 547 F.3d 109, 111 (2d Cir. 2008) and *U.S. Bancorp*, 513 U.S. at 28)).
[21]*Lake Coal Co. v. Roberts & Schaefer Co.,* 474 U.S. 120 (1985).
[22]*U.S. Bancorp*, 513 U.S. at 23.
[23]*Id.*
[24]*Id.* at 23-25.
[25]*Id.* at 25.
[26]*Id.* at 26-27.
[27]*Id.* at 29.
[28]*Id.*
[29]*Hartford Casualty,* 2016 WL 3741972 at *1.
[30]*Id.*
[31]*Id.*
[32]*Id.*
[33]*Id.*
[34]*Id.* at *3.
[35]*Id.* at *4.
[36]*Id.; see also Lundsten*, n.20, *supra*, 2016 WL 111431 (district court granted parties' motion for "indicative ruling" that it would grant a request to vacate its prior judgment finding denial of benefits "arbitrary and capricious" as part of a settlement of an ERISA action applying a balancing test, not the "exceptional circumstances" test in *U.S. Bancorp*, although they employed similar concepts (including the effect on judicial precedent, the preclusive effect of the court's order and the impact on judicial resources); noting that settlement would conserve judicial resources as affirmance by the Seventh Circuit would not end the litigation, the court's "opinions are only relevant as persuasive authority," they "will not be ripped from the Federal Supplement," can be cited as persuasive authority and the impact on *res judicata* was "unimportant" as the settlement resolved all issues between the parties); *Janssen Prods. L.P. v. Lupin Ltd.*, No. 10-5954 (WHW), 2016 WL 1029269 (D. N.J. Mar. 15, 2016) (after "indicative ruling" district court, on remand from Federal Circuit, granted parties' motion to modify judgment arising from settlement of patent-related litigation; the court acted under Rule 60(b)(5) and (6), noting the amendment to its judgment was limited in scope, and that modifying the judgment was consistent with the principles set forth in *U.S. Banco*rp). *But see In re Facebook Inc. IPO, Sec. & Derivative Litig.*, n.20, *supra*, 2015 WL 7587357 (district court denied defendants' motion to withdraw and vacate order denying, in part, their motion to dismiss amended class action complaint alleging violations of the Securities Exchange Act of 1934 and Rule 10b-5, and asserting common-law negligence, rejecting as contrary to *U.S. Bancorp* defendants' concern about use of the order in subsequent litigation, noting defendants' failure to address the public interests subject of the order and that by settling defendants relinquished their right to obtain reversal but seek to collaterally attack the order by vacatur); *Tow v. Water Quality Ins. Syndicate (In re ATP Oil*

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& Gas Corp.), 544 B.R. 607 (Bankr. S.D. Tex. 2016) (bankruptcy court denied defendant's motion to vacate prior adverse judgment and accompanying memorandum opinion based on settlement while appeal before district court; settlement not conditioned on vacation of judgment and opinion and bankruptcy court declined to vacate the judgment as no reason was offered to do so and, as to memorandum opinion it rejected the contention that limiting fallout from adverse rulings sufficed under *U.S. Bancorp*, explaining as follows:

> "Water Quality was a party to the settlement. Without its own participation in the settlement, the matter would not have become moot by settlement. The Supreme Court squarely faced this issue and determined that the voluntary participation of a party in the settlement was the most significant factor outweighing vacatur based on mootness. With respect to the public interest, none is effectively argued by Water Quality. This Court's Memorandum Opinion concerned an issue that could be repeated (i.e., a policy issued by Water Quality to a Texas insured). The principal holding is that the notice provision in a policy issued to a Texas resident is governed by Texas law. The Court does not understand how the public interest could favor the elimination of an opinion that provides guidance on the rights and duties of the parties in such a situation. If the Court erred, the remedy should have been through appeal—a right voluntarily waived by Water Quality in the settlement.").

[37]*Id.*
[38]*Id.*
[39]*Id.*
[40]*Major League Baseball Props. Inc. v. Pacific Trading Cards Inc.*, 150 F.3d 149 (2d Cir. 1998).
[41]*Motta v. District Dir. of I.N.S.*, 61 F.3d 117 (1st Cir. 1995).
[42]*Id.*
[43]*Bd. of Trs. of the Univ. of Ala. v. Houndstooth Mafia Enters. LLC*, No. 7:13--1736-, 2016 WL 706022 (N.D. Ala. Feb. 23, 2016).
[44]*Id.* at *2.
[45]*Id.*
[46]*Id.*
[47]*Id.* at **2-3.
[48]*Id.* at *3.
[49]*Id.*
[50]*Id.*
[51]*Id.*
[52]*Id.* at **5-6.
[53]*Id.* at *6.
[54]*Id.*
[55]*Id.*
[56]*Id.* at *2.
[57]*Id.* at *6.
[58]*Id.*
[59]*Id.* at *8.
[60]*Id.*
[61]*Id.*
[62]*Id.*
[63]*Id. at* **7-10.
[64]*Threadgill v. Armstrong World Indus. Inc.,* 928 F.2d 1366, 1371 and n.7 (3d Cir. 1991) ("…it is clear that there is no such thing as 'the law of the district.' Even where the facts of a prior district court case are, for all practical purposes, the same as those presented to a different district court in the same district, the prior resolution of those claims does not bar reconsideration by this Court of similar contentions. The doctrine of *stare decisis* does not compel one district court judge to follow the decision of another. Where a second judge believes that a different result may obtain, independent analysis is appropriate.") (internal quotation omitted; additional citations omitted; italics in original).

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broader arguments about this outcome (aside from the fact that it might have hurt Detroit's chances of hosting the Olympics). Likewise, the story of Reuther's role in Detroit is fascinating, but only through quick asides do readers get a sense that his particular political coalition—"the New Deal-Fair Deal-laborite orbit"—was already in decline. Maraniss mentions that, in 1964, at-large elections left open "the possibility that a white candidate might prevail" in filling the only African-American seat on Detroit's City Council. But he never mentions that the at-large election system plagued Detroit politics—where council members had no geographic allegiances—until 2012.

Instead of explaining these connections between the Detroit of the 1960s and that of today, Maraniss highlights esoteric links that reflect his interests. Berry Gordy was "developing a system" at Motown's music studios, just as Vince Lombardi (the subject of another Maraniss book) had with the Green Bay Packers. Early ad copy for the Mustang touting it as a "BRAND NEW IMPORT … FROM DETROIT" brings Maraniss back to the Chrysler Super Bowl commercial, which used a similar catchphrase.

Fans of legal and judicial history will find interesting tidbits in these pages. The nomination of Detroit's police chief George Edwards to the Sixth Circuit provoked recriminations that will be familiar to anyone who follows the nomination process today. A prominent attorney named Damon Keith makes several cameos a few years before his nomination to the Eastern District of Michigan (and his later elevation to the Sixth Circuit, where he still serves from chambers in Detroit). Yet Maraniss misses the opportunity to tell the reader of Keith's later role as a trailblazing federal judge.

In this manner, the book's visit to Detroit—like mine in 2008-2009—is not long-term. It's a singular glimpse that reminds readers of Detroit's former glory but provides limited context for its current state. Yet, even without a deeper analysis connecting the two, it is still worth seeing Detroit through Maraniss' eyes. Whether you love the city or just have a passing interest in the challenges it currently faces, *Once in a Great City* reminds us of Detroit's importance in American history. Though some of its people, buildings, and sites are gone, others remain a vibrant part of Detroit, which, though diminished, is still a great city. ⊙

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