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605 - Supreme Court Update

Christine Dekker
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Session 605

Faculty Biographies

Christine Dekker

Tina Dekker currently serves as senior litigation counsel for McDonald's Corporation with its headquarters located in Oak Brook, Illinois. Ms. Dekker is responsible for representing McDonald's and handling commercial litigation and pre-litigation business disputes involving business torts, breach of contract, franchise compliance, intellectual property, bankruptcy and real estate.

Prior to joining McDonald's, Ms. Dekker was in-house counsel for Northwest Airlines in Minneapolis, Minnesota. At Northwest, she was responsible for managing the company's labor and employment and employee benefits matters for more than 30,000 employees in the US and Canada. Before making the move in-house, Ms. Dekker was a partner at the law firm of Ungaretti & Harris in Chicago.

Ms. Dekker is a graduate of John Marshall Law School in Chicago.

Robert Griffith

Robert H. Griffith is a partner with Foley & Lardner LLP and a member of the firm's business litigation & dispute resolution, consumer financial services litigation and securities enforcement & litigation practices. Mr. Griffith's practice focuses on complex commercial, health care, securities and consumer litigation matters, including class actions, derivative actions and multidistrict litigation. He has represented corporate clients, and their officers, directors and employees, in state and federal courts across the country, as well as in numerous arbitration forums.

Mr. Griffith also has extensive experience in the area of ERISA litigation, and he has defended numerous class and individual ERISA claims, as well as claims brought under various states' consumer fraud statutes, and state and federal False Claims Act/Qui Tam statutes.

Mr. Griffith received his bachelor's degree from the University of Iowa. He received his JD from Chicago - Kent College of Law.

Catherine Wassberg

Catherine Wassberg is the general counsel and vice president of human resources for Hamline University in St. Paul, Minnesota. She has overall responsibility for all legal matters for the University and for its Human Resources function.

Prior to joining Hamline, Ms. Wassberg served as associate general counsel for Northwest Airlines Inc. and was responsible for all employment-related litigation and legal counseling.

Ms. Wassberg coaches several Special Olympics sports team and is the immediate past chair of the Minneapolis Urban League.

Ms. Wassberg received her BA from Northern Illinois University and is a graduate of the University of Chicago Law School.

Todd Wozniak

Todd Wozniak, a shareholder in Greenberg Traurig's Atlanta office, is a trial lawyer who defends companies and public institutions throughout the United States in labor and employment, ERISA, and business disputes.

He is an experienced class action litigator who has defended more than a dozen class cases involving alleged violations of ERISA, securities laws, wage and hour laws, and plant closing and mass layoff laws. Mr. Wozniak has significant experience in collective bargaining and traditional labor law, executive compensation, and noncompete and trade secrets litigation.

Mr. Wozniak is also a frequent lecturer and writer on a wide range of employment and business-related issues. He has been recognized in "Georgia's Legal Elite," Georgia Trend magazine, 2009; Chambers & Partners USA Guide, 2007-2009 editions; and Georgia Super Lawyers, 2009-2010.

Mr. Wozniak obtained his JD, cum laude, from the University of Michigan Law School and his AB, summa cum laude, from Duke University.

Supreme Court Update

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Federal Statutory Liability

Hemi Group, LLC v. City of New York, 130 S. Ct. 983 (2010)

The Court ruled that New York City cannot use the federal racketeering law to collect hundreds of millions of dollars of tax revenue lost as a result of cigarette sales conducted over the Internet. Chief Justice Roberts, writing for the Court and joined by Justices Scalia, Thomas, and Alito, decided the action on proximate cause grounds, concluding that the link between the alleged fraud (selling cigarettes without reporting customer information to the state) and the injury (the city's lost tax revenue) is too weak to satisfy the "direct relationship" requirement of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961. Justice Ginsburg concurred in the judgment based on her interpretation of the Jenkins Act "[w]ithout subscribing to the broader range of the Court's proximate cause analysis…." The dissenters, Justices Breyer, Stevens, and Kennedy, disagreed with the Court's proximate cause analysis and would impose a foreseeability test instead. Justice Sotomayor took no part in the decision.

This case, while seeming to limit RICO liability, is actually somewhat ominous as to the potential scope of future RICO liability. Presuming that Justice Ginsburg would vote with the "liberal wing" of the court in a case not involving a Jenkins Act twist and presuming further that Justices Sotomayor and Kagan would do the same, a foreseeability test in civil RICO actions has a Supreme Court majority. The scope of what courts can in retrospect find foreseeable is often broad.

Graham County Soil and Water Conservation Dist. v. United States ex rel. Wilson, 130 S. Ct. 1396 (2010)

Qui tam action was brought against county soil and water conservation district and district supervisors alleging violations of the False Claims Act (FCA) and that district constructively discharged relator in retaliation for bringing the claims. The Supreme Court held that term "administrative," as used in second part of the three-part "public disclosure" bar of the False Claims Act (FCA) to deprive courts of jurisdiction over qui tam suits when relevant information has already entered public domain as result of disclosure in a congressional, administrative or General Accounting Office (GAO) report, hearing, audit or investigation, was broad enough to include not just federal administrative reports, hearings, audits or investigations, but state and local administrative reports, hearings, audits or investigations as well. The Court made clear that when an individual takes it upon himself to file a suit designed to rectify fraud against the federal government, the suit is barred under most circumstances if the facts underlying the alleged fraud have already been publicly disclosed -- unless the individual was an "original source" of those facts.

This is a notable new limitation of Qui Tam actions. The most obscure state or local inquiry now counts as public disclosure, limiting Qui Tam actions to only those brought by the original source of the information.

Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA, 130 S. Ct. 1605 (2010)

Debtor brought action against debt collector alleging violations of the federal Fair Debt Collection Practices Act (FDCPA) and the Ohio Consumer Sales Practices Act (OCSPA). The Supreme Court held that the bona fide error defense in the FDCPA does not apply to a violation resulting from a debt collector's mistaken interpretation of the Act's legal requirements.

Labor & Employment

Union Pacific Re. Co. v. Locomotive Engineers and Trainmen Gen. Comm. of Adjustment, Central Region, 130 S. Ct. 584 (2009)

The Court unanimously ruled that the Railway Labor Act's (RLA) requirement that parties to minor disputes attempt settlement in conference before resorting to arbitration is not jurisdictional. Thus, the NRAB could not dismiss union grievances for lack of jurisdiction merely because the union had not submitted proof of conferencing in the record.

This case arose when a union initiated grievance proceedings against the Union Pacific Railroad Company, and then sought arbitration before the NRAB after a resolution was not reached between the parties. Prior to the hearing, one of the NRAB arbitrators objected that the record included no proof of conferencing. On that basis, the NRAB panel dismissed the union's petitions for want of jurisdiction. The Court found that satisfaction of the obligation to attempt settlement in conference is not a prerequisite to the NRAB's exercise of jurisdiction. It explained that, while Congress authorized the NRAB to prescribe rules for the presentation and processing of claims, Congress did not give the NRAB authority under the RLA to decide the scope of its own jurisdiction to hear disputes.

Lewis v. Chicago, 130 S. Ct. 2191 (2010)

Title VII of the Civil Rights Act prohibits employers from using employment practices that cause a disparate impact on the basis of race. 42 U.S.C. § 2000e, et al. Section § 2000e-5(e)(1), however, requires a plaintiff claiming discrimination to bring this charge to the EEOC within three hundred days "after the alleged unlawful employment practice occurred."

The Supreme Court addressed the question: "When an employer adopts an employment practice that discriminates against African Americans in violation of Title VII's disparate impact provision, must a plaintiff file an EEOC charge within 300 days after the announcement of the practice, or may a plaintiff file a charge within 300 days after the employer's use of the discriminatory practice."

In a unanimous opinion, the Court held that a plaintiff who does not file a timely charge challenging the adoption of a practice may later assert a disparate-impact claim in a timely charge challenging the employer's subsequent application of that practice.

Conkright v. Frommert, 130 S. Ct. 1640 (2010)

The Supreme Court decided that a court may not refuse to defer to an ERISA plan administrator's interpretation of a plan simply because a previous related interpretation by the administrator was held to be invalid.

In a 5-3 decision, the Court rejected the Second Circuit's 'one-strike-and-you're-out' approach, finding that 'a single honest mistake' in plan interpretation does not justify stripping a plan administrator of deference in subsequent interpretations of the plan. The bedrock of the Court's reasoning was its ruling in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989), which had that where an ERISA plan gives a plan administrator discretionary authority to interpret the plan, the administrator is entitled to deference in exercising that discretion. Granting deference to a plan administrator means that the plan administrator's interpretation of the plan will be upheld by a reviewing court as long as it is reasonable. In considering other precedents, the Court found that the broad standard of deference set out in Firestone was not susceptible to ad hoc exceptions like the one adopted by the Second Circuit.

Hardt v. Reliance Standard Life Ins. Co., 130 S. Ct. 2149 (2010)

The Supreme Court unanimously held that the ERISA fee-shifting provision contained in 29 USC §1132(g)(1) does not require a claimant to be the "prevailing party," but only to have achieved some degree of success on the merits. The Court found there is nothing in the text of §1132(g) (1) which limits the availability of attorney's fees to a prevailing party. Instead, §1132(g)(1) expressly grants district courts discretion to award attorney's fees to either party. The Court looked to its leading case on fee-shifting statutes not limited to prevailing parties, *Ruckelshaus v. Sierra Club*, 463 US 680 (1983), which provided that courts have discretion to award attorney's fees under such statutes as long as the fee claimant could show "some degree of success on the merits." Under this standard, the Court held that the district court properly exercised its discretion under §1132(g) (1) to award attorney's fees to Ms. Hardt based on her achieving some success through settlement.

New Process Steel, L.P. v. NLRB, 130 S. Ct. 2635 (2010)

The Supreme Court ruled 5-4 that the NLRB lacks authority to issue rulings in unfair labor practice and representation cases unless at least three of the board's five seats are filled. This decision effectively vacated hundreds of NLRB decisions made since January 1, 2008 by a board operating with only two members.

City of Ontario, Cal. v. Quon, 130 S. Ct. 2619 (2010)

City police officer brought § 1983 action against city, police department, and police chief alleging that police department's review of officer's text messages violated Fourth Amendment, and asserted claim against wireless communications provider under Stored Communications Act (SCA). The Supreme Court held that a city's search of text messages sent by police officers using city-provided alphanumeric pagers did not violate the officers' privacy rights.

The Court here emphasized that it should proceed with caution in delineating the limits of reasonable privacy expectations of employees using electronic communication devices provided by their employers. The Court here avoided that issue by assuming that Quon had a reasonable expectation of privacy, but holding that the search--the review of the transcripts--was reasonable. The decision does provide public employers with some guidelines regarding workplace searches--the search is likely to be held to be reasonable if the employer acts because of a legitimate, work-related purpose, and the means used for the search are not excessively intrusive in light of the circumstances giving rise to the search. The employer here only reviewed the transcripts for messages sent during working hours in the months of August and September, and did not review messages sent outside of working hours. The employees involved had also been informed that the messages were subject to being audited.

Alternative Dispute Resolution

Granite Rock Co. v. International Broth. of Teamsters, 130 S. Ct. 2847 (2010)

Employer sued international union and local union alleging that local's strike constituted breach of no-strike clause in collective bargaining agreement (CBA), and that international had engaged in tortious interference with contract by promoting strike, and asserting claims against both entities under the Labor Management Relations Act (LMRA).

The United States Supreme Court held that:

(1) dispute over ratification date of CBA was matter to be resolved by District Court, rather than by arbitrator; (2) employer did not implicitly consent to arbitration of dispute over ratification date of CBA; and (3) tortious interference claim was outside scope of LMRA.

The opinion is most notable for its holding that the effective date that a CBA went into effect, and thus whether a no-strike provision had been violated, was a matter for the court to determine and not the arbitrator under the arbitration provision in the CBA.

Rent-A-Center, West, Inc. v. Jackson, 130 S. Ct. 2772 (2010)

In former employee's § 1981 action alleging race discrimination and retaliation by his former employer, employer moved to dismiss and to compel arbitration pursuant to the Federal Arbitration Act (FAA). The Supreme Court held that provision of employment agreement which delegated to an arbitrator exclusive authority to resolve any dispute relating to the agreement's enforceability was a valid delegation under the FAA.

This 5-4 decision made clear that, under the FAA, an arbitrator and not a court should decide whether an arbitration agreement is unconscionable when the parties have delegated to an arbitrator the ability to rule upon the validity of the arbitration agreement itself. Under the Court's ruling, unless the party attempting to avoid arbitration raises a challenge going specifically to the enforceability of such delegation provision, the arbitrator has the power to decide whether the agreement is enforceable.

Stolt-Nielsen S. A. v. AnimalFeeds Int'l Corp., 130 S. Ct. 1758 (2010)

The Supreme Court addressed the question of whether imposing class arbitration on parties whose arbitration agreement is silent on the question of class arbitration is consistent with the Federal Arbitration Act, and found that the answer is "no." As the Court explained, arbitration is a matter of consent. Consent to arbitration with one party does not imply consent to class arbitration because class arbitration is significantly different.

Securities Regulation & Financial Services

Jones v. Harris Associates L. P., 130 S. Ct. 1418 (2010)

Owners of shares in mutual funds brought action against investment advisor under Investment Company Act of 1940, alleging that advisor's compensation was too high. Investment advisers have a fiduciary duty with respect to the receipt of compensation for services pursuant to §36(b) of the Investment Company Act of 1940. In the absence of a Supreme Court opinion on the issue, most courts had relied on the Second Circuit's decision in *Gartenberg v. Merrill Lynch Asset Management Inc.*, 694 F.2d 923 (2d Cir. 1982), in evaluating whether an investment adviser breached this duty. This consensus approach was recently challenged by *Jones v. Harris Associates L.P.*, 527 F. 3d 627, 632 (7th Cir. 2008), a decision in which the Seventh Circuit explicitly rejected the *Gartenberg* standard.

In the appeal of the Seventh Circuit's decision, the Supreme Court for the first time addressed what standard courts should apply in evaluating whether investment advisers have complied with their duty. The Supreme Court unanimously held that an investment adviser breaches its duty when it charges "a fee that is so disproportionately large that it bears no reasonable relationship to the services rendered and could not have been the product of arm's length bargaining." Although the Supreme Court expressly adopted the *Gartenberg* standard and vacated the Seventh Circuit's decision, the Court did not provide further guidance regarding how the standard should be applied and, in fact, recognized that the approach "may lack sharp analytical clarity."

Merck & Co. v. Reynolds, 130 S. Ct. 1784 (2010)

Investors brought securities fraud class action against manufacturer of nonsteroidal anti-inflammatory drug (NSAID) that had been withdrawn from market due to safety concerns, alleging that manufacturer and individual officers and directors had made misrepresentations and omissions regarding drug's safety and commercial viability.

In its holding, the Court set forth the standard under which lower courts should evaluate motions to dismiss securities fraud cases on statute-of-limitations grounds. The Court rejected the argument that the limitations period begins to run after a potential plaintiff is placed on "inquiry notice"; i.e., the point at which facts would lead a reasonably diligent plaintiff to investigate further. Instead, the Court held that "a cause of action accrues (1) when the plaintiff did in fact discover, or (2) when a reasonably diligent plaintiff would have discovered, 'the facts constituting the violation' -- whichever comes first." Without addressing what other facts may fall within its scope, the Court also concluded that scienter, or an intent to deceive, is among those "facts constituting the violation."

Free Enterprise Fund v. Public Company Accounting Oversight Bd., 130 S. Ct. 3138 (2010)

Sarbanes Oxley provides that the five members of the Public Company Accounting Oversight Board are to be appointed by the SEC. The SEC cannot remove Board members at will, but only "for good cause shown." The Commissioners, in turn, cannot themselves be removed unless good cause is shown.

The Supreme Court addressed the following questions:

"Whether the Sarbanes-Oxley Act of 2002 violates the Constitution's separation of powers by vesting members of the [PCAOB] with far-reaching executive power while completely stripping the President of all authority to appoint or remove those members....";

"Whether the court of appeals erred in holding that, under the Appointments Clause, PCAOB members are 'inferior officers' directed and supervised by the Securities and Exchange Commission...."; and

"If PCAOB members are inferior officers, whether the Act's provision for their appointment by the SEC violates the Appointments Clause either because the SEC is not a 'Department' ... or because the five commissioners, acting collectively, are not the 'Head' of the SEC."

The Supreme Court held that the double good-cause removal standard over members of the Public Company Accounting Oversight Board violates the separation of powers as an unconstitutional limitation on the President's removal power. Board members are inferior officers who can be appointed by the SEC.

Courts & Civil Procedure

Mohawk Industries, Inc. v. Carpenter, 130 S. Ct. 599 (2009)

The Supreme Court ruled that there is no immediate right of appeal of an order to compel production of documents subject to attorney-client privilege. Writing for a unanimous court, Justice Sonia Sotomayor held that allowing piecemeal appeals of all rulings involving attorney-client privilege would "unduly delay the resolution of district court litigation and needlessly burden the court of appeals." Although Justice Sotomayor noted that the attorney-client privilege is important, she said post-judgment appeals and other review procedures are sufficient to protect the parties and the "vitality of the privilege."

Hertz Corp. v. Friend, 130 S. Ct. 1181 (2010)

For diversity jurisdiction purposes, 28 U.S.C. § 1332(c)(1) provides that "a corporation shall be deemed to be a citizen ... of the State where it has its principal place of business."

The Supreme Court addressed the question: "Whether, for purposes of determining principal place of business for diversity jurisdiction citizenship under 28 U.S.C. § 1332, a court can disregard the location of a nationwide corporation's headquarters - i.e., its nerve center."

Justice Breyer, writing for a unanimous Court, held that a corporation's "principal place of business" is the place where its high level officers direct, control, and coordinate its activities, which will usually be its corporate headquarters.

This decision is especially notable for striking down the Ninth Circuit's previous standard, which found corporate citizenship anywhere even a solid plurality of business is derived. Post-*Hertz*, companies that simply do a lot of business in California will find themselves stuck in California state courts far less frequently. Companies will be able to remove actions from any state court in a state other than the ones the company is incorporated or headquartered in.

Shady Grove Orthopedic Associates, P. A. v. Allstate Ins. Co., 130 S. Ct. 1431 (2010)

The Supreme Court addressed whether a state statute precluding class actions in suits seeking state statutory penalties or minimum damages prevents a federal court sitting in diversity from entertaining a class action in such circumstances, and determined that the answer is "no." The Court determined that the state rule was procedural and not substantive and, therefore, the *Erie* doctrine was inapplicable. In Rule 23 of the Federal Rules of Civil Procedure, Congress set forth the rules governing when class actions are appropriate in federal court. The States may not add to or limit these procedural requirements.

Krupski v. Costa Crociere S.p.A., 130 S. Ct. 2485 (2010)

Passenger brought action against carrier to recover for injuries sustained while aboard cruise ship. The United States District Court for the Southern District of Florida entered summary judgment in carrier's favor, holding that passenger's amendment of her complaint to correctly identify carrier did not relate back to her original complaint, and the 11th Circuit affirmed.

A unanimous Supreme Court reversed the district and appellate courts and held that where a plaintiff brings an action against one of two closely related corporations to recover for injuries sustained on the premises, amendment of the complaint in federal court to correctly identify the proper party relates back to the original complaint if the party to be added knew or should have known that it was the proper party. The amending party's knowledge or timeliness in seeking to amend the pleading are not the determining factors.

Monsanto Co. v. Geertson Seed Farms, 130 S. Ct. 2743 (2010)

The district court held that the Animal and Plant Health Inspection Service violated the National Environmental Policy Act by completely deregulating genetically engineered alfalfa without first completing a full-blown environmental impact statement. Assuming that determination to be valid, the question presented was whether the court erred by enjoining the government from partially deregulating alfalfa, and also enjoining the public from planting such alfalfa, until the environmental impact statement was completed.

The Supreme Court held that the district court erred by entering the injunction. This is one in a series of recent cases in which the Court has emphasized that injunctions should not be issued as a matter of course and that there is no presumptive right to an injunction.

Citizens United v. Federal Election Comm'n, 130 S. Ct. 876 (2010)

The Bipartisan Campaign Reform Act of 2002 amended federal law to prohibit corporations and unions from using general treasury funds to make independent expenditures for speech that is an "electioneering communication" or for speech that expressly advocates the election or defeat of a candidate. 2 U.S.C. § 441(b).

The Supreme Court addressed the question of whether federal campaign finance laws apply to a critical film about Senator Hillary Clinton intended to be shown in theaters and on-demand to cable subscribers.

After hearing argument, the Court ordered supplemental briefing and reargument, to focus on the constitutionality of limiting corporations' independent campaign spending.

In a 5-4 decision authored by Justice Kennedy, the Court overruled *Austin v. Michigan Chamber of Commerce* and overruled in part *McConnell v. Federal Election Commission*, concluding that 2 U.S.C. § 441(b)'s prohibition of independent expenditures by corporations was invalid. The Constitution, the Court held, precludes Congress from punishing the political speech of such corporations.

Skilling v. United States, 130 S. Ct. 2896 (2010)

The honest services fraud statute, 18 U.S.C. § 1346, was enacted in 1988 to proscribe fraudulent deprivations of "the intangible right to honest services." From the day the statute was enacted, courts have struggled to define just what kind of wrongdoing fits within the concept of a denial of the "intangible right" to "honest services."

Following the downfall of Enron, the federal government charged Enron's CEO, Jeffrey Skilling, with conspiring to defraud shareholders by misrepresenting the company's fiscal health for his own profit in violation of § 1346. Skilling was convicted on the honest services fraud count. The Supreme Court addressed whether § 1346 was unconstitutionally vague, and if not, whether Skilling's conduct fell within the statute's prohibitions.

The Court held that § 1346 should be construed to apply only to bribery and kickback schemes and rejected the government's argument that § 1346 proscribes other categories of misconduct, including undisclosed self-dealing. Based on its reading of the statute, the Court found that Skilling had not violated § 1346 because the allegations supporting his conviction did not involve bribery or a kickback scheme.

The ruling dealt a significant blow to prosecutors' attempts to expansively use the statute to prosecute corruption cases. The *Skilling* decision may, in fact, prove to have a significant impact on several other high-profile corruption cases. Illinois Governor George Ryan, who was convicted on corruption charges in 2006, has filed a motion seeking to have his sentence vacated in light of the *Skilling* decision. Similarly, former Alabama Governor Don Siegelman and former HealthSouth chief Richard Scrushy have relied on *Skilling* to seek the dismissal of charges against them.

American Needle, Inc. v. National Football League, 130 S. Ct. 2201 (2010)

The Supreme Court addressed the question of whether agreements among the 32 teams of the National Football League concerning each team's intellectual property rights are subject to scrutiny under the antitrust laws, and found that they are.

As the Court explained, antitrust law prohibits every contract, combination, or conspiracy in restraint of trade. Under the "single entity" doctrine, agreements by executives within a single company are generally not treated as a contract, combination, or conspiracy. Here, the NFL teams have joined together to form the NFL, but they clearly compete with one another, both on the field and in the market for intellectual property.

Bilski v. Kappos, 130 S. Ct. 3218 (2010)

Here, the Supreme Court addressed the standard for determining whether a method is patentable subject matter. The legal standard is unclear at this point. But in this case, the Supreme Court held that a method of hedging against risk by purchasing offsetting positions is not eligible for patent protection.

The Court held that patents on methods of doing business are not per se unpatentable. The Court also rejected the Federal Circuit's test, which required that a method must either be tied to a particular machine or apparatus, or transform matter. The Court eschewed any bright-line rules, and instead asked whether a method essentially claims an abstract idea, without adding enough additional substance to warrant patent protection. Here, the Court did not find enough additional substance to warrant patent protection.

Supreme Court Update

	Decision Date	Summary of Case
1*	10/20/09	*Corcoran v. Levenhagen*, 130 S. Ct. 8 (2009) The Supreme Court held that, upon reversing the district court's grant of federal habeas relief on one of the five grounds raised by state prisoner in support of his habeas petition, the Court of Appeals should have either remanded for consideration of the four grounds that district court had declined to address or explained why consideration of these undecided claims was unnecessary.
2*	11/9/09	*Bobby v. Van Hook*, 130 S. Ct. 13 (2009) The Supreme Court held that: (1) it was inappropriate for the Court of Appeals to rely on the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, which were announced 18 years after the petitioner's trial; and (2) counsel did not perform deficiently, as element of ineffective assistance of counsel, in investigating penalty-phase mitigation evidence regarding petitioner's background.
3*	11/16/09	*Wong v. Belmontes*, 130 S. Ct. 383 (2009) The Supreme Court held that prisoner was not deprived of effective assistance of counsel during penalty phase of capital murder trial.
4*	11/30/09	*Porter v. McCollum*, 130 S. Ct. 447 (2009) The Supreme Court held that: (1) defense counsel's failure to uncover and present, during penalty phase, any mitigating evidence regarding defendant's mental health, family background, or military service was deficient; and (2) the Florida Supreme Court's decision that defendant was not prejudiced by such failure was unreasonable application of federal law, warranting federal habeas relief.
5*	12/7/09	*Michigan v. Fisher*, 130 S. Ct. 546 (2009) Defendant was charged with assault with a dangerous weapon and possession of a felony during commission of a felony. The state trial court granted defendant's motion to suppress evidence obtained as a result of warrantless entry into defendant's residence. The Supreme Court held that the officer's warrantless entry into defendant's residence was reasonable and remanded to determine whether evidence should have been suppressed.

*These cases have little relevance to in-house counsel and will not be covered in the main presentation.

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6*	12/8/09	*Beard v. Kindler*, 130 S. Ct. 612 (2009) The Court held that a discretionary state procedural rule can serve as an adequate ground to bar federal habeas review; abrogating *Doctor v. Walters*, 96 F.3d 675 (3d. Cir. 1996).
7	12/8/09	*Union Pacific Re. Co. v. Locomotive Engineers and Trainmen Gen. Comm. of Adjustment, Central Region*, 130 S. Ct. 584 (2009) The Court unanimously ruled that the Railway Labor Act's (RLA) requirement that parties to minor disputes attempt settlement in conference before resorting to arbitration is not jurisdictional. Thus, the NRAB could not dismiss union grievances for lack of jurisdiction merely because the union had not submitted proof of conferencing in the record. This case arose when a union initiated grievance proceedings against the Union Pacific Railroad Company, and then sought arbitration before the NRAB after a resolution was not reached between the parties. Prior to the hearing, one of the NRAB arbitrators objected that the record included no proof of conferencing. On that basis, the NRAB panel dismissed the union's petitions for want of jurisdiction. The Court found that satisfaction of the obligation to attempt settlement in conference is not a prerequisite to the NRAB's exercise of jurisdiction. It explained that, while Congress authorized the NRAB to prescribe rules for the presentation and processing of claims, Congress did not give the NRAB authority under the RLA to decide the scope of its own jurisdiction to hear disputes.
8	12/8/09	*Alvarez v. Smith*, 130 S. Ct. 576 (2009) The Court vacated a Seventh Circuit ruling that statutory procedures in Illinois failed to comply with the due process requirement of providing a speedy probable-cause hearing after seizure of cash and cars potentially forfeitable because they were used to facilitate drug crimes. The Court concluded that the case, which involved claims by six property owners for declaratory and injunctive relief, had become moot after certiorari had been granted. The more difficult question was whether the Court should vacate the Seventh Circuit's decision. The Court cited *U.S. Bancorp Mortg. Co. v. Bonner Mall Partnership*, 115 S. Ct. 386, (1994), for the proposition that where mootness results from settlement rather than happenstance, the losing party has voluntarily forfeited his legal remedy, thereby surrendering his claim to the equitable remedy of vacatur. The Court concluded that the case at bar more closely resembled mootness through happenstance than through settlement, because the presence of the federal case played no significant role in the termination of the separate state-court proceedings.

*These cases have little relevance to in-house counsel and will not be covered in the main presentation.

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9	12/8/09	*Mohawk Industries, Inc. v. Carpenter*, 130 S. Ct. 599 (2009) The Supreme Court ruled that there is no immediate right of appeal of an order to compel production of documents subject to attorney-client privilege. Writing for a unanimous court, Justice Sonia Sotomayor held that allowing piecemeal appeals of all rulings involving attorney-client privilege would "unduly delay the resolution of district court litigation and needlessly burden the court of appeals." Although Justice Sotomayor noted that the attorney-client privilege is important, she said post-judgment appeals and other review procedures are sufficient to protect the parties and the "vitality of the privilege."
10*	1/11/10	*McDaniel v. Brown*, 130 S. Ct. 665 (2010) The United States Supreme Court held that the Ninth Circuit and the district court erred when applying to a state prisoner's habeas claim the *Jackson* standard for the sufficiency of the evidence, by considering evidence that was not admitted at trial, i.e., a posttrial report criticizing the testimony of the prosecution's DNA expert at the prisoner's rape trial, and then using that report as the basis for completely excluding the DNA evidence from the *Jackson* analysis.
11*	1/12/10	*Smith v. Spisak*, 130 S. Ct. 676 (2010) Penalty-phase instructions at habeas petitioner's capital murder trial did not violate clearly established federal law.
12	1/13/10	*NRG Power Marketing, LLC v. Maine Pub. Util. Comm'n*, 130 S. Ct. 693 (2010) Deferential review standard applied to non-settling parties' challenge to negotiated electricity rates. The Supreme Court reversed a federal appellate panel's novel ruling that the *Mobile-Sierra* presumption that contractually negotiated rates are just and reasonable does not apply to rate challenges brought by non-contracting parties. Justice Ruth Bader Ginsburg, writing for an eight-justice majority, held that application of the presumption does not depend on the identity of the rate challenger. Having reversed the D.C. Circuit's conclusion that *Mobile-Sierra* applies to all challenges to contractually negotiated rates, the high court remanded the matter to the appeals court to resolve the previously unaddressed issue of whether the rates in question actually qualify as "contract rates" subject to the presumption.

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13*	1/13/10	*Hollingsworth v. Perry*, 130 S. Ct. 705 (2010) Real-time streaming of civil trial in challenge to California's ban on same-sex marriages would be stayed. The broadcast in this case was stayed because it appeared the courts below did not follow the appropriate procedures set forth in federal law before changing their rules to allow such broadcasting.
14*	1/19/10	*Presley v. Georgia*, 130 S. Ct. 721 (2010) The Supreme Court held that a criminal defendant's Sixth Amendment right to a public trial extended to voir dire of prospective jurors, and that the trial court was required to consider alternatives to closing the courtroom, even though the defendant himself did not suggest any alternatives.
15*	1/19/10	*Wellons v. Hall*, 130 S. Ct. 727 (2010) In a brief per curiam opinion, the Supreme Court granted certiorari, vacated the judgment, and remanded a case in which the Eleventh Circuit held that a habeas petitioner's claims of judge, juror, and bailiff misconduct in his state court capital murder trial were procedurally barred because the state supreme court had rejected the claims on direct appeal, and the state postconviction court had held that this decision rendered the claims barred by res judicata. This was error under the Supreme Court's intervening decision in *Cone v. Bell*, 129 S.Ct. 1769 (2009), which held that "[w]hen a state court declines to review the merits of a petitioner's claim on the ground that it has done so already, it creates no bar to federal habeas review."
16*	1/20/10	*Kucana v. Holder*, 130 S. Ct. 827 (2010) The Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IRRIRA) bars judicial review of discretionary decisions of the attorney general (8 U.S.C. § 1252(a)(2)(B)(ii)). The Board of Immigration Appeals (BIA) denied Kucana's motion to reopen removal proceedings; the court of appeals denied review, citing the IRRIRA. After the grant of certiorari, the United States filed a brief in support of petitioner, arguing that the BIA's decision should be subject to judicial review. An amicus was appointed to argue in support of the appellate court's ruling. Reversing, the Court held that the IRRIRA prohibition against judicial review applies only to decisions placed in the discretion of the attorney general by statute. The BIA was given discretion to grant or deny a motion to reopen proceedings by administrative order rather than by statute, and thus such a decision is subject to judicial review.

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17	1/20/10	*South Carolina v. North Carolina*, 130 S. Ct. 854 (2010) In a 5-4 decision, the Court opened the door to private water users to intervene in interstate water rights disputes. Over strong objections from the dissent, the Court rejected the State of South Carolina's efforts to prevent an energy company and a private water supplier from actively participating in a dispute with North Carolina over rights to water in the Catawba River. The Court denied municipalities the right to intervene, concluding that their interests were already represented by the states who were party to the litigation. The Court's decision opens the door to private water users to intervene in water resource disputes between states and foreshadows more active private party involvement in such cases. The eventual substantive outcome of the case may also impact other water disputes. In the southeast, Tennessee and South Carolina have worried that Atlanta may look to the nearby Tennessee or Savannah rivers for relief from droughts that often plague the area. Similarly, Georgia, Alabama, and Florida have fought over how much water can be stored in north Georgia lakes, keeping water from flowing to downstream states. Similarly, although states in the Midwest and west have entered compacts governing interstate water use, many issues within and outside those compacts remain unresolved and are potentially ripe for litigation.
18*	1/20/10	*Wood v. Allen*, 130 S. Ct. 841 (2010) The Supreme Court held that a state postconviction court's determination that a habeas petitioner's trial counsel made a strategic decision not to pursue and present mitigating evidence of his borderline mental retardation during the penalty phase of his capital murder trial was not an unreasonable determination of the facts, and thus it did not warrant federal habeas relief.
19	1/21/10	*Citizens United v. Federal Election Comm'n*, 130 S. Ct. 876 (2010) The Bipartisan Campaign Reform Act of 2002 amended federal law to prohibit corporations and unions from using general treasury funds to make independent expenditures for speech that is an “electioneering communication” or for speech that expressly advocates the election or defeat of a candidate. 2 U.S.C. § 441(b). The Supreme Court addressed the question of whether federal campaign finance laws apply to a critical film about Senator Hillary Clinton intended to be shown in theaters and on-demand to cable subscribers. After hearing argument, the Court ordered supplemental briefing and reargument, to focus on the constitutionality of limiting corporations’ independent campaign spending. In a 5-4 decision authored by Justice Kennedy, the Supreme Court overruled *Austin v. Michigan Chamber of Commerce* and overruled in part *McConnell v. Federal Election Commission*, concluding that 2 U.S.C. § 441(b)’s

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		prohibition of independent expenditures by corporations was invalid. The Constitution, the Court held, precludes Congress from punishing the political speech of such corporations.
20	1/25/10	*Hemi Group, LLC v. City of New York*, 130 S. Ct. 983 (2010) The Court ruled that New York City cannot use the federal racketeering law to collect hundreds of millions of dollars of tax revenue lost as a result of cigarette sales conducted over the Internet. In a 5-3 ruling, the majority said the link between the alleged fraud (selling cigarettes without reporting customer information to the state) and the injury (the city's lost tax revenue) is too weak to satisfy the "direct relationship" requirement of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961.
21*	1/25/10	*Briscoe v. Virginia*, 130 S. Ct. 1316 (2010) Here, the Supreme Court merely vacated the judgment of the Supreme Court of Virginia and remanded the case for further proceedings not inconsistent with the opinion in *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009).
22*	2/22/10	*Wilkins v. Gaddy*, 130 S. Ct. 1175 (2010) The Supreme Court held that the core judicial inquiry when a prisoner alleges that prison officers used excessive force against the prisoner is not whether a certain quantum of injury was sustained, but rather whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm, abrogating *Norman v. Taylor*, 25 F.3d 1259 (4th Cir. 1994), *Riley v. Dorton*, 115 F.3d 1159 (4th Cir. 1997), and *Taylor v. McDuffie*, 155 F.3d 479 (4th Cir. 1998)
23*	2/22/10	*Thaler v. Haynes*, 130 S. Ct. 1171 (2010) The Supreme Court reversed the judgment, and remanded, in a case in which the Fifth Circuit held that the state courts' determination that a prosecutor in a capital murder trial articulated a race-neutral explanation for his peremptory strike of a prospective juror based upon her "somewhat humorous" demeanor during voir dire, was an unreasonable application of clearly established federal law, warranting habeas relief. The Fifth Circuit noted that the judge who denied the prisoner's challenge under *Batson v. Kentucky*, had not presided over the voir dire examination of the prospective juror. As such, the judge had engaged in "pure appellate fact-finding" and had not undertaken the "sensitive inquiry into such circumstantial and direct evidence of intent as may be available" required by *Batson*. The per curiam opinion, however, stated that neither *Batson* nor its progeny established the categorical rule upon which the Fifth Circuit apparently relied,

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		under which a demeanor-based explanation for a peremptory strike must be rejected unless the judge personally observed and recalls the aspect of the prospective juror's demeanor on which the explanation is based. *Batson* simply requires that a judge considering an objection to a peremptory strike based on a prospective juror's demeanor take into account any observations of the juror that the judge was able to make during the voir dire.
24*	2/23/10	*Florida v. Powell*, 130 S. Ct. 1195 (2010) Defendant was convicted of being a felon in possession of a firearm. Defendant appealed and the appellate court reversed and remanded, and certified a question. The Florida Supreme Court answered the certified question and approved the decision of the appellate court. The Supreme Court held that: (1) the Florida Supreme Court's decision did not indicate clearly and expressly that it was alternatively based on bona fide separate, adequate, and independent state grounds; and (2) form of Miranda warnings given by city police officers to suspect, stating that the suspect had "the right to talk to a lawyer before answering any of [the officers'] questions," but also containing a catch-all provision stating that, with respect to the various rights recited in the warnings, "[y]ou have the right to use any of these rights at any time you want during this interview," reasonably conveyed to the suspect that the right to counsel applied "during" interrogation.
25	2/23/10	*Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010) For diversity jurisdiction purposes, 28 U.S.C. § 1332(c)(1) provides that "a corporation shall be deemed to be a citizen ... of the State where it has its principal place of business." The Supreme Court addressed the question: "Whether, for purposes of determining principal place of business for diversity jurisdiction citizenship under 28 U.S.C. § 1332, a court can disregard the location of a nationwide corporation's headquarters - i.e., its nerve center." Justice Breyer, writing for a unanimous Court, held that a corporation's "principal place of business" is the place where its high level officers direct, control, and coordinate its activities, which will usually be its corporate headquarters.
26*	2/24/10	*Maryland v. Shatzer*, 130 S. Ct. 1213 (2010) Defendant was convicted in the Maryland Circuit Court, Washington County of child sexual abuse. The Supreme Court held that: (1) the *Edwards* rule, under which a suspect who has invoked his right to the presence of counsel during custodial interrogation is not subject to further interrogation until either counsel has been made available or the suspect himself further initiates exchanges with the police, does not apply if a break in custody lasting 14 days has occurred; and (2) defendant's return to the general prison population, after he had invoked his

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		right to the presence of counsel during custodial interrogation regarding allegations of criminal conduct separate from the conduct underlying the defendant's convictions, constituted a break in custody.
27*	3/1/10	*Kiyemba v. Obama*, 130 S. Ct. 1235 (2010) A change in the underlying facts was found to potentially moot the question originally presented - whether a federal court exercising habeas jurisdiction has the power to order the release of prisoners held at Guantanamo Bay "where the Executive detention is indefinite and without authorization in law, and release into the continental United States is the only possible effective remedy." Because no court had yet ruled in the case in light of the new facts, the Supreme Court declined to be the first to do so, and thus vacated the judgment and remanded the case to the appellate court.
28*	3/2/10	*Johnson v. United States*, 130 S. Ct. 1265 (2010) Defendant pleaded guilty in the United States District Court for the Middle District of Florida to possession of ammunition by a convicted felon and was sentenced under the Armed Career Criminal Act (ACCA). The Supreme Court held that defendant's prior battery conviction under Florida law was not a "violent felony" under the ACCA.
29	3/2/10	*Reed Elsevier, Inc. v. Muchnick*, 130 S. Ct. 1237 (2010) Freelance authors who contracted with publishers to author works for publication in print media, and who retained the copyrights in those works, and trade groups representing such authors brought class action against the publishers alleging electronic reproduction of the works by the publishers infringed their copyrights. The Supreme Court held that the Copyright Act's registration requirement is a precondition to filing a copyright infringement claim but that precondition does not restrict a federal court's subject-matter jurisdiction with respect to infringement suits involving unregistered works.
30	3/2/10	*Mac's Shell Service, Inc. v. Shell Oil Products Co.*, 130 S. Ct. 1251 (2010) In consolidated cases alleging that petroleum franchisor violated the Petroleum Marketing Practices Act (PMPA) by constructively terminating service-station franchises and constructively failing to renew franchise relationships with gasoline dealers, a jury in the United States District Court for the District of Massachusetts found for franchisees. Franchisor appealed and the First Circuit affirmed in part and reversed in part. The U.S. Supreme Court ruled that the franchisees had no valid claims under the PMPA for termination or nonrenewal of their franchise agreements because they had actually signed new franchise agreements with Shell Oil Co.

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31*	3/8/10	*Bloate v. United States*, 130 S. Ct. 1345 (2010) Defendant, who was indicted on firearms and drug charges, moved to dismiss on speedy trial grounds. The Supreme Court held that time granted to a party to prepare pretrial motions in a criminal case is not automatically excludable from the Speedy Trial Act's 70-day time limit for bringing the defendant to trial and, instead, such time may be excluded only if a court complies with the Act's requirement of making case-specific findings that the ends of justice served by granting a continuance outweigh the best interest of the public and the defendant in a speedy trial.
32	3/8/10	*Milavetz, Gallop & Milavetz, P. A. v. United States*, 130 S. Ct. 1324 (2010) The Supreme Court held that attorneys who provide qualifying services are "debt relief agencies" within the meaning of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). Like the Court of Appeals, the Supreme Court upheld the BAPCPA's disclosure requirements as applied in the consolidated cases before it. The Court, however, reversed the Court of Appeals' judgment that the section of BAPCPA governing debt relief agencies' advice to clients is unconstitutionally overbroad.
33	3/23/10	*United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (2010) The Court ruled in favor of a loan delinquent who used the bankruptcy laws to restructure his debt. The Court said that a bankruptcy court order that forgave part of the debt was valid, even though the student did not show at an adversary proceeding that repayment would pose an “undue hardship.”
34	3/30/10	*Graham County Soil and Water Conservation Dist. v. United States ex rel. Wilson,* 130 S. Ct. 1396 (2010) Qui tam action was brought against county soil and water conservation district and district supervisors alleging violations of the False Claims Act (FCA) and that district constructively discharged relator in retaliation for bringing the claims. The Supreme Court held that term “administrative,” as used in second part of the three-part “public disclosure” bar of the FCA to deprive courts of jurisdiction over qui tam suits when relevant information has already entered public domain as result of disclosure in a congressional, administrative or General Accounting Office (GAO) report, hearing, audit or investigation, was broad enough to include not just federal administrative reports, hearings, audits or investigations, but state and local administrative reports, hearings, audits or investigations as well. The Court made clear that when an individual takes it upon himself to file a suit designed to rectify fraud against the federal government, the suit is barred under most circumstances if the facts underlying the alleged fraud have already been publicly disclosed -- unless the individual was an "original source" of those facts.

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35*	3/30/10	*Berghuis v. Smith*, 130 S. Ct. 1382 (2010) Following affirmance of his conviction for second-degree murder and felony possession of firearm, petitioner sought federal habeas corpus relief. The Court held that the Michigan Supreme Court's decision on direct review, which rejected petitioner's claim that his jury was not drawn from a fair cross section of the community, was consistent with the Supreme Court's *Duren* decision and did not involve an "unreasonable" application of clearly established federal law.
36	3/30/10	*Jones v. Harris Associates L. P.*, 130 S. Ct. 1418 (2010) Owners of shares in mutual funds brought action against investment advisor under Investment Company Act of 1940, alleging that advisor's compensation was too high. Investment advisers have a 'fiduciary duty with respect to the receipt of compensation for services pursuant to §36(b) of the Investment Company Act of 1940. In the absence of a Supreme Court opinion on the issue, most courts had relied on the Second Circuit's decision in *Gartenberg v. Merrill Lynch Asset Management Inc.*, 694 F.2d 923 (2d Cir. 1982), in evaluating whether an investment adviser breached this duty. This consensus approach was recently challenged by *Jones v. Harris Associates L.P.*, 527 F. 3d 627, 632 (7th Cir. 2008), a decision in which the Seventh Circuit explicitly rejected the *Gartenberg* standard. In the appeal of the Seventh Circuit's decision, the Supreme Court for the first time addressed what standard courts should apply in evaluating whether investment advisers have complied with their duty. The Supreme Court unanimously held that an investment adviser breaches its duty when it charges "a fee that is so disproportionately large that it bears no reasonable relationship to the services rendered and could not have been the product of arm's length bargaining." Although the Supreme Court expressly adopted the *Gartenberg* standard and vacated the Seventh Circuit's decision, the Court did not provide further guidance regarding how the standard should be applied and, in fact, recognized that the approach "may lack sharp analytical clarity."
37*	3/31/10	*Padilla v. Kentucky*, 130 S. Ct. 1473 (2010) Defendant convicted on drug-related charges filed motion for post-conviction relief, alleging that his attorney was ineffective in misadvising him about potential for deportation as consequence of his guilty plea. The Supreme Court held that: (1) counsel engaged in deficient performance by failing to advise defendant that his plea of guilty made him subject to automatic deportation; and (2) defendant's claim was subject to *Strickland* ineffective assistance test, not only to extent that he alleged affirmative misadvice, but also to extent that he alleged omissions by counsel.
38	3/31/10	*Shady Grove Orthopedic Associates, P. A. v. Allstate Ins. Co.*, 130 S. Ct. 1431

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		(2010) The Supreme Court addressed whether a state statute precluding class actions in suits seeking state statutory penalties or minimum damages prevents a federal court sitting in diversity from entertaining a class action in such circumstances, and determined that the answer is "no." The Court determined that the state rule was procedural and not substantive and, therefore, the *Erie* doctrine was inapplicable. In Rule 23 of the Federal Rules of Civil Procedure, Congress set forth the rules governing when class actions are appropriate in federal court. The States may not add to or limit these procedural requirements.
39*	4/20/10	*United States v. Stevens*, 130 S. Ct. 1577 (2010) Defendant was convicted, in the United States District Court for the Western District of Pennsylvania, of violating a statute prohibiting depictions of animal cruelty. Defendant appealed. The Supreme Court held that the federal statute criminalizing the commercial creation, sale, or possession of depictions of animal cruelty was overbroad and, thus, the statute was facially invalid under the First Amendment.
40	4/21/10	*Conkright v. Frommert*, 130 S. Ct. 1640 (2010) The Supreme Court decided that a court may not refuse to defer to an ERISA plan administrator's interpretation of a plan simply because a previous related interpretation by the administrator was held to be invalid. In a 5-3 decision, the Court rejected the Second Circuit's "one-strike-and-you're-out" approach, finding that "a single honest mistake" in plan interpretation does not justify stripping a plan administrator of deference in subsequent interpretations of the plan. The bedrock of the Court's reasoning was its ruling in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989), which had that where an ERISA plan gives a plan administrator discretionary authority to interpret the plan, the administrator is entitled to deference in exercising that discretion. Granting deference to a plan administrator means that the plan administrator's interpretation of the plan will be upheld by a reviewing court as long as it is reasonable. In considering other precedents, the Court found that the broad standard of deference set out in *Firestone* was not susceptible to ad hoc exceptions like the one adopted by the Second Circuit.

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41	4/21/10	*Perdue v. Kenny A. ex rel Winn*, 130 S. Ct. 1662 (2010) The District Court awarded fees of approximately $10.5 million to counsel who represented children in a dispute with the Georgia foster-care system. The court began with a lodestar calculation of approximately $6 million and then enhanced this award by 75% based on the attorneys' skill and the exceptional results they had obtained. The Supreme Court addressed the question: "Can a reasonable attorney's fee award under a federal fee-shifting statute ever be enhanced based solely on quality of performance and results obtained when these factors already are included in the lodestar calculation?" The Court held that a federal court can award larger-than-usual attorney's fees to a civil rights lawyer who gives an especially strong performance in a particular case, but only in "extraordinary circumstances."
42	4/21/10	*Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 130 S. Ct. 1605 (2010) Debtor brought action against debt collector alleging violations of the federal Fair Debt Collection Practices Act (FDCPA) and the Ohio Consumer Sales Practices Act (OCSPA). The Supreme Court held that the bona fide error defense in the FDCPA does not apply to a violation resulting from a debt collector's mistaken interpretation of the Act's legal requirements.
43	4/27/10	*Merck & Co. v. Reynolds*, 130 S. Ct. 1784 (2010) Investors brought securities fraud class action against manufacturer of nonsteroidal anti-inflammatory drug (NSAID) that had been withdrawn from market due to safety concerns, alleging that manufacturer and individual officers and directors had made misrepresentations and omissions regarding drug's safety and commercial viability. In its holding, the Court set forth the standard under which lower courts should evaluate motions to dismiss securities fraud cases on statute-of-limitations grounds. The Court rejected the argument that the limitations period begins to run after a potential plaintiff is placed on "inquiry notice"; i.e., the point at which facts would lead a reasonably diligent plaintiff to investigate further. Instead, the Court held that "a cause of action accrues (1) when the plaintiff did in fact discover, or (2) when a reasonably diligent plaintiff would have discovered, 'the facts constituting the violation' -- whichever comes first." Without addressing what other facts may fall within its scope, the Court also concluded that scienter, or an intent to deceive, is among those "facts constituting the violation."

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44	4/27/10	*Stolt-Nielsen S. A. v. AnimalFeeds Int'l Corp.*, 130 S. Ct. 1758 (2010) The Supreme Court addressed the question of whether imposing class arbitration on parties whose arbitration agreement is silent on the question of class arbitration is consistent with the Federal Arbitration Act, and found that the answer is "no." As the Court explained, arbitration is a matter of consent. Consent to arbitration with one party does not imply consent to class arbitration because class arbitration is significantly different.
45*	4/28/10	*Salazar v. Buono*, 130 S. Ct. 1803 (2010) Retired employee of National Park Service (NPS) filed suit, alleging that display of Latin cross atop Sunrise Rock in Mojave National Preserve violated Establishment Clause. After the United States District Court for the Central District of California entered permanent injunction against display of cross, and the Ninth Circuit affirmed, plaintiff moved to enforce injunction by challenging federal statute authorizing transfer of land displaying cross. The District Court granted motion. Government appealed. The Court of Appeals affirmed. The Supreme Court held that: (1) plaintiff had standing to bring the motion to enforce the injunction; (2) district court failed to consider the context in which the statute was enacted and the reasons for its passage, and to acknowledge the statute's significance as a substantial change in circumstances bearing on the propriety of the requested injunctive relief; and (3) remand was appropriate, to allow district court to conduct a proper analysis in the first instance regarding continued necessity for injunctive relief.
46*	5/03/10	*Renico v. Lett*, 130 S. Ct. 1855 Following reversal by intermediate state appellate court of petitioner's conviction for second-degree murder and possession of a firearm during the commission of a felony, the Supreme Court of Michigan reversed and remanded, and the intermediate appellate court affirmed on remand. Petitioner then sought federal habeas relief. The Supreme Court held that: (1) Michigan Supreme Court's determination that double jeopardy did not bar retrial was not unreasonable, and (2) Michigan Supreme Court's failure to apply Sixth Circuit precedent was not independent basis for granting habeas relief.
47*	5/03/10	*Hui v. Castaneda*, 130 S. Ct. 1845 (2010) Survivors of immigration detainee brought medical negligence claims against the United States under the Federal Tort Claims Act (FTCA) and *Bivens* claims against officers and employees of the Public Health Service (PHS) for their alleged violation of detainee's Fifth and Eighth Amendment rights. The Supreme Court held that the Public Health Service Act (PHSA), 42 U.S.C.A. § 233(a),

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		precludes *Bivens* actions against PHS personnel for constitutional violations arising out of their official duties.
48*	5/17/10	*Abbott v. Abbott*, 130 S. Ct. 1983 (2010) After mother removed child from Chile to the United States, non-custodial father brought suit under the Hague Convention on the Civil Aspects of International Child Abduction seeking order requiring child to be returned to Chile. The Supreme Court held that father's ne exeat right granted by Chilean family court was "right of custody," under Hague Convention.
49*	5/17/10	*Graham v. Florida*, 130 S. Ct. 2011 (2010) Terrance Graham committed armed burglary when he was 16, and after violating his parole by committing additional crimes, was sentenced to life in prison without parole. The Supreme Court addressed the question: "Whether the Eighth Amendment' s ban on cruel and unusual punishments prohibits the imprisonment of a juvenile for life without the possibility of parole as punishment for the juvenile's commission of a non-homicide." In a 5-1-3 decision written by Justice Kennedy, the Court held that the Eighth Amendment's ban on "cruel and unusual" punishment prohibits a State from sentencing a juvenile offender to life in prison without parole when the crime does not involve murder.
50	5/17/10	*United States v. Comstock*, 130 S. Ct. 1949 (2010) The Adam Walsh Child Protection and Safety Act, 18 U.S.C. § 4248, gives the federal government authority to seek civil commitment of "sexually dangerous person[s]" already held in its custody. The Supreme Court addressed the question: "Whether Congress had the constitutional authority to enact 18 U.S.C. § 4248, which authorizes court-ordered civil commitment by the federal government of (1) 'sexually dangerous' persons who are already in the custody of the Bureau of Prisons, but who are coming to the end of their federal prison sentences; and (2) 'sexually dangerous' persons who are in the custody of the Attorney General because they have been found mentally incompetent to stand trial." The Court found that the Necessary and Proper Clause grants Congress authority sufficient to enact §4248.

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51*	5/17/10	*Sullivan v. Florida*, 130 S. Ct. 2059 (2010) The Supreme Court dismissed writ of certiorari as improvidently granted.
52	5/24/10	*American Needle, Inc. v. National Football League*, 130 S. Ct. 2201 (2010) The Supreme Court addressed the question of whether agreements among the 32 teams of the National Football League concerning each team's intellectual property rights are subject to scrutiny under the antitrust laws, and found that they are. As the Court explained, antitrust law prohibits every contract, combination, or conspiracy in restraint of trade. Under the "single entity" doctrine, agreements by executives within a single company are generally not treated as a contract, combination, or conspiracy. Here, the NFL teams have joined together to form the NFL, but they clearly compete with one another, both on the field and in the market for intellectual property.
53	5/24/10	*Lewis v. Chicago*, 130 S. Ct. 2191 (2010) Title VII of the Civil Rights Act prohibits employers from using employment practices that cause a disparate impact on the basis of race. 42 U.S.C. § 2000e, et al. Section § 2000e-5(e)(1), however, requires a plaintiff claiming discrimination to bring this charge to the EEOC within three hundred days "after the alleged unlawful employment practice occurred." The Supreme Court addressed the question: "When an employer adopts an employment practice that discriminates against African Americans in violation of Title VII's disparate impact provision, must a plaintiff file an EEOC charge within 300 days after the announcement of the practice, or may a plaintiff file a charge within 300 days after the employer's use of the discriminatory practice." In a unanimous opinion, the Court held that a plaintiff who does not file a timely charge challenging the adoption of a practice may later assert a disparate-impact claim in a timely charge challenging the employer's subsequent application of that practice.
54*	5/24/10	*United States v. O'Brien*, 130 S. Ct. 2169 (2010) Defendants pleaded guilty in the United States District Court for the District of Massachusetts to Hobbs Act violations for attempted robbery and conspiracy to affect interstate commerce, and to using a firearm in furtherance of a crime of violence. The Supreme Court held that under the statute prohibiting the use or carrying of a firearm in relation to a crime of violence or drug trafficking, fact that firearm was a machinegun was an element of the offense to be proved to the jury beyond a reasonable doubt, rather than a sentencing factor.

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55	5/24/10	*Hardt v. Reliance Standard Life Ins. Co.*, 130 S. Ct. 2149 (2010) The Supreme Court unanimously held that the ERISA fee-shifting provision contained in 29 USC §1132(g)(1) does not require a claimant to be the "prevailing party," but only to have achieved some degree of success on the merits. The Court found there is nothing in the text of §1132(g) (1) which limits the availability of attorney's fees to a prevailing party. Instead, §1132(g)(1) expressly grants district courts discretion to award attorney's fees to either party. The Court looked to its leading case on fee-shifting statutes not limited to prevailing parties, *Ruckelshaus v. Sierra Club*, 463 US 680 (1983), which provided that courts have discretion to award attorney's fees under such statutes as long as the fee claimant could show "some degree of success on the merits." Under this standard, the Court held that the district court properly exercised its discretion under §1132(g) (1) to award attorney's fees to Ms. Hardt based on her achieving some success through settlement.
56*	5/24/10	*United States v. Marcus*, 130 S. Ct. 2159 (2010) Following his conviction on charges of violating sex trafficking and forced labor provisions of the Trafficking Victims Protection Act (TVPA), defendant moved for judgment of acquittal or for new trial. The Supreme Court held that: (1) Court of Appeals employed improper plain error standard of review; and (2) district court's error in failing to instruct jury as to TVPA's enactment date was not a structural error.
57*	5/24/10	*Robertson v. United States ex rel. Watson*, 130 S. Ct. 2184 (2010) The Court dismissed the writ of certiorari in this case in which the District of Columbia Court of Appeals held that a provision of the District's intra-family offense statute, allowing a private person to enforce a civil protection order (CPO) by seeking to hold a violator in criminal contempt, does not contravene the general principle that criminal prosecutions are brought in the name of the sovereign. The grant of certiorari had been limited to the following question: whether an action for criminal contempt in a congressionally created court may constitutionally be brought in the name and pursuant to the power of a private person, rather than in the name and pursuant to the power of the United States. The Supreme Court's one-sentence per curiam order dismissing the writ of certiorari stated that the writ had been improvidently granted.

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58*	5/24/10	*Jefferson v. Upton*, 130 S. Ct. 2217 (2010) Following affirmance of his Georgia conviction for felony murder and armed robbery, and of his sentence of death, and the denial of his petition for state post-conviction relief, state inmate petitioned for writ of habeas corpus. On petition for writ of certiorari, the Supreme Court held that remand was required to determine whether state habeas court's factual findings warranted a presumption of correctness.
59*	6/01/10	*Samantar v. Yousuf*, 130 S. Ct. 2278 (2010) Natives of Somalia brought action under the Torture Victim Protection Act (TVPA) and the Alien Tort Statute, seeking to impose liability against and recover damages from former high-ranking government official for alleged acts of torture and human rights violations committed against them by government agents. The Supreme Court held that an individual foreign official sued for conduct undertaken in his official capacity is not a "foreign state" entitled to immunity from suit within the meaning of the Foreign Sovereign Immunities Act (FSIA).
60*	6/01/10	*Alabama v. North Carolina*, 130 S. Ct. 2295 (2010) Plaintiff States brought motion for leave to file a bill of complaint for an original action against defendant State asserting claims for violation of plaintiffs' rights under regional interstate compact for low-level radioactive waste management, breach of contract, unjust enrichment, promissory estoppel, and money had and received, after defendant, which had been designated by a regional interstate low-level radioactive waste management commission as host state for a planned facility to dispose of low-level radioactive waste, ceased its efforts toward obtaining a license for the planned facility because the commission had stopped providing financial assistance to defendant for costs of obtaining a license. The Supreme Court held that: (1) compact did not authorize commission to impose monetary sanctions on defendant for allegedly failing to comply with the compact; (2) defendant did not breach its obligation under the compact to take appropriate steps to ensure that an application for a license to construct and operate the planned facility was filed with and issued by the appropriate authority; (3) compact did not impose an implied duty of good faith and fair dealing with respect to defendant withdrawing from the compact; and (4) commission could bring claims for violation of the compact and for breach of contract.

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61*	6/01/10	*Berghuis v. Thompkins*, 130 S. Ct. 2250 (2010) After defendant's conviction for first-degree murder was affirmed, defendant sought federal habeas relief. The Supreme Court held that: (1) fact that defendant was silent during first two hours and 45 minutes of three hour interrogation was insufficient to invoke his right to remain silent under Miranda; (2) defendant waived his right to remain silent under Miranda by responding to question by interrogating officer; (3) police are not required to obtain a waiver of defendant's right to remain silent under Miranda before commencing interrogation; and (4) defense counsel's failure to request a limiting instruction, informing jury that it could consider accomplice's acquittal in previous trial only in assessing accomplice's credibility and not as substantive evidence of defendant's guilt, did not amount to ineffective assistance.
62	6/01/10	*Levin v. Commerce Energy, Inc.*, 130 S. Ct. 2323 (2010) The Supreme Court ruled that natural-gas marketers must use the state court system to challenge the constitutionality of Ohio's allegedly discriminatory tax scheme. Comity considerations required that independent marketers' complaint of allegedly discriminatory state taxation, framed as a request to increase a commercial competitor's tax burden, proceed originally in state court, given that an adequate state-court forum was available to hear and decide their constitutional claims.
63*	6/01/10	*Carr v. United States*, 130 S. Ct. 2229 (2010) Defendants were charged in separate proceedings with violating Sex Offender Registration and Notification Act (SORNA). The Supreme Court held that SORNA section imposing criminal liability for failure to adhere to registration requirements does not apply to sex offenders whose interstate travel occurred before SORNA's effective date.
64*	6/07/10	*Barber v. Thomas*, 130 S. Ct. 2499 (2010) Federal prisoners filed habeas petitions challenging the Bureau of Prisons' (BOP) method for calculating good time credit. The Supreme Court held that: (1) BOP's method of calculating good time credit was lawful; and (2) rule of lenity did not apply to good time credit statute.
65	6/07/10	*Hamilton v. Lanning*, 130 S. Ct. 2464 (2010) Chapter 13 trustee objected to confirmation of plan proposed by above-median-income debtor on ground that debtor was not committing all of her "projected disposable income" to the repayment of creditors. The Supreme Court held that when a bankruptcy court calculates a Chapter 13 debtor's projected disposable

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		income, the court may account for changes in the debtor's income or expenses that are known or virtually certain at the time of confirmation.
66	6/07/10	*Krupski v. Costa Crociere S p.A.*, 130 S. Ct. 2485 (2010) Passenger brought action against carrier to recover for injuries sustained while aboard cruise ship. The United States District Court for the Southern District of Florida entered summary judgment in carrier's favor, holding that passenger's amendment of her complaint to correctly identify carrier did not relate back to her original complaint, and the Eleventh Circuit affirmed. A unanimous Supreme Court reversed the district and appellate courts and held that where a plaintiff brings an action against one of two closely related corporations to recover for injuries sustained on the premises, amendment of the complaint in federal court to correctly identify the proper party relates back to the original complaint if the party to be added knew or should have known that it was the proper party. The amending party's knowledge or timeliness in seeking to amend the pleading are not the determining factors.
67*	6/07/10	*United States v. Juvenile Male*, 130 S. Ct. 2518 (2010) Following revocation of juvenile offender's supervised release, the United States District Court for the District of Montana imposed as condition of supervision requirement that juvenile register as sex offender pursuant to Sex Offender Registration and Notification Act (SORNA). The Supreme Court held that certification of question to Montana Supreme Court was appropriate in order to help determine whether case was rendered moot by expiration of juvenile offender's term of juvenile supervision.
68*	6/14/10	*Carachuri-Rosendo v. Holder*, 130 S. Ct. 2577 Alien petitioned for review of en banc order of the Board of Immigration Appeals (BIA) holding he was ineligible for cancellation of removal. The Supreme Court held that defendant's second Texas offense of simple drug possession was not "aggravated felony," so as to preclude cancellation of removal, where second conviction was not based on fact of prior conviction.
69*	6/14/10	*Astrue v. Ratliff*, 130 S. Ct. 2521 (2010) After successfully representing her client in suit to obtain benefits from the Social Security Administration (SSA), attorney moved for award of fees and costs under the Equal Access to Justice Act (EAJA). The Supreme Court held that an award of prevailing-party attorney's fees under the Equal Access to Justice Act (EAJA), in a civil action brought by or against the United States, was payable to the litigant rather than to the litigant's attorney and, thus, the award was subject to a government offset to satisfy the litigant's pre-existing debt to the government.

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70*	6/14/10	*Dolan v. United States*, 130 S. Ct. 2533 (2010) Defendant pleaded guilty in the United States District Court for the District of New Mexico to assault resulting in serious bodily injury and was sentenced to 21 months in prison and to pay victim $250 monthly in restitution. The Supreme Court held that sentencing court that misses Mandatory Victims Restitution Act's (MVRA's) 90-day deadline for district court to make final determination of victim's losses and impose restitution nonetheless retains the power to order restitution, at least where that court made clear prior to the deadline's expiration that it would order restitution, leaving open for more than 90 days only the amount.
71*	6/14/10	*Holland v. Florida*, 130 S. Ct. 2549 (2010) Following affirmance of his first-degree murder conviction and death sentence, affirmance of the denial of his motion for state post-conviction relief, and denial of his state habeas petition, Florida death row inmate sought federal habeas relief. The Supreme Court held: (1) one-year statute of limitations on petitions for federal habeas relief by state prisoners is subject to equitable tolling; and (2) habeas corpus proceeding had to be remanded to the Court of Appeals to determine whether conduct on part of state prisoner's attorney rose to level of "extraordinary circumstance" sufficient to permit equitable tolling of one-year statute. Attorney was accused of not filing federal habeas petition in timely fashion despite prisoner's many admonitions on importance of doing so; not doing the research necessary to ascertain filing deadline despite fact that prisoner's letters went so far as to identify applicable legal rules; failing to provide prisoner with information that he had requested so that he could monitor case; and failing to communicate with prisoner over period of years.
72	6/17/10	*New Process Steel, L.P. v. NLRB*, 130 S. Ct. 2635 (2010) The Supreme Court ruled 5-4 that the NLRB lacks authority to issue rulings in unfair labor practice and representation cases unless at least three of the board's five seats are filled. This decision effectively vacated hundreds of NLRB decisions made since January 1, 2008 by a board operating with only two members.
73*	6/17/10	*Stop the Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection*, 130 S. Ct. 2592 (2010) After unsuccessfully challenging decision of the Florida Department of Environmental Protection (FDEP), which granted a permit pursuant to the state's Beach and Shore Preservation Act to restore eroded beach, nonprofit corporation formed by owners of adjoining beachfront property brought action in Florida state

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		court to challenge the project. The Court rejected the state-law premise upon which owners of Florida beachfront properties had based their claim that the Florida Supreme Court had unconstitutionally taken their property when that court had declared that Florida's Beach and Shore Preservation Act did not unconstitutionally deprive the owners of littoral rights without just compensation.
74	6/17/10	*City of Ontario, Cal. v. Quon*, 130 S. Ct. 2619 (2010) City police officer brought § 1983 action against city, police department, and police chief alleging that police department's review of officer's text messages violated Fourth Amendment, and asserted claim against wireless communications provider under Stored Communications Act (SCA). The Supreme Court held that a city's search of text messages sent by police officers using city-provided alphanumeric pagers did not violate the officers' privacy rights. The Court emphasized that it should proceed with caution in delineating the limits of reasonable privacy expectations of employees using electronic communication devices provided by their employers. The Court avoided that issue by assuming that Quon had a reasonable expectation of privacy, but holding that the search--the review of the transcripts--was reasonable. The decision does provide public employers with some guidelines regarding workplace searches--the search is likely to be held to be reasonable if the employer acts because of a legitimate, work-related purpose, and the means used for the search are not excessively intrusive in light of the circumstances giving rise to the search. Here, the employer only reviewed the transcripts for messages sent during working hours in the months of August and September, and did not review messages sent outside of working hours. The employees involved had also been informed that the messages were subject to being audited.
75	6/17/10	*Schwab v. Reilly*, 130 S. Ct. 2652 (2010) A trustee did not need to object to a debtor's exemption claim when a debtor has valued the asset at the exemption limit but the actual value exceeded the amount listed. Chapter 7 trustee filed motion to sell debtor's business equipment. The Supreme Court, Justice Thomas, held that when the Bankruptcy Code defines the property a debtor is authorized to exempt as an interest in a particular type of asset the value of which may not exceed a certain dollar amount, and the debtor's schedule of exempt property accurately describes the asset and declares the "value of [the] claimed exemption" in that asset to be an amount within the limits that the Code prescribes, an interested party is entitled to rely upon that value as evidence of the claim's validity and need not object to the exemption in order to preserve the estate's ability to recover value in the asset beyond the dollar value the debtor expressly declared exempt, abrogating *In re Green*, 31 F.3d 1098, and *In re Anderson*, 377 B.R. 865.

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76*	6/17/10	*Dillon v. United States*, 130 S. Ct. 2683 (2010) Defendant , moved to reduce his sentence based on amended Sentencing Guideline that retroactively reduced base offense level for crack cocaine offenses by two levels. He was convicted of conspiracy to distribute more than 500 grams of cocaine and more than 50 grams of cocaine base, use of a firearm during a drug-trafficking offense, and possession with intent to distribute more than 500 grams of cocaine. The Supreme Court held that: (1) sentence modification proceedings based on retroactive amendment to Sentencing Guidelines do not implicate the Sixth Amendment; (2) defendant's Sixth Amendment rights were not violated when district court considered a reduction only within the amended Guidelines range; (3) remedial aspect of *U.S. v. Booker* did not apply to sentence modification proceedings; abrogating *U.S. v. Hicks*, 472 F.3d 1167; and (4) district court properly declined to address challenges to aspects of original sentence unaffected by the amendment.
77*	6/21/10	*Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2010) United States citizens and domestic organizations seeking to provide support for lawful activities of two organizations that had been designated as foreign terrorist organizations sought injunction to prohibit enforcement of criminal ban on providing material support to such organizations. The Supreme Court held that the material-support statute, 18 U.S.C. § 2339B, is constitutional as applied to the particular forms of support that plaintiffs seek to provide to foreign terrorist organizations.
78	6/21/10	*Rent-A-Center, West, Inc. v. Jackson*, 130 S. Ct. 2772 (2010) In former employee's § 1981 action alleging race discrimination and retaliation by his former employer, employer moved to dismiss and to compel arbitration pursuant to the Federal Arbitration Act (FAA). The Supreme Court held that provision of employment agreement which delegated to an arbitrator exclusive authority to resolve any dispute relating to the agreement's enforceability was a valid delegation under the FAA. This 5-4 decision made clear that, under the FAA, an arbitrator, not a court, and should decide whether an arbitration agreement is unconscionable when the parties have delegated to an arbitrator the ability to rule upon the validity of the arbitration agreement itself. Under the Court's ruling, unless the party attempting to avoid arbitration raises a challenge going specifically to the enforceability of such delegation provision, the arbitrator has the power to decide whether the agreement is enforceable.

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79	6/21/10	*Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp*, 130 S. Ct. 2433 (2010) Shippers brought breach of contract action in state court against ocean carrier, its agent, and rail carrier involved in shipping cargo inland, after train derailed in Oklahoma causing damage to the cargo. The Supreme Court held that: (1) Carmack Amendment does not apply to the inland rail segment of a shipment originating overseas under a single through bill of lading; abrogating *Sompo Japan Ins. Co. of America v. Union Pacific R. Co.*; (2) ocean carrier was not a receiving rail carrier within the meaning of the Carmack Amendment; (3) rail carrier was not a receiving rail carrier within the meaning of the Carmack Amendment; and (4) forum-selection clauses in through bills of lading were enforceable.
80	6/21/10	*Monsanto Co. v. Geertson Seed Farms*, 130 S. Ct. 2743 (2010) The district court held that the Animal and Plant Health Inspection Service violated the National Environmental Policy Act by completely deregulating genetically engineered alfalfa without first completing a full-blown environmental impact statement. Assuming that determination to be valid, the question presented was whether the court erred by enjoining the government from partially deregulating alfalfa, and also enjoining the public from planting such alfalfa, until the environmental impact statement was completed. The Supreme Court held that the district court erred by entering the injunction. This is one in a series of recent cases in which the Court has emphasized that injunctions should not be issued as a matter of course and that there is no presumptive right to an injunction.
81*	6/24/10	*John Doe #1 v. Reed*, 130 S. Ct. 2811 (2010) Petition sponsor and individual signers of referendum sought preliminary injunction prohibiting State of Washington from making referendum petitions available in response to requests under State's Public Records Act (PRA). The Supreme Court held that as applied to referendum petitions in general, disclosure requirements of PRA were sufficiently related to the State's interest in protecting the integrity of the electoral process to satisfy the exacting scrutiny standard applicable to First Amendment challenges. Accordingly, public disclosure of names of signers of referendum petitions generally does not violate the First Amendment.
82	6/24/10	*Morrison v. National Australia Bank Ltd.*, 130 S. Ct. 2869 (2010)

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		The Second Circuit has long held that, for purposes of securities litigation, subject matter jurisdiction over foreign investors trading foreign securities on foreign exchanges could be based on either: (1) a substantial effect on American securities markets or investors; or (2) significant misconduct in the United States. National Australia Bank, a foreign bank whose shares are not traded on any U.S. exchange, was sued by foreign citizens alleging various § 10(b) violations. The district court dismissed for lack of subject matter jurisdiction and the Second Circuit affirmed. The Supreme Court address the question: "Whether the antifraud provisions of the United States securities laws extend to transnational frauds." Justice Scalia writing for the Court held that Section 10(b) does not provide a cause of action to foreign plaintiffs suing foreign and American defendants for misconduct in connection with securities traded on foreign exchanges.
83	6/24/10	*Granite Rock Co. v. International Broth. of Teamsters*, 130 S. Ct. 2847 (2010) Employer sued international union and local union alleging that local's strike constituted breach of no-strike clause in collective bargaining agreement (CBA) and that international had engaged in tortious interference with contract by promoting strike, and asserting claims against both entities under the Labor Management Relations Act (LMRA). The United States Supreme Court held that: (1) dispute over ratification date of CBA was matter to be resolved by District Court, rather than by arbitrator; (2) employer did not implicitly consent to arbitration of dispute over ratification date of CBA; and (3) tortious interference claim was outside scope of LMRA. The opinion is most notable for its holding that the effective date of a CBA, and thus whether a no-strike provision had been violated, was a matter for the court to determine and not the arbitrator under the arbitration provision in the CBA.
84*	6/24/10	*Magwood v. Patterson*, 130 S. Ct. 2788 (2010) Following affirmance of death sentence imposed after new sentencing hearing, petition for writ of habeas corpus was filed. The United States District Court for the Middle District of Alabama granted the petition in part, denied the petition in part, and remanded. Appeal was taken. The Eleventh Circuit affirmed in part and reversed in part. Certiorari was granted. The Supreme Court held that petitioner's fair-warning claim could be raised in the habeas petition challenging his death sentence that was imposed following a new sentencing hearing.

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85*	6/24/10	*Skilling v. United States*, 130 S. Ct. 2896 (2010) In a series of three cases led by *Skilling v. United States*, the Supreme Court considered: "Whether the federal "honest services" fraud statute, 18 U.S.C. § 1346, requires the government to prove that the defendant's conduct was intended to achieve 'private gain' rather than to advance the employer's interests, and, if not, whether § 1346 is unconstitutionally vague;" and "When a presumption of jury prejudice arises because of the widespread community impact of the defendant's alleged conduct and massive, inflammatory pretrial publicity, whether the government may rebut the presumption of prejudice, and, if so, whether the government must prove beyond a reasonable doubt that no juror was actually prejudiced." The Supreme Court, per Justice Ginsburg, first held that the pretrial publicity and any community prejudice did not prevent Skilling from obtaining a fair trial. Next, the Court held that, to avoid vagueness problems, 18 U.S.C. § 1346 covers only bribery and kickback schemes and thus Skilling's convictions were invalid as they involved no such scheme. *The other two cases in the series are *Black v. United States* and *Weyrauch v. United States*.
86*	6/24/10	*Black v. United States*, 130 S. Ct. 2963 (2010) Defendants were convicted of mail fraud, wire fraud, and obstruction of justice. Defendants appealed. The Seventh Circuit affirmed. Certiorari was granted. The Supreme Court held that defendants preserved their challenge to jury instructions concerning alternative theory even though they did not request special interrogatories or acquiesce in Government-proposed special-verdict forms.
87*	6/24/10	*Weyhrauch v. United States*, 130 S. Ct. 2971 (2010) Judgment vacated and remanded for further consideration in light of *Skilling v. United States*, 130 S.Ct. 2896 (2010).

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88	6/28/10	*Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 130 S. Ct. 3138 (2010) Sarbanes Oxley provides that the five members of the Public Company Accounting Oversight Board are to be appointed by the SEC. The SEC cannot remove Board members at will, but only "for good cause shown." The Commissioners, in turn, cannot themselves be removed unless good cause is shown. The Supreme Court addressed the following questions: "Whether the Sarbanes-Oxley Act of 2002 violates the Constitution's separation of powers by vesting members of the [PCAOB] with far-reaching executive power while completely stripping the President of all authority to appoint or remove those members...."; "Whether the court of appeals erred in holding that, under the Appointments Clause, PCAOB members are 'inferior officers' directed and supervised by the Securities and Exchange Commission...."; and "If PCAOB members are inferior officers, whether the Act's provision for their appointment by the SEC violates the Appointments Clause either because the SEC is not a 'Department' … or because the five commissioners, acting collective, are not the 'Head' of the SEC." The Supreme Court held that the double good cause removal standard over members of the Public Company Accounting Oversight Board violates the separation of powers as an unconstitutional limitation on the President's removal power. Board members are inferior officers who can be appointed by the SEC.
89	6/28/10	*Bilski v. Kappos*, 130 S. Ct. 3218 (2010) Here, the Supreme Court addressed the standard for determining whether a method is patentable subject matter. The legal standard is unclear at this point. But in this case, the Supreme Court held that a method of hedging against risk by purchasing offsetting positions is not eligible for patent protection. The Court held that patents on methods of doing business are not per se unpatentable. The Court also rejected the Federal Circuit's test, which required that a method must either be tied to a particular machine or apparatus, or transform matter. The Court eschewed any bright-line rules, and instead asked whether a method essentially claims an abstract idea, without adding enough additional substance to warrant patent protection. Here, the Court did not find enough additional substance to warrant patent protection.

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90	6/28/10	*Christian Legal Soc. Chapter of Univ. of Cal., Hastings College of Law v. Martinez*, 130 S. Ct. 2971 (2010) In 2005, Christian Legal Society ("CLS") requested that Hastings Law School officially recognize it as a student organization. Hastings rejected CLS's application on the ground that its bylaws excluded students based on religion and sexual orientation. CLS then filed suit alleging that Hastings had violated its First Amendment rights to free speech, expressive association, and free exercise. The Supreme Court addressed: "Whether the Ninth Circuit erred when it held ... that the Constitution allows a state law school to deny recognition to a religious student organization because the group requires its officers and voting members to agree with its core religious viewpoints." Justice Ginsburg, writing for a 5-4 Court, held that a public law school policy requiring student groups to open their membership to all students, including those who do not share their core beliefs about religion, is a reasonable condition on access to a limited public forum.
91	6/28/10	*McDonald v. Chicago*, 130 S. Ct. 3016 (2010) In *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008), the Supreme Court held that the Second Amendment secures for individuals the right to keep and bear arms for the purpose of self-defense. One day later, McDonald filed the above captioned suit challenging municipal laws that were similar to the federal laws struck down by the Supreme Court in *Heller*. The Supreme Court addressed the question: "Whether the Second Amendment right to keep and bear arms is incorporated as against the States by the Fourteenth Amendment's Privileges or Immunities or Due Process Clauses." In a 5-4 decision, the Supreme Court held that the Fourteenth Amendment extends the Second Amendment's right to keep and bear arms to state and local gun laws.
92*	6/29/10	*Sears v. Upton*, 130 S. Ct. 3259 (2010) Following affirmance of defendant's convictions for armed robbery and kidnapping with bodily injury which also resulted in death, and affirmance of his death sentence, defendant's request for state postconviction relief was denied. Defendant appealed. The Supreme Court of Georgia summarily denied review. Defendant petitioned for writ of certiorari. The Supreme Court held that state postconviction court failed to apply proper prejudice inquiry in determining that counsel's facially inadequate mitigation investigation did not prejudice defendant.

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