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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (May 29–June 4, 2023)

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The federal courts issue hundreds of decisions every week in cases involving diverse legal disputes. This Sidebar series selects decisions from the past week that may be of particular interest to federal lawmakers, focusing on orders and decisions of the Supreme Court and precedential decisions of the courts of appeals for the thirteen federal circuits. Selected cases typically involve the interpretation or validity of federal statutes and regulations, or constitutional issues relevant to Congress's lawmaking and oversight functions.

Some cases identified in this Sidebar, or the legal questions they address, are examined in other CRS general distribution products. Members of Congress and congressional staff may click here to subscribe to the *CRS Legal Update* and receive regular notifications of new products and upcoming seminars by CRS attorneys.

Decisions of the Supreme Court

Last week, the Supreme Court issued opinions in three cases where it had heard arguments:

- **False Claims Act:** A unanimous Court held that the requirement of the False Claims Act (the FCA) that a defendant act "knowingly" primarily refers to a defendant's subjective beliefs at the time of submitting a claim. The Court based its reasoning on the statutory definition and common-law origins of the term. The Court decided that even if the false statement concerned an ambiguous legal requirement, and even if an objectively reasonable person could have adopted the FCA defendant's (incorrect) interpretation, the defendant might still have acted knowingly if the defendant *thought* its claims were inaccurate at the time of submission (*United States ex rel. Schutte v. Supervalu Inc.*).
- **Labor & Employment:** The Supreme Court held that the National Labor Relations Act (NLRA) did not preempt a company's tort claims that a union intentionally destroyed the company's property during a labor dispute where the union did not take reasonable precautions to avoid foreseeable danger to that property. The Court recited the National

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Labor Relations Board's long-standing position that the right to strike under the NLRA is limited by the requirement that workers take reasonable precautions to protect their employer's property from foreseeable, aggravated, and imminent danger. Accepting the allegations in the company's complaint as true, the Court reversed a state court's dismissal of the tort claims against the union (*Glacier Nw., Inc. v. Teamsters*).

- **Securities:** The Supreme Court adopted a narrow reading of Section 11 of the Securities Act of 1933. The Act requires a company to register the securities it intends to offer to the public with the Securities and Exchange Commission, and Section 11 authorizes an individual to sue for a material misstatement or omission in a registration statement when the individual has acquired "such security." The Court held that "such security" only pertains to a security registered under a materially misleading registration statement. Observing that the plain text of § 11 does not define "such security," the Court parsed the statute's context to determine that § 11 liability extends only to shares traceable to an allegedly defective registration (*Slack Techs., LLC v. Pirani*).

Decisions of the U.S. Courts of Appeals

Topic headings marked with an asterisk (*) indicate cases where the appellate court's controlling opinion recognizes a split among the federal appellate courts on a key legal issue resolved in the opinion, contributing to a non-uniform application of the law among the circuits.

- ***Bankruptcy:** Joining most circuits, the Second Circuit held that two provisions of the Bankruptcy Code—11 U.S.C. §§ 105(a) and 1123(b)(6)—jointly provide a basis for a bankruptcy court to approve a Chapter 11 bankruptcy plan allowing nonconsensual, third-party releases of direct claims against nondebtors. The case here involved Purdue Pharma's filing for bankruptcy after costly civil litigation over its introduction of the opioid OxyContin into the pharmaceutical market. The bankruptcy court authorized the release of many civil litigation claims against the Sackler family, which owned and operated Purdue Pharma for decades, contingent upon the family's agreeing to contribute billions to the company's bankruptcy estate to fund settlements with both private litigants and the federal government. The circuit court set forth a multifactor test for when the nonconsensual, third-party release of direct claims against nondebtors may be permitted, and concluded that those factors were satisfied in this case (*In re Purdue Pharma, L.P.*).
- **Bankruptcy:** The Eighth Circuit affirmed a bankruptcy court order denying a debtor's motion to compel the case trustee to abandon the debtor's real property. The court held that a debtor who converts a case from one Chapter of the Bankruptcy Code to another does not retain any preconversion market appreciation and increases in equity in real property. Here, the debtor filed a petition under Chapter 13 and two years later converted the case to one under Chapter 7. The parties disagreed whether the market appreciation on the debtor's residence as well as the reduction in the mortgage lien on the residence during that two-year period inured to the benefit of the debtor or the bankruptcy estate. The court interpreted Section 348 of the Bankruptcy Code, which concerns the effect of a conversion on property of the estate held at the time of the petition, but is silent as to preconversion market appreciation or increases in equity. The court declined to adopt the debtor's argument that Congress, in failing to address this scenario, intended for debtors to retain postpetition and preconversion appreciation and increases in equity (*Goetz v. Weber*).
- ***Civil Procedure:** The Fifth Circuit held that 28 U.S.C. § 1654—which allows parties to pursue "their own cases" pro se in federal court—does not establish an absolute bar against parents proceeding pro se on behalf of their minor children, a holding the court

recognized conflicts with those of 10 other circuits. While the controlling opinion recognized that § 1654 did not abrogate the common-law rule that typically barred parents from representing their children pro se, the panel majority concluded that this rule does not apply if a federal or state law designated a child's case as belonging to the parent (*Raskin v. Dallas Indep. Sch. Dist.*).

- ***Civil Procedure:** The Eleventh Circuit held that a district court order compelling an appraisal in an insurance contract dispute and staying proceedings pending the appraisal is an interlocutory order not immediately appealable under 28 U.S.C. § 1292(a)(1). The court disagreed with a Seventh Circuit decision, which had found appellate jurisdiction over an appraisal order without conducting a jurisdictional analysis. The Eleventh Circuit further held that an order compelling an appraisal is not immediately appealable under the Federal Arbitration Act. Assuming that the order compelling an appraisal pertained to an arbitration, the court found no appellate jurisdiction because the order was not a final decision (*Positano Place at Naples I Condo. Ass'n, Inc. v. Empire Indem. Ins. Co.*).
- **Consumer Protection:** The Sixth Circuit reversed the dismissal of an action under the Telephone Consumer Protection Act of 1991 (TCPA) on Article III standing grounds. The district court held the plaintiff lacked standing to file the TCPA action because receipt of a single ringless voicemail (RVM) did not cause a concrete harm sufficient to support a suit. The court of appeals reversed, holding that the receipt of a single RVM implicated the plaintiff's common-law right to seclusion and that this was the type of harm Congress sought to address when it passed the TCPA (*Dickson v. Direct Energy, LP*).
- **Criminal Law & Procedure:** The Eighth Circuit affirmed the dismissal of federal criminal indictments against the captain and managers of a commercial tour boat that sank in Table Rock Lake in the Ozarks, killing several passengers. The defendants were charged under the Seaman's Manslaughter Statute, 18 U.S.C. § 1115, which punishes negligence or misconduct by vessel operators leading to death, and 46 U.S.C. § 2302(b), which sanctions the operation of a vessel in a grossly negligent manner that endangers another. Looking to the text and history of the statutes, the panel majority held that Congress enacted them under its power to legislate on matters within the scope of admiralty and maritime jurisdiction, and that the statutes did not apply to conduct on the lake because it is not part of navigable waters subject to federal admiralty jurisdiction. The court implied a potentially different result if the statutes had been enacted under Congress's Commerce Clause authority (*United States v. McKee*).
- ***Criminal Law & Procedure:** The Ninth Circuit vacated a defendant's sentence for conspiracy to distribute methamphetamine where the district court had labeled conspiracy a "controlled substance offense" under § 4B1.2 of the U.S. Sentencing Guidelines (USSG). The court confronted the issue of whether to follow the text of § 4B1.2, which did not provide for inchoate offenses, and the USSG commentary to § 4B1.2 (Application Note 1), which did. The court declined to defer to the Application Note 1, reasoning that § 4B1.2 unambiguously does not include inchoate offenses. The court relied on the Supreme Court's decision in *Kisor v. Wilkie*, which held that courts may not defer to agency interpretations of their own regulation if the court determines the regulation is not ambiguous. The Ninth Circuit joins most, but not all, circuit courts that have declined to defer to Application Note 1 in the aftermath of *Kisor* (*United States v. Castillo*).
- ***Criminal Law & Procedure:** A divided Ninth Circuit panel held that it had jurisdiction to review a district court's denial of the appellant's habeas petition even without a certificate of appealability (COA), where the petition related to a sentence imposed by the D.C. Superior Court. Under 28 U.S.C. § 2253(c)(1), a COA must be obtained before a

habeas petitioner may appeal a federal district court's denial of a petition "in which the detention complained of arises out of process issued by a State court." Splitting with other circuits, the panel majority held that requirement did not apply here, because the D.C. Superior Court is not a "state court" under § 2253(c)(1). The majority then concluded that the district court erred in dismissing the petition on other grounds and remanded for the lower court to consider the petition's merits (*Elridge v. Howard*).

- ***Criminal Law & Procedure:** The Eleventh Circuit affirmed the convictions and sentencing of a defendant convicted of Hobbs Act robbery and associated firearms offenses for his involvement in the robbery of nine businesses. As to sentencing, the court affirmed a sentencing enhancement based on bodily restraint for three of the nine robberies. The court declined to follow a Third Circuit decision that would have counseled against applying the enhancement because that case directly conflicted with Eleventh Circuit precedent (*United States v. Ware*).
- ***Securities:** Sitting en banc, a divided Ninth Circuit affirmed the dismissal of a putative derivative action filed in federal court against The Gap, Inc. and its directors (Gap) because a forum-selection clause in Gap's bylaws provided that the Delaware Court of Chancery was the sole and exclusive forum for any derivative action. The majority rejected the plaintiff's arguments that the forum-selection clause violated the antiwaiver provision of the Securities Exchange Act of 1934, federal public policy, and Section 115 of the Delaware General Corporation Law. The majority acknowledged that its holdings created a circuit split with the Seventh Circuit (*Lee v. Fisher*).
- ***Tax:** The Fourth Circuit affirmed the U.S. Tax Court's partial disallowance of a corporation's business deduction for bonuses paid to the company's CEO because the bonuses exceeded the reasonable allowance for compensation in 26 U.S.C. § 162(a)(1). The court joined most circuits in applying a multifactor approach that assesses the reasonableness of compensation under the totality of the circumstances. In so holding, the court declined to adopt the Seventh Circuit's independent investor test, which establishes a rebuttable presumption that an executive's compensation is reasonable if shareholders are receiving a sufficiently high rate of return on their equity investment. The court concluded that the multifactor test is more in line with the Internal Revenue Service (IRS) regulations that limit compensation deductions to what is "reasonable under all the circumstances" and that the independent investor test was too narrow (*Clary Hood, Inc. v. Comm'r of Internal Revenue*).
- ***Tax:** The Eighth Circuit decided that the IRS assessment of the fair market value of a closely held corporation properly identified the corporation's life insurance policy on a deceased shareholder as an asset, when policy proceeds were used to redeem the decedent's shares. Characterizing its decision as consistent with governing law and customary valuation principles, the court acknowledged a split with the Eleventh Circuit, which held in a similar case that life insurance proceeds should not be added to the value of a corporation for tax purposes (*Connelly v. United States*).
- **Tax:** In a case about the tax liability of a couple who claimed boating expenses related to their chartered yacht as "hobby losses" under 26 U.S.C. § 183(b)(2), the Eleventh Circuit considered whether § 183(b)(2) expenses are deductible "above-the-line" (reducing gross income) or "below-the-line" as miscellaneous itemized deductions (reducing *adjusted* gross income). The court held that § 183(b)(2) expenses are "below-the-line" deductions. This classification typically yields a less favorable result for the taxpayer than "above-the-line" deductions treated as reductions in the taxpayer's gross income. P.L. 115-97,

- often referred to as the Tax Cuts and Jobs Act of 2017, suspends such miscellaneous itemized deductions for the 2018-2025 tax years (*Gregory v. Comm'r of Internal Rev.*).

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