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January 3, 2022

WLF Month in Review

This WLF Litigation Division feature highlights WLF's court filings, as well as decisions issued in response to WLF's filings. In this edition, we list **December 2021** filings and results.

New Filings

- WLF asks the Florida Supreme Court to clarify the limits due process imposes on punitive damages awards. (***Coates v. R.J. Reynolds Tobacco Co.***)
- WLF asks the Supreme Court to stay the Occupational Safety and Health Administration's emergency temporary standard, which requires employers with more than 100 employees to force their employees to either get a COVID-19 vaccine or pay for weekly testing. (***Nat'l Federation of Independent Businesses v. OSHA***)
- WLF submits formal comments supporting proposed amendments to Federal Rule of Evidence 702. (***In re Proposed Amendments to Federal Rule of Evidence 702***)
- WLF urges the Supreme Court to clarify companies' disclosure obligations under federal securities law. (***Alphabet Inc. v. Rhode Island***)

Decisions

- The Supreme Court of Pennsylvania holds that Pennsylvania's long-arm statute violates the Fourteenth Amendment's Due Process Clause. (***Mallory v. Norfolk Southern Railway Co.***) ****victory****
- The Fifth Circuit affirms dismissal of a declaratory-judgment action against the DEA for want of jurisdiction. (***Walmart Inc. v. U.S. Drug Enforcement Administration***)
- The Supreme Court agrees, yet again, to provide FAA guidance to the California courts. (***Viking River Cruises, Inc. v. Moriana***) ****victory****
- The Supreme Court agrees to clarify the scope of the "transportation worker" exemption under section 1 of the FAA. (***Southwest Airlines v. Saxon***) ****victory****

Litigation is the backbone of WLF's public-interest mission. We litigate nationally before state and federal courts and agencies. Our team, at times with the pro-bono assistance of leading private attorneys, litigates original actions, files *amicus* briefs, participates in the regulatory process, and provides constitutional analysis before federal agencies and Congress.

If you become aware of a pending legal or regulatory matter in which WLF's unique public-interest participation would advance economic liberty, please contact WLF General Counsel and Vice President of Litigation, Cory Andrews.

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NEW FILINGS

WLF asks the Florida Supreme Court to clarify the limits due process imposes on punitive damages awards.

Coates v. R.J. Reynolds Tobacco Co.

On December 30, WLF urged the Florida Supreme Court to provide lower Florida courts with much-needed guidance on the limits due process imposes on punitive damages awards. After awarding the plaintiff \$150,000 solely on her design-defect claim, the jury awarded her a staggering \$16 million in punitive damages. That award produced an eye-popping 106:1 punitive-to-compensatory ratio. WLF's *amicus* brief contends that when, as here, the compensatory award is substantial and the conduct at issue is not heinous, the constitutional maximum is a 1:1 ratio of punitive to compensatory damages. Anything greater than a 1:1 ratio would far exceed the amount necessary to accomplish Florida's interest in punishing and deterring Reynold's conduct.

WLF asks the Supreme Court to stay the Occupational Safety and Health Administration's emergency temporary standard, which requires employers with more than 100 employees to force their employees to either get a COVID-19 vaccine or pay for weekly testing.

Nat'l Federation of Independent Businesses v. OSHA

On December 20, WLF filed an *amicus* brief urging the Supreme Court to stay the emergency temporary standard issued by the Occupational Safety and Health Administration, which requires employers with more than 100 employees to force their employees to either get a COVID-19 vaccine or pay for weekly testing. WLF's brief explains that the ETS will harm our nation's economy and was issued without statutory authorization. As the ETS will expire soon, WLF's brief also urges the Court to grant certiorari before judgment and hear the case now.

WLF submits formal comments supporting proposed amendments to Federal Rule of Evidence 702.

In re Proposed Amendments to Federal Rule of Evidence 702

On December 14, WLF filed comments urging the Committee on Rules of Practice and Procedure to submit to the Supreme Court, with slight modifications, proposed amendments to Rule 702. The comments explain how district courts and circuit courts continue to misapply Rule 702. The proposed amendments clarify some aspects of Rule 702 that would limit the ability of courts to circumvent the rule's requirements. The comments also explain how tweaking the proposed amendments would help to eliminate current problems with courts' application of the rule and prevent further attempts at skirting the rule's requirements.

WLF urges the Supreme Court to clarify companies' disclosure obligations under federal securities law.

Alphabet Inc. v. Rhode Island

On December 13, WLF asked the Supreme Court to review, and ultimately reverse, a Ninth Circuit decision that would hold companies liable for failing to include irrelevant and stale information in their forward-looking risk disclosures. As WLF explained in its *amicus* brief urging review, the Ninth Circuit's ruling will force companies to disclose extensive, immaterial information about past incidents, which will likely confuse investors who must navigate a company's SEC filings to find information relevant to their investment decisions. Even worse, companies will be subject to potentially frivolous securities litigation based on accurate

forward-looking statements, which is exactly the outcome that Congress sought to avoid when it passed the Private Securities Litigation Reform Act. The case arose in connection with Google's alleged failure to disclose a software bug in the Google+ social network, which Google promptly fixed as soon as it was discovered. WLF's *amicus* brief was prepared with the pro bono assistance of Lyle Roberts, George Anhang, and Michael Holt of Shearman & Sterling LLP.

DECISIONS

The Supreme Court of Pennsylvania holds that Pennsylvania's long-arm statute violates the Fourteenth Amendment's Due Process Clause.

Mallory v. Norfolk Southern Railway Co.

On December 22, the Supreme Court of Pennsylvania held that Pennsylvania's long-arm statute violates the Fourteenth Amendment's Due Process Clause. The decision was a win for WLF, which filed an *amicus* brief in the case. WLF's brief explained why subjecting any out-of-state corporation that registers to do business in Pennsylvania to general jurisdiction violates the Due Process Clause. As WLF's brief urged, the Pennsylvania Supreme Court stuck to *Daimler AG v. Bauman*, which reinforced the Constitution's due-process limits on the judiciary's exercise of personal jurisdiction over out-of-state defendants. WLF filed its brief with substantial pro bono assistance from James M. Beck of the firm Reed Smith LLP in Philadelphia, Pennsylvania.

The Fifth Circuit affirms dismissal of a declaratory-judgment action against the DEA for want of jurisdiction.

Walmart Inc. v. U.S. Drug Enforcement Administration

On December 22, the U.S. Court of Appeals for the Fifth Circuit affirmed the district court's decision dismissing Walmart's claim for want of jurisdiction. This was a setback for WLF, which filed an *amicus* brief explaining that DEA and DOJ took agency action sufficient to waive sovereign immunity under Fifth Circuit precedent. Alternatively, WLF explained why the Fifth Circuit should reconsider its outlying precedent. Now that the panel has spoken, WLF hopes that the *en banc* court will correct its erroneous precedent.

The Supreme Court agrees, yet again, to provide FAA guidance to the California courts.

Viking River Cruises, Inc. v. Moriana

On December 15, the Supreme Court agreed to review a California Court of Appeal ruling that is inconsistent with the Federal Arbitration Act. The grant was welcome news for WLF, which filed an *amicus* brief in the case urging review. The California court's decision, which holds that public and *qui tam* claims occupy a unique FAA-free zone, is the latest in a long line of decisions from California refusing to follow the FAA's directive that arbitration contracts be enforced as written. In its brief, WLF argued that Supreme Court review was needed to ensure uniform application of the FAA nationwide so that arbitration achieves its basic purpose: resolving disputes efficiently, predictably, individually, and cost-effectively. The decision below thwarts those aims. WLF's brief was prepared with the pro bono assistance of Peder Batalden, Felix Shafir, and John Querio of Horvitz & Levy LLP.

The Supreme Court agrees to clarify the scope of the “transportation worker” exemption under section 1 of the FAA.

Southwest Airlines v. Saxon

On December 10, the Supreme Court agreed to review a Seventh Circuit decision that refused to read section 1 of the Federal Arbitration Act (known as the “transportation worker exemption”) in line with the statute’s text and context. The decision was a victory for WLF, which filed one of only two *amicus* briefs supporting the petition. Although some judge-made tests purport to expand the exemption beyond those actively engaged in the interstate transportation of goods, WLF argued that these contrived standards defy statutory text and context, produce inconsistent results, and serve no end set forth by Congress. Because the plaintiff in this case does not physically transport goods interstate or even supervise others who do, she falls outside the section 1 exemption.