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The Supreme Court & Business: Looking Ahead to the 2008 Term

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Overview of Program

- Court has filled its October, November, December, and January argument calendars, but not its February, March, and April calendars
- Of 54 cases on docket so far, 16 are business cases
- Likely to be more business cases added over next three to four months

Significant Business Cases This Term in a Number of Areas

- Preemption
 - Arbitration
 - Employment and labor law
 - Environmental law
 - Antitrust
 - Punitive damages
 - Administrative law
 - ERISA
- No intellectual property, securities, bankruptcy, or tax cases on Court's docket yet, but significant intellectual property, securities, and bankruptcy cases pending at petition stage

Preemption

- Court decided two important preemption cases last Term and it has two more this Term
 - *Altria Group v. Good*
 - State law claims involving tobacco advertising
 - *Wyeth v. Levine*
 - State law claims involving drug labeling
- Court has requested views of Solicitor General in another preemption case
 - *Albertson's, Inc. v. Kanter*
 - State law claims to enforce Food, Drug, and Cosmetic Act

Arbitration

- Court decided two significant arbitration cases last Term and it has two more this Term
 - *14 Penn Plaza LLC v. Pyett*
 - Enforceability of arbitration agreement waiving right to file statutory discrimination claim
 - *Vaden v. Discover Bank*
 - When there is federal jurisdiction over motion to compel arbitration

Employment & Labor Law

- Court decided several employment law cases last Term and has two more this Term
 - *Crawford v. Metropolitan Government of Nashville*
 - Whether Title VII's anti-retaliation provision protects against firing for cooperation with internal investigation
 - *AT&T Corp. v. Hulteen*
 - Whether Title VII requires retroactive restoration of service credit for pregnancy leaves
- One labor law case
 - *Locke v. Karass*
 - Non-member payment of union service fees

Environmental Law

- Unusually large number of environmental cases
 - *Entergy Corp. v. EPA*
 - Whether Clean Water Act permits EPA to undertake cost-benefit analysis in determining best available technology
 - *Burlington Northern & Santa Fe Railway Co. v. United States*
 - Availability of joint and several liability for costs of environmental clean-up under CERCLA
 - *Summers v. Earth Island Institute*
 - Standing and ripeness issues relating to environmental organizations' challenge to forest service regulations
 - *Coeur Alaska, Inc. v. Southeast Alaska Conservation Council*
 - Permitting process for discharging mining pollutants under Clean Water Act

Environmental Law

- Pending petition for certiorari filed by United States in another significant environmental case
 - *United States v. McWane, Inc.*
 - Federal authority to regulate wetlands under Supreme Court's *Rapanos* decision

Antitrust

- One important antitrust case this Term
 - *Pacific Bell Telephone Co., d/b/a AT&T California v. linkLine Communications*
 - Availability of “price squeeze” claim when defendant has no duty to deal

Punitive Damages

- One punitive damages case that has returned to the Court
 - *Philip Morris USA v. Williams*
 - Permissibility of invoking state law procedural bar to prevent defendant from asserting constitutional claim

Administrative Law

- Two administrative law cases involving different areas of substantive law
 - *FCC v. Fox Television Stations* (Media)
 - Permissibility of change of policy on “fleeting expletives”
 - *United States v. Eurodif* (Trade)
 - Whether contracts for uranium enrichment services are subject to anti-dumping laws

ERISA

- Only one ERISA case so far this Term
 - *Kennedy v. Plan Administrator for Dupont Savings & Investment Plan*
 - Right of divorcing spouse to receive ex-spouse's pension benefits
- Court has requested views of Solicitor General in another ERISA case
 - *AK Steel Corp. Retirement Accumulation Pension Plan v. West*
 - Calculating value of lump sum distributions to early retirees

Intellectual Property, Securities and Bankruptcy

- Court has requested views of Solicitor General in significant intellectual property, securities and bankruptcy cases
 - *Biomedical Patent Management Corp. v. California Department of Health Services*
 - Whether state waives Eleventh Amendment immunity by invoking federal jurisdiction to litigate patent claims
 - *Trainer Wortham & Co. v. Betz*
 - Commencement of statute of limitations for securities fraud claims
 - *Denton v. Hyman*
 - When corporate officer can be prevented from discharging in bankruptcy debt owed to corporation for misappropriation of corporate assets

Miscellaneous Developments At Court This Term

- Court front-loads arguments to reduce end-of-Term rush
- Justice Alito opts out of cert pool
- Justice Breyer sells stock to minimize recusals

The Presidential Election and Possible Impact on the Court

The Supreme Court & Business: Looking Ahead to the 2008 Term

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