

MAYER • BROWN

Supreme Court and Business

Assessing This Term's Decisions and Looking Forward to Next Term's Docket

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Health Care

- OT 2011

- Individual mandate upheld as an exercise of Congress's taxing power (5-4)
- Court held that the mandate *could not* be justified under the Commerce Clause power
 - Does not regulate existing commerce; compels individuals to engage in commerce
 - Emphasis on existing breadth of Commerce Clause, and consequences of permitting government to compel activity within that broad sphere
- Court held that a condition on grants to the States violates the Tenth Amendment
 - Medicaid expansion permitted federal government to withdraw all federal funds from States that refused to agree to expansion
 - Court says that withdrawal can't include funds relating to preexisting Medicaid program

Calculation of Criminal Fines

- OT 2011

- *Southern Union Co. v. United States*

- Court holds that criminal fines are subject to rule of *Apprendi*, according to which sentence-enhancing facts must be found by jury rather than judge
 - Major victory for corporations
 - Decision shows that Court's newest members are more sympathetic to *Apprendi* than their predecessors
 - Next major *Apprendi* issue may be restitution

Arbitration

- OT 2011

- Court grants summary reversal in favor of arbitration in two cases
 - *Marmet Health Care Center, Inc. v. Brown*: States cannot place categories of claims off-limits to arbitration
 - *KPMG LLP v. Cocchi*: arbitrable claims remain arbitrable even if they are consolidated with nonarbitrable claims
- *Compucredit Corp. v. Greenwood*: claims under the Credit Repair Organizations Act are arbitrable
 - Court has never held a federal claim to be nonarbitrable since it adopted modern standards for addressing the issue

- OT 2012

- *In re American Express Merchants' Litigation*: whether *Concepcion's* rationale regarding the validity of class waivers in arbitration clauses applies when the claim to be arbitrated arises under federal law

Preemption

- OT 2011

- *Kurns v. R.R. Friction Prods. Corp.*

- Field preemption case
 - Court holds that Locomotive Inspection Act preempts state-law claims that defendants defectively designed locomotive parts and failed to warn of dangers associated with parts
 - Most important aspect of otherwise statute-specific decision may turn out to be Court's identical treatment of design-defect and failure-to-warn claims

- *Nat'l Meat Ass'n v. Harris*

- Express preemption case
 - Court holds that Federal Meat Inspection Act preempts California statute regulating slaughterhouses
 - Decision makes clear that federal statutes preempting state requirements that are "in addition to, or different than" federal requirements preempt more than just conflicting state requirements

Intellectual Property

- OT 2011

- *Mayo Collaborative Services v. Prometheus Laboratories*: laws of nature and abstract ideas cannot be patented
 - Court recognizes risk of overbroad patents that inhibit future discoveries
- *Kappos v. Hyatt*: in a Section 145 proceeding challenging denial of a patent, the applicant may introduce new evidence and the district court must make de novo factual findings

- OT 2012

- *Kirtsaeng v. John Wiley & Sons*: whether copyright owner's rights are extinguished by a first sale of goods produced and purchased abroad

Power of Administrative Agencies

- OT 2011
 - *Christopher v. SmithKline Beecham Corp.*
 - Fair Labor Standards Act case
 - Court holds that pharmaceuticals sales representatives are not entitled to overtime pay because they fall within “outside salesman” exemption from overtime-pay requirement
 - Major victory for pharmaceutical companies
 - Decision limits *Auer*, which held that agency’s interpretation of its own ambiguous regulations ordinarily is entitled to deference
 - *United States v. Home Concrete & Supply, LLC*
 - Tax case
 - Court holds that three-year rather than six-year statute of limitations applies to tax-deficiency assessments when taxpayer overstates basis in property he or she has sold
 - Major victory for taxpayers
 - Decision limits *Brand X*, which held that agency’s construction of statute trumps prior judicial construction that does not follow from unambiguous terms of statute

Power of Administrative Agencies (cont'd)

- *FCC v. Fox Television Stations, Inc.*
 - Telecommunications case
 - Court holds that FCC's "fleeting expletives" and "momentary nudity" indecency policy violates "fair notice" requirement of Due Process Clause and is therefore void for vagueness as applied to broadcasts aired before policy's adoption
 - Court leaves open questions whether policy is void for vagueness in its entirety and whether it violates First Amendment
- *Freeman v. Quicken Loans, Inc.*
 - Real Estate Settlement Procedures Act case
 - Court holds that statute is violated only if charge for settlement services is divided between two or more people
 - Court declines to defer to Bureau of Consumer Financial Protection's construction of statute, on ground that statute unambiguously compels opposite result

Limitations on Private Lawsuits

- OT 2011

- *First American Financial Corp. v. Edwards*

- The ‘dog that did not bark’ – the Court dismisses without decision a case involving a claim under the Real Estate Settlement Procedures Act; the question was whether Congress’s creation of statutory damages enabled a plaintiff to sue even if he or she had not suffered an actual injury.
 - Similar issues arise under a variety of statutes, and likely will be revisited in the future.

- *Douglas v. Independent Living Center*

- When may private parties bring an action against a State alleging that state laws are preempted by federal law? The Court declines to decide, but four Justices say “no lawsuit may be brought when Congress has declined to create a private cause of action.”

Limitations on Private Lawsuits (cont'd)

- OT 2012
 - When do settlement offers moot claims?
 - *Genesis HealthCare Corp. v. Symczyk*: effect of offer to settle for full amount of plaintiff's claim on plaintiff's ability to continue to maintain FLSA collective action
 - *Already, LLC v. Nike, Inc.*: effect of trademark owner's covenant not to sue on district court's power to hear challenge to trademark's validity
 - Class action standards
 - *Comcast Corp. v. Behrend*: “[w]hether a district court may certify a class action without resolving whether the plaintiff class has introduced admissible evidence, including expert testimony, to show that the case is susceptible to awarding damages on a class-wide basis”

Environmental Law

- OT 2011
 - *Sackett v. EPA*
 - Court holds that EPA's issuance of administrative compliance order under Clean Water Act may be challenged in court before agency seeks to enforce it
 - Major victory for property owners
- OT 2012
 - *Ark. Game & Fish Comm'n v. United States*
 - Case presents question whether government actions that cause flooding, but are temporary in nature, can violate Takings Clause
 - Another important case for property owners
 - *Ga.-Pac. W., Inc. v. Nw. Env'tl. Def. Ctr. and Decker v. Nw. Env'tl. Def. Ctr. (consolidated) and L.A. Cnty. Flood Control Dist. v. NRDC*
 - Both Clean Water Act cases involving pollutant-discharge requirements
 - In both cases Court granted certiorari despite Solicitor General's recommendation that certiorari be denied

Federal Statutory Actions

- OT 2012
 - Antitrust
 - *FTC v. Phoebe Putney Health System*: scope of the state action doctrine—how much “clear expression” and “active supervision” is enough?
 - ERISA
 - *US Airways v. McCutchen*: courts’ power to refuse to order employee to reimburse plan for benefits paid
 - Alien Tort Statute
 - *Kiobel v. Royal Dutch Petroleum*: availability of a private action under US law for alleged human rights violations occurring in the territory of another nation
 - Title VII
 - *Vance v. Ball State University*: scope of employer’s vicarious liability for violations of a supervisor

Securities

- OT 2011

- *Credit Suisse Secs. (USA) LLC v. Simmonds*

- Court divides 4-4 on whether two-year statute of limitations for suit against corporate insider under § 16(b) of Securities Exchange Act is subject to equitable tolling but unanimously rejects position that limitations period is tolled until filing of disclosure statement required by § 16(a) of Act
 - Narrow decision rejecting pro-plaintiff position of Ninth Circuit and agreeing with position of SEC

- OT 2012

- *Amgen Inc. v. Conn. Retirement Plans & Trust Funds*

- Case presents questions whether, under SEC Rule 10b-5, district courts must require proof of materiality before certifying plaintiff class based on fraud-on-the-market theory and whether district courts must allow defendant to present evidence rebutting applicability of fraud-on-the-market theory before certifying plaintiff class based on that theory
 - Court's decision will affect large number of securities-fraud class actions