

MAYER • BROWN

Supreme Court and Business: Assessing this Term's Decisions

Miriam R. Nemetz
Partner

+1 202 263 3253
mnemetz@mayerbrown.com

Evan M. Tager
Partner

+1 202 263 3240
etager@mayerbrown.com

Andrew Tauber
Partner

+1 202 263 3324
atauber@mayerbrown.com

June 2011

Mayer Brown is a global legal services organization comprising legal practices that are separate entities ("Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP, a limited liability partnership established in the United States; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales; Mayer Brown JSM, a Hong Kong partnership, and its associated entities in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. "Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

Class Actions

- *Wal-Mart Stores, Inc. v. Dukes*
- *AT&T Mobility LLC v. Concepcion*
- *Smith v. Bayer Corp.*

Wal-Mart v. Dukes

- Background
- Holdings:
 - By a 5-4 vote, the Court held that the plaintiffs had failed to show that any of their claims involved a common question of law or fact, as required by Rule 23(a)(2)
 - The Court unanimously held that the back pay claims were improperly certified under Rule 23(b)(2)
- Implications

AT&T Mobility v. Concepcion

- Background
- Holding:
 - The Federal Arbitration Act preempts state-law rules that bar enforcement of agreements to arbitrate on an individual basis because they preclude class actions
- Implications

Personal Jurisdiction

- *Goodyear Dunlop Tires Operations, S.A. v. Brown*
- *J. McIntyre Machinery, Ltd. v. Nicastro*

Goodyear Dunlop Tires v. Brown

- Issue: When may a state adjudicate a claim against an out-of-state corporation when the conduct giving rise to the claim is not related to the corporation's in-state activities?
- Held that state may not exercise general jurisdiction over out-of-state corporation merely because that corporation placed its goods into the "stream of commerce" and some of those goods ended up in the forum state

J. McIntyre Machinery v. Nicastro

- Issue: When may a state adjudicate a claim against an out-of-state corporation when the conduct giving rise to the claim relates to the corporation's in-state activities?
- Plurality: Corporation must have "targeted" the forum state; placing goods into the "stream of commerce" is insufficient
- Justice Breyer: Insufficient contacts in this case; broader issue should be decided another day
- Dissent: Manufacturer who targeted a national market can be sued in state where product sold and injury occurred

Federal Preemption

- *Williamson v. Mazda Motor of Am., Inc.*
- *PLIVA, Inc. v. Mensing*
- *Bruesewitz v. Wyeth*
- *Chamber of Commerce v. Whiting*

Williamson v. Mazda

- Holds that a regulation giving manufacturers the choice between two design alternatives did not preempt a tort claim alleging that it was negligent for the manufacturer to have adopted one alternative rather than the other
- *Cf. Geier v. Am. Honda Motor Co.* (2000)
- Critical distinction: Why did agency allow choice?

PLIVA, Inc. v. Mensing

- Holds that federal drug labeling regulations preempt a state-law failure-to-warn claim brought against the manufacturer of a generic drug
- *Cf. Wyeth v. Levine* (2009)
- Critical distinction: Could the manufacturer take unilateral action to change its warning label?

Securities Fraud

- *Janus Capital Group Inc. v. First Derivative Traders, Inc.*
- *Matrixx Initiatives, Inc. v. Siracusano*
- *Erica P. John Fund, Inc. v. Halliburton*

Janus Capital Group Inc. v. First Derivative Traders, Inc.

- By a 5-4 vote, the Court rebuffed efforts to expand liability under Section 10(b) to third parties
- Strict adherence to language of Rule 10b-5
 - “One ‘makes’ a statement by stating it”
 - The “maker of a statement” is therefore “the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it”
- Consistent with *Central Bank of Denver* and *Stoneridge*

Matrixx Initiatives, Inc. v. Siracusano

- Section 10(b) claim based on failure to disclose adverse event reports regarding pharmaceutical products
- No bright-line rule of materiality; contextual inquiry
 - May be material even if not statistically significant
 - Materiality determined under “total mix of information” standard of *Basic, Inc. v. Levinson*

Erica P. John Fund, Inc. v. Halliburton

- Holding: Plaintiffs in securities fraud class action need not prove loss causation to invoke rebuttable presumption of reliance and obtain class certification

Employment/ERISA

- *Thompson v. North American Stainless LP*
- *Staub v. Proctor Hospital*
- *Kasten v. Saint-Gobain Performance Plastics Corp.*
- *CIGNA v. Amara*

Thompson v. North American Stainless LP

- Holding: Employee fired because fiancé filed discrimination charge may bring a retaliation claim under Title VII
- Approves retaliation claims based upon third-party reprisals
 - No bright-line rule regarding which relationships are covered
 - “Zone of interest” test for standing

Staub v. Proctor Hospital

- Employer liable for employment discrimination based on discriminatory animus of employee who influenced, but did not make, the employment decision
- Agent motivated by discriminatory animus must have intended adverse action
- Decisionmaker's independent investigation does not insulate employer from liability, but employer not liable "if the employer's investigation results in an adverse action for reasons unrelated to the ... original biased action"

Kasten v. Saint-Gobain Performance Plastics Corp.

- Holding: Fair Labor Standards Act’s antiretaliation provision covers oral complaints, not just written complaints
- Broad interpretation of phrase “filed any complaint”
 - Complaint “must be sufficiently clear and detailed for a reasonable employer to understand it, in light of both content and context, as an assertion of rights protected by the statute”
- Court did *not* decide whether complaints to employer are included; leaves considerable uncertainty regarding which complaints are covered

CIGNA Corp. v. AMARA, et al.

- Holding: District court has broad authority to fashion equitable relief for violations of ERISA's notice provisions

Government Contracts

- *General Dynamics Corp. v. United States*
- *Schindler Elevator Corp. v. United States*
- *Astra USA, Inc. v. Santa Clara County*

General Dynamics Corp. v. United States

- When the United States sues a contractor but precludes assertion of otherwise valid affirmative defense by invoking “state secret” privilege, “neither party can obtain judicial relief”
- The parties remain as they are “with regard to possession of funds and property”
- Contractors working on projects involving classified information should anticipate possibility that disputes will be deemed non-justiciable

Schindler Elevator Corp. v. United States

- Interprets scope of public disclosure limitation on *qui tam* suits under the False Claims Act
- A federal agency's written response to a FOIA request is a "report" within the meaning of the public disclosure provision
- Public disclosure bar has since been amended

Astra USA, Inc. v. Santa Clara County

- Health-care facilities may not sue to enforce ceiling-price contracts between drug manufacturers and HHS

Debunking the Canard that the Court Is Pro-Business

- The Texas sharpshooter fallacy
- A couple of high-profile cases does not a business court make
- The Court ruled against businesses in half of the 18 cases that pitted businesses against individuals
- This 50% win rate is not materially different from prior Terms
- For example, last Term businesses prevailed in six out of thirteen cases

Debunking the Canard that the Court Is Pro-Business

- Composition of Court has become less friendly to business
- Souter was much more pro-business than Sotomayor
- Stevens voted with business more often than Kagan has
- Breyer has moved out of the moderate camp

Questions?

MAYER • BROWN

Supreme Court and Business: Assessing this Term's Decisions

Miriam R. Nemetz
Partner

+1 202 263 3253
mnemetz@mayerbrown.com

Evan M. Tager
Partner

+1 202 263 3240
etager@mayerbrown.com

Andrew Tauber
Partner

+1 202 263 3324
atauber@mayerbrown.com

June 2011

Mayer Brown is a global legal services organization comprising legal practices that are separate entities ("Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP, a limited liability partnership established in the United States; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales; Mayer Brown JSM, a Hong Kong partnership, and its associated entities in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. "Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.