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The 2008 Term of the United States Supreme Court: The Decisions Most Important to the Business Community

The United States Supreme Court recently issued several significant decisions affecting businesses and the nature of business litigation in federal court. The most important of these decisions are summarized below.

Enhanced Pleading Standards in Civil Actions. In *Ashcroft v. Iqbal*, ___ U.S. ___, 129 S.Ct. 1937 (May 18, 2009), the Court clarified the standard for pleading a case in federal court, and held that plaintiffs must include sufficient detail in the complaint before courts will “unlock the doors of discovery.” To determine whether a complaint satisfies this standard, the Court established a two-part test. First, the complaint must include specific facts that support a cause of action, and cannot merely recite “legal conclusions” or “conclusory statements,” which are “not entitled to the assumption of truth.” Second, the complaint must state a “plausible claim for relief,” which means that it must show “more than a sheer possibility that a defendant has acted unlawfully.” The new standard—which amplifies the standard set forth in *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007)—will potentially give defendants an important tool for dismissing a case before discovery begins.

Arbitration: Binding Non-Signatories to Arbitration Agreements. In *Arthur Andersen LLP v. Carlisle*, ___ U.S. ___, 129 S.Ct. 1896 (May 4, 2009), the Court held that a party who did not sign an arbitration agreement may nevertheless be compelled to arbitrate if “traditional principles of state law” would bind the non-signatory to the agreement. Such principles include “assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel.” If one of these principles would “allow a contract to be enforced by or against [non-signatories] to the contract,” then they will also force the non-signatories to abide by the contract’s arbitration provision.

Antitrust Law: Further Restrictions on § 2 Sherman Act Claims. A unanimous Court held in *Pacific Bell Tel. Co. v. linkLine Commc’ns, Inc.*, ___ U.S. ___, 129 S.Ct. 1109 (Feb. 25, 2009), that a plaintiff cannot bring a “price-squeeze claim” under § 2 of the Sherman Act when the defendant is under no antitrust obligation to sell to the plaintiff at the wholesale level. If a defendant’s “wholesale price and [] retail price are independently lawful, there is no basis for imposing antitrust liability simply because a vertically integrated firm’s wholesale price is greater than or equal to its retail price.” The Court’s holding builds on a 2004 decision in which the Court limited the application of § 2 of the Sherman Act, and reinforces the view that § 2 does not apply to firms with no antitrust duty to deal with their competitors.

Constitutional Limits on Judicial-Election Contributions. In *Caperton v. Massey Coal Co.*, ___ U.S. ___, 129 S.Ct. 2252 (June 8, 2009), in a closely watched case about the role of money in state judicial races, the Court held that the Due Process Clause of the Fourteenth Amendment required recusal of a Justice of the West Virginia Supreme Court of Appeals based on multi-million dollar contributions made to support the Justice’s election. The Court, applying “objective” and “reasonable” standards, held that the exceptional nature of the campaign contributions, including the relative amount of the contributions and their timing, had a disproportionate influence on the Justice’s election and thus required recusal. The case raises important questions about the role of money in judicial races, and its effects on litigation, particularly those raised in Chief Justice Robert’s dissent, will be closely watched in the coming years.

Pre-Emption—When Can State-Law Tort Suits Proceed? In a pair of pre-emption decisions, *Wyeth v. Levine*, ___ U.S. ___, 129 S.Ct. 1187 (March 4, 2009) and *Altria, Inc. v. Good*, ___ U.S. ___, 129 S.Ct. 538 (Dec. 15, 2008), the Court limited the reach of federal pre-emption in the context of state-law tort suits.

In *Wyeth*, a drug manufacturer sought dismissal of a drug-labeling suit in state court based on two implied pre-emption theories that have gained traction in recent years: (i) impossibility—that it would have been impossible to comply with state-law tort duties and the federal drug-labeling requirements; and (ii) purposes-and-objectives pre-emption—that the state-law tort action would interfere with Congress’s purposes and objectives in mandating FDA drug-labeling regulations. The Court held that unless Congress expressly authorized the FDA to pre-empt state tort law, these implied pre-emption theories do not bar potentially beneficial tort suits.

In *Altria*, the Court also rejected a pre-emption argument, but this time addressed an express pre-emption provision. The Court held that a consumer-fraud claim against cigarette manufacturers was not expressly pre-empted by the Federal Cigarette Labeling and Advertising Act. The provision at issue expressly pre-empts state restrictions regarding advertising or promotion of cigarette packages labeled in conformity with the federal statute. The Court, focusing on the text of the express pre-emption provision, held that suits based on manufacturers’ allegedly fraudulent statements about “light” cigarettes are not pre-empted, and thus the state-law claim could go forward.

Pre-emption will likely remain fertile ground for seeking dismissal of consumer claims brought under state tort law. But this past Term the Court appeared to narrow the reach of pre-emption defenses. The Court has arguably weakened implied pre-emption theories while reinforcing the idea that any pre-emption defense should focus on the language of the statute.

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