2000

Section 10: Also this Term

Institute of Bill of Rights Law at the William & Mary Law School

ALSO THIS TERM

99-1295 Gitlitz v. Com'r of Internal Revenue

Ruling below (10th Cir., 182 F.3d 1143):

Shareholder of insolvent subchapter S corporation may not use corporation's untaxed discharge of indebtedness income to increase shareholder's adjusted basis in corporation's stock; 26 U.S.C. § 108(b)(4)(A), which states that attribute reductions outlined in Section 108(b)(2) shall be made after determination of tax imposed for taxable year of discharge, is simply designed to compute certain tax applications before reducing tax attributes, and does not mandate that attribute reductions be made in tax year following year of discharge of indebtedness, as suggested by taxpayers.

Question presented: Did Tenth Circuit incorrectly hold – in conflict with holdings in *United States v. Farley*, 68 U.S.L.W. 1460 (3d Cir. 2000), and *CSI Hydrostatic Testers Inc. and Subs. v. Commissioner*, 62 F.3d 136 (5th Cir. 1995), *aff'g and adopting opinion of Tax Court*, 103 T.C. 398 (1994) – that tax attributes subject to reduction under 26 U.S.C. § 108(b), including suspended losses of S corporation shareholder, must be reduced in year that discharge of indebtedness income, excluded under 26 U.S.C. § 108(a), is realized, despite statutory requirements that all tax attributes, including suspended losses, be adjusted in succeeding taxable year, and only after determination of tax for taxable year of discharge?

99-1434 United States v. Mead Corp.

Ruling below (Fed. Cir., 185 F.3d 1304, 68 U.S.L.W. 1128):

Unlike Customs Service tariff regulations, which were held entitled to judicial deference in *United States v. Haggar Apparel Co.*, 526 U.S. 380, 67 U.S.L.W. 4249 (1999), Customs classifications rulings implicitly interpreting provisions of Harmonized Tariff Schedules of United States are unaccompanied by procedural safeguards and do not carry force of law, but merely interpret and apply customs laws to specific set of facts, and thus are not entitled to judicial deference; imported day planners provide for only brief prospective entries rather than lengthy retrospective entries made in diaries, are held together by ringed loose-leaf binders rather than permanent fastening, and thus are not subject to tariff applicable to bound diaries, but instead fall under HTSUS subheading for "other" blank books similar to diaries that are not subject to tariff.

Questions presented: (1) Are classification rulings issued by Customs Service entitled to deference in determining proper tariff classification of imported goods? (2) Did Custom Service reasonably interpret statutory phrase "diaries, notebooks and address books, bound" in Subheading 4820.10.20 of HTSUS to include spiral-bound and ring-bound day planners imported by respondent?

99-859 Central Green Co. v. United States

Ruling below: (9th Cir., 177 F.3d 834):

Damage to pistachio orchard caused by subsurface and surface leakage from irrigation canal that is part of federal flood control project was not wholly unrelated to project, and thus orchard owner's Federal Tort Claims Act suit for damages is barred by 33 U.S.C. § 702c, which provides that "[n]o liability of any kind shall attach to or rest upon the United States for any damage from or by floods or flood waters at any place."

Question presented: Did Ninth Circuit err in concluding that 1928 Flood Control Act immunizes respondent from this suit?

99-1331 Lewis v. Lewis & Clark Marine Inc.

Ruling below (8th Cir., 196 F.3d 900):

Neither choice of forum nor right to in personam judgment is "saved" remedy within meaning of saving to suitors clause of 28 U.S.C. § 1333, and thus, in absence of actual conflict between saving to suitors clause and Limitation of Liability Act in suit by vessel owner for exoneration from or limitation of liability to crew member who was allegedly injured on board vessel, who is sole claimant, and who was waived right to jury trial in state court suit for damages based on Jones Act, unseaworthiness, and maintenance and cure theories, district court abused its discretion in dissolving injunction against state court suit.

Questions presented: (1) Did district court abuse its discretion by dissolving injunction against state court proceedings in single claimant limitation of liability case under 46 U.S.C. §§ 181-196, when claimant guaranteed vessel owner's right to limitation by stipulating that claim does not exceed limitation fund? (2) If so, must injunction nonetheless be dissolved pursuant to savings to suitors clause of 28 U.S.C. § 1333(2)?

99-1529 Egelhoff v. Egelhoff

Ruling below (Wash., 139 Wash. 2d 557, 989 P.2d 80, 23 Employee Benefits Cas. 2189):

Employee Retirement Income Security Act does not preempt state statute that revokes, upon dissolution of marriage, former spouse's entitlement to her deceased ex-husband's life insurance proceeds and pension plan and awards benefits of decedent's pension plan and life insurance proceeds to decedent's children instead.

Questions presented: (1) Does ERISA preempt use of state law to override ERISA beneficiary designations made pursuant to terms of ERISA plans? (2) Does ERISA's anti-alienation provision, 29 U.S.C. § 1056(d)(1), which generally precludes alienation or assignment of ERISA pension plan benefits, preempt state laws that purport to deprive designated ERISA beneficiaries of their benefits under ERISA pension plan?

99-1792 Missouri Director of Revenue v. CoBank ACB

Ruling below (*Production Credit Ass'n of Southeastern Missouri v. Director of Revenue,* Mo., 10 S.W.3d 142):

Farm Credit System institutions, as federal instrumentalities, are exempt from corporate income tax unless Congress expressly consents to such tax, and, notwithstanding state revenue director's contention that by amending Farm Credit Act in 1985 to delete exemption from state income tax, Congress necessarily intended to consent to imposition of state income tax, Congress cannot be deemed to have expressly consented to state income tax by such amendment; accordingly, FCS member institutions are entitled to refunds on Missouri corporate income taxes that they paid.

Question presented: Does 12 U.S.C. §2134 authorize states to tax income of National Bank for Cooperatives, federally chartered instrumentality of United States?

99-1551 Semtek International Inc. v. Lockheed Martin Corp.

Ruling below (Md. Ct. Spec. App., 736 A.2d 1104):

Dismissal of diversity suit asserting breach of contract and related tort claims by federal district court in California on California statute of limitations grounds was dismissal on merits, res judicata effect of which is determined by federal law; in subsequent suit involving same parties based on Maryland law, Maryland state court was bound by res judicata effect, under federal law, of such dismissal, even though claims were not time-barred under Maryland law.

Questions presented: (1) Is holding in *Dupasseur v. Rochereau,* 88 U.S. 130 (1874) – that res judicata effect of judgment of federal court sitting in diversity "is such as would belong to judgments of State courts rendered under similar circumstances" and that "no higher sanctity or effect can be claimed" – still good law? (2) If *Dupasseur* is overruled or modified, what should be res judicata effect of statute of limitations dismissal in federal court diversity suit?

99-1571 Traffix Devices Inc. V. Marketing Displays Inc.

Ruling below (6th Cir., 200 F.3d 929, 53 U.S.P.Q.2d 1335):

Utility patent disclosure does not foreclose trade dress protection.

Question presented: Should this court resolve circuit conflict – expressly acknowledged and deepened by Sixth Circuit below – on whether federal trade dress protection extends to product configuration covered by expired utility patent?

98-1768 Buckman Co. v. Plaintiffs' Legal Committee

Ruling below (*In re Orthopedic Bone Screw Products Liability Litigation*, 3d Cir., 159 F.3d 817, 67 U.S.L.W. 1312):

State common law claim that medical device manufacturer committed fraud on Food and Drug Administration in its application for substantial equivalence exception to market approval process is not preempted by Medical Device Amendments to Food, Drug, and Cosmetic Act.

Question presented: Does federal law preempt state-law tort claims alleging fraud on Food and Drug Administration during regulatory process for marketing clearance applicable to certain medical devices?

99-1244 GTE Service Corp. v. FCC

Ruling below (*Texas Office of Public Utility Council v. FCC*, 5th Cir., 183 F.3d 393):

Federal Communications Commission reasonably interpreted 1996 Telecommunications Act when it decided that, in determining amount of subsidized support for carrier services to high-cost subscribers, it would not use costs that incumbent carriers have historically incurred, but would instead use "forward-looking" cost model to calculate costs that efficient carrier would incur in serving high-cost users at below-cost rates; contention that use of forward-looking cost methodology will force carriers to operate at loss and thereby amount to unconstitutional taking under *Brooks-Scanlon Co. v. Railroad Commission*, 251 U.S. 396 (1920), is meritless.

Questions presented: (1) When FCC determined that funding should no longer be based on actual, historical costs that carriers incur in providing service, but rather should be based on projections of costs that would be incurred by hypothetical, most-efficient carrier, did Fifth Circuit err by upholding FCC's approach? (2) Did court of appeals err by ignoring this court's holdings in *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989), both that regulator's opportunistic switch in rate methodologies raises "serious constitutional questions," and that, when there has been switch in rate methodologies, constitutionality of new method must be tested by determining whether it would continue to provide constitutionally adequate return on rate base as measured under old methodology? (3) Did court of appeals err by holding that *Duquesne* permits FCC to use method for calculating compensation that systematically fails to recover historical costs, i.e., must "all prudently incurred investment" be counted in determining whether rate meets constitutional standard of providing "fair return"? (4) Did court of appeals err by disregarding this court's holding in *Brooks-Scanlon Co. v. Railroad Commission* that regulated entity may not be required to operate regulated line of its business at loss on expectation that it will make up shortfall from competitive lines of business? (5) Did court of appeals err by holding, in conflict with decisions of other circuits, that it should defer to FCC's interpretation of Telecommunications Act under *Chevron USA Inc. v. Natural Resources Defense Council Inc.*, 467 U.S. 837 (1984), even when FCC's construction raised serious constitutional questions and even when issue involved constitutional level of just compensation required under Fifth Amendment?