

2003

Section 10: Also This Term

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

Repository Citation

Institute of Bill of Rights Law at the William & Mary Law School, "Section 10: Also This Term" (2003). *Supreme Court Preview*. 168.
<https://scholarship.law.wm.edu/preview/168>

Copyright c 2003 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
<https://scholarship.law.wm.edu/preview>

Also This Term:

02-682 Verizon Communications Inc. v. Law Offices of Curtis V. Trinko LLP

Ruling Below: (Law Office of Curtis V. Trinko LLP v. Bell Atlantic Corp., 2d Cir., 305 F.3d 89, 71 U.S.L.W. 1031)

Telephone service customer's allegations that defendant incumbent local exchange carrier failed to provide competing local exchange carrier with equal access to its network in violation of 1996 Telecommunications Act establish that customer was directly injured by ILEC's anticompetitive conduct aimed principally at CLEC for purposes of establishing customer's antitrust standing; customer's allegations that ILEC illegally failed to provide CLEC reasonable access to its facilities state monopolization claim under Section 2 of Sherman Act, either under "essential facilities" doctrine or under monopoly leveraging theory.

Question Presented: Did court of appeals err in reversing district court's dismissal of respondent's antitrust claims?

02-693 Lamie v. U.S. Trustee

Ruling Below: (U.S. Trustee v. Equipment Services (In re Equipment Services), 4th Cir., 290 F.3d 739, 70 U.S.L.W. 1784)

Section 330(a)(1) of Bankruptcy Code, which provides that bankruptcy court "may award to a trustee, an examiner, a professional person employed under section 327 or 1103-- (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person," does not authorize award of fees to Chapter 7 debtor's attorney.

Question Presented: Does 11 U.S.C. § 330(a)(1) authorize court to award fees to debtor's attorney?

02-1016 Till v. SCS Credit Corp.

Ruling Below: (In re Till, 7th Cir., 301 F.3d 583, 71 U.S.L.W. 1139)

Bankruptcy creditor in Chapter 13 cramdown plan is entitled to rate of interest it would earn on loan if it had foreclosed on collateral and then used proceeds to issue new loan of similar character, amount, and duration, in same industry, to debtor who is similarly situated, although not in bankruptcy; absent evidence to the contrary from either creditor or debtor, bankruptcy court should use rate of interest under parties' pre-bankruptcy contract as presumptive rate.

Question Presented: (1) Is undersecured creditor entitled to "indubitable equivalent" of its nonbankruptcy entitlement for purposes of discounting deferred payments to present

value under Chapter 13 cramdown provision at 11 U.S.C. § 1325(a)(5)(B)(ii), resulting in fixing of subprime lender's 21 percent contract rate as presumptive discount rate? (2)
What is proper method for discounting of deferred payments to present value on property retained by debtor under Chapter 13 cramdown provision, and what is creditor entitled to be compensated for in calculating appropriate discount rate of interest?

02-1405 Southwestern Bell Telephone LP v. Missouri Municipal League

Ruling Below: (Missouri Municipal League v. FCC, 8th Cir., 299 F.3d 949, 71 U.S.L.W. 1135)

Provision in 1996 Telecommunications Act that bars states from prohibiting "any entity" from providing telecommunications services, 47 U.S.C. § 253(a), clearly articulates congressional intent to override states' regulation of their political subdivisions and thus preempts Missouri statute prohibiting municipalities from providing telecommunications services.

Question Presented: Does 47 U.S.C. § 253(a) establish with clarity required by Gregory v. Ashcroft, 501 U.S. 452 (1991), that Congress intended to intrude on states' authority to control their subordinate political subdivisions by preempting state laws that prevent those subdivisions from offering certain telecommunications services?

02-1238 Nixon v. Missouri Municipal League

Ruling Below: (Missouri Municipal League v. FCC, 8th Cir., 299 F.3d 949, 71 U.S.L.W. 1135)

Provision of 1996 Telecommunications Act that bars states from prohibiting "any entity" from providing telecommunications services clearly states congressional intent to override states' regulation of their political subdivisions and thus preempts Missouri statute prohibiting municipalities from providing telecommunications services.

Question Presented: In enacting 47 U.S.C. § 253(a), which bars states from prohibiting "any entity" from providing intrastate or interstate telecommunications services, did Congress clearly and manifestly deprive states of ability to bar their own political subsidiaries from entering telecommunications business?

02-1386 Federal Communications Commission v. Missouri Municipal League

Ruling Below: (8th Cir., 299 F.3d 949, 71 U.S.L.W. 1135)

Provision of 1996 Telecommunications Act that bars states from prohibiting "any entity" from providing telecommunications services, 47 U.S.C. § 253(a), clearly articulates congressional intent to override states' regulation of their political subdivisions and thus preempts Missouri statute prohibiting municipalities from providing telecommunications services.

Question Presented: Does 47 U.S.C. § 253(a), which provides that "[n]o State ... regulation ... may prohibit ... the ability of any entity to provide any interstate or intrastate telecommunications service," preempt state law prohibiting political subdivisions of state from offering telecommunications service to public?

02-1389 United States v. Galletti

Ruling Below: (9th Cir., 314 F.3d 336)

Internal Revenue Service cannot collect partnership's tax deficiency directly from partners without first making individualized assessments against partners or obtaining judgment against them holding them jointly and severally liable for partnership's debts, and thus, because IRS did not make assessment against partners within applicable three-year period permitted under Section 6501(a) of Internal Revenue Code, bankruptcy court properly disallowed proofs of claim filed by IRS against debtors for unpaid employment tax assessments against partnership of which debtors were general partners.

Question Presented: In order to enforce derivative liability of partners for tax debts of their partnership, must United States make separate assessment of taxes owed by partnership against each of partners directly?

02-1377 Doe v. Chao

Ruling Below: (4th Cir., 306 F.3d 170, 71 U.S.L.W. 1194)

Provision of Privacy Act making United States liable for "actual damages sustained by the individual" as result of agency's intentional or willful violation of statute, but stating that "in no case shall a person entitled to recovery receive less than" \$1,000, 5 U.S.C. § 552a(g)(4), requires showing of actual damages for recovery of minimum \$1,000 damages award.

Question Presented: Must individual who has suffered "adverse effect" as result of federal agency's "intentional or willful" violation of Privacy Act further prove that he has suffered "actual damages" to be entitled to minimum statutory damages award of \$1,000 available under Section 552a(g)(4) of act?

02-458 Yates v. Hendon

Ruling Below: (6th Cir., 287 F.3d 521, 27 Employee Benefits Cas. 2430)

Sole shareholder of medical professional corporation is employer for purposes of Employee Retirement Income Security Act and, as such, cannot be plan participant or beneficiary; accordingly, insolvent sole shareholder, who is also administrator of corporation's profit sharing/pension plan, lacks standing under ERISA to enforce plan's restrictions on alienation of plan benefits in bankruptcy adversary proceeding in which bankruptcy court set aside as preferential transfer debtor-shareholder's repayment of loan

from plan three weeks before involuntary bankruptcy petition was filed against debtor-shareholder.

Question Presented: Can 100 percent shareholder of corporate employer, partner, or sole proprietor qualify as participant in employee benefit plan sponsored by employer in which other nonspouse employees, as defined in 29 C.F.R. § 2510.3-3(c), participate, and thus be entitled to enforce restrictions against alienation contained in Section 206(d) of ERISA and Section 401(a)(13) of Internal Revenue Code?

02-857 Household Credit Services Inc. v. Pfennig

Ruling Below: (6th Cir., 295 F.3d 522)

Fee that credit card company charges customer for every month that customer's balance exceeds customer's credit limit falls squarely within definition of "finance charge" that must be disclosed under Truth in Lending Act, and Federal Reserve Board's Regulation Z, expressly excluding from definition of finance charge fees imposed for exceeding credit limit, conflicts with express language of TILA and cannot stand.

Question Presented: Did Sixth Circuit improperly substitute its interpretation of TILA for that of Federal Reserve--agency authorized by Congress to interpret statute--in invalidating important provision of Regulation Z that affects tens of millions of consumer credit card agreements?