

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1710

Chase Brexton Health v. State of MD
(Garbis)

MEDICAID. Whether the district court properly abstained in action challenging state's methodology used to set rates for services by health centers.

04-1795

VA Office for Protec v. Reinhard
(Williams)

ATTORNEYS' FEES. Whether the Virginia Office for Protection and Advocacy may bring a Section 1983 action against a state official in his official capacity, and if so, do the principles of dual sovereignty preclude the award of attorneys' fees.

04-6661

Wood v. Sacchet
(Bennett)

HABEAS CORPUS. Whether district court abused its discretion in staying "mixed" federal habeas petition to allow petitioner to exhaust state remedies.

04-1642 (L), 04-1758

NLRB v. Mashuda Corporation

LABOR. Whether employer's refusal to hire was motivated by anti-union animus.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

TUESDAY, FEBRUARY 1, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-28

Lovitt v. True
(Hudson)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

04-6448

US v. LeMaster
(Turk)

CRIMINAL LAW & PROCEDURE. Whether LeMaster waived his right to file a Section 2255 motion on the grounds of ineffective counsel.

04-1182

Saldarriaga v. Ashcroft

IMMIGRATION. Whether substantial evidence supports the Board's decision overturning the immigration judge's grant of asylum.

04-1800

Natl Audubon Society v. Dept of the Navy
(Boyle)

PRELIMINARY INJUNCTION. Whether the district court erred in issuing an injunction which enjoined the construction of an Outlying Landing Field proposed by the Department of the Navy.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:30 a.m.

TUESDAY, FEBRUARY 1, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-23

Conner v. Polk
(Boyle)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

04-1577

Chacko v. Patuxent Institution
(Legg)

TITLE VII. Challenge to jury verdict and denial of motion for new trial in action alleging hostile work environment based on national origin.

03-2276

National Union Fire v. Allfirst Bank
(Nickerson)

BANK FRAUD. Whether plaintiff was judicially estopped from arguing check payees were fictitious under UCC; whether checks were deemed forged under UCC; other issues.

03-7401

Thompson v. Greene
(Blake)

HABEAS CORPUS. Whether Attorney General has a constitutional procedural due process obligation to serve petitioner with exhibits used to support its answer.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
9:30 a.m.

TUESDAY, FEBRUARY 1, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1347

Schaffer v. Westinghouse Savan
(Currie)

ERISA. Challenge to summary judgment in action alleging employer misrepresented amount of vested and accrued pension benefits.

03-1749

Williams v. US Dept of Labor

CIVIL. Whether the U.S. Department of Labor's Administrative Review Board was arbitrary and capricious in affirming Williams' employment termination.

04-1736

Hawes v. US
(Cacheris)

FEDERAL TORTS CLAIMS ACT. Whether claim of negligent repair to Marine Corps obstacle course is barred by "discretionary function" exception.

04-1559

Martin v. American Bancorp Ret
(Broadwater)

ERISA. Propriety of res judicata and other summary judgment rulings in favor of defendants in action brought under retirement plan.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

TUESDAY, FEBRUARY 1, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1683

Nye v. Roberts
(Motz)

TITLE VII. Whether plaintiff established an adverse employment action and retaliatory discrimination sufficient to defeat summary judgment.

04-1440

Bonner v. Dawson
(Conrad)

COPYRIGHT INFRINGEMENT. Challenge to sufficiency of the evidence on damages.

04-1525

Taylor v. Progress Energy Inc
(Howard)

EMPLOYMENT. Whether release barred relief on substantive and retaliation claims under Family and Medical Leave Act.

00-2028 (L), 04-1843

Reliance Insurance v. William R. Miller
(Quarles)

INSURANCE. Whether appellants were appellee's agents or fiduciaries in regard to accepting premiums, and whether the use of those payments for other purposes constituted constructive fraud; whether appellee knew the premiums were financed.

PANEL V
COURTROOM FIVE
Courtroom of Judge Spencer
9:30 a.m.

TUESDAY, FEBRUARY 1, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1744

AttorneyFirst LLC v. Ascension Entertain
(Goodwin)

CIVIL PROCEDURE. Whether district court erred in sua sponte converting hearing on injunctive relief to trial on the merits.

04-1868

Gresham v. Lumbermens Mutual
(Motz)

EMPLOYMENT. Whether breach of contract claim is preempted by ERISA; whether failure to pay severance pay violated state Wage Payment Act.

03-2328 (L), 03-2347

Coleman v. Community Trust Bank
(Williams)

BANKRUPTCY. Whether bankruptcy court erred in limiting the avoidance of deeds of trust to only that portion necessary to pay creditors; other issues.

04-1872

Sudano v. US Dept Agriculture

ADMINISTRATIVE AGENCY. Challenge to the Secretary of Agriculture's decision holding two individuals responsible for produce company's violation of the Perishable Agricultural Commodities Act.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

WEDNESDAY, FEBRUARY 2, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-22

Walker v. True
(Hilton)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

03-4775

US v. Terry W. Stewart
(Thornburg)

CRIMINAL LAW & PROCEDURE. Whether defendant knowingly and intelligently waived his right to counsel; other issues.

03-2525

Li v. Ashcroft

IMMIGRATION. Whether IJ and Board erred in concluding that forced insertion of IUD as part of China's population control program did not rise to level of persecution.

04-1774

Boyuka v. White
(Mullen)

BANKRUPTCY. Whether debt based on alleged securities fraud is dischargeable.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:30 a.m.

WEDNESDAY, FEBRUARY 2, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1882
Garofolo v. Donald B Heslep Asso
(Lowe)

FAIR LABOR STANDARDS ACT. Whether pre-employment agreement under 29 C.F.R. Section 785.23 created an exception to overtime compensation requirements.

04-1262
White v. Univision of Va
(Ellis)

BANKRUPTCY. Whether majority shareholder of Chapter 7 corporation who failed to file an objection to creditor's claim has standing to appeal.

04-1157
Manufactured Housing v. EPA

ADMINISTRATIVE AGENCY. Challenge to EPA's policy on submetered properties.

04-1059
NAACP v. Brackett
(Anderson)

CIVIL RIGHTS. Challenge to summary judgment and denial of injunctive relief in action alleging official harassment and intimidation to inhibit exercise of First Amendment rights.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
9:30 a.m.

WEDNESDAY, FEBRUARY 2, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

03-4899 (L), 03-4922 03-4923 04-4038
US v. Macy Walker McLean
(Thornburg)

CRIMINAL LAW. Whether the evidence was sufficient to prove the defendants had the requisite scienter; challenge to numerous jury charges; challenge to sentences.

04-6885
Anderson v. XYZ CORRECTIONAL
(Lee)

PRISON LITIGATION REFORM ACT. Whether a prisoner is required under the Prison Litigation Reform Act to affirmatively plead exhaustion of available administrative remedies.

04-4376
US v. Tyronski Johnson
(Bennett)

FOURTH AMENDMENT. Propriety of district court's order denying motion to suppress firearm and blood test results.

04-1790 (L), 04-1855
Abcouwer v. NiSource Inc
(Goodwin)

EMPLOYMENT. Challenge to denial of termination benefits.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

WEDNESDAY, FEBRUARY 2, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1542

Universal Maritime v. Perry

LONGSHORE BENEFITS. Whether ALJ's decision that Universal Maritime is the responsible employer is supported by substantial evidence; other issues.

04-4391

US v. A. Cisneros-Mayoral
(Tilley)

CRIMINAL LAW & PROCEDURE. Whether district court erred in denying motion to suppress evidence seized pursuant to search warrant.

04-1812

Steele v. Kenner
(Titus)

EVIDENCE. Challenge to district court's limitations on plaintiff's medical expert witnesses.

04-1357

McDonald v. Friedman
(Bennett)

CIVIL. Whether genuine issue of material fact existed with regard to claim of fraudulent inducement to enter into franchise agreement; other issues.

PANEL V
COURTROOM FIVE
Courtroom of Judge Spencer
9:30 a.m.

WEDNESDAY, FEBRUARY 2, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
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(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1232
Daly v. Ashcroft

IMMIGRATION. Whether Daly is a national of the United States and whether he has been convicted of a crime of violence.

04-1220
Fourth Quarter Prop v. City of Concord NC
(Tilley)

LAND USE. Challenge to dismissal of federal "takings" claim based on ripeness and Burford abstention.

04-4349
US v. Anthony White
(Quarles)

CRIMINAL LAW & PROCEDURE. Whether the district court erroneously admitted rebuttal testimony of prior bad acts to impeach White's testimony; other issues.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

THURSDAY, FEBRUARY 3, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

03-4937

US v. Darrin Wright
(Boyle)

SENTENCING GUIDELINES. Upward departure pursuant to USSG
Section 4A1.3; extent and statement of reasons for
departure.
15 mins. per side

03-4809

US v. Curtis Spivey
(Ellis)

CRIMINAL LAW & PROCEDURE. Whether the invited error
doctrine precludes claim of jury instruction error.

04-1410

Constantine v. Rectors and Visitors
(Hilton)

ADA. Whether sovereign immunity bars a claim under ADA and
Rehabilitation Act; claim of disability discrimination.

04-4302

US v. James E. Milbourne
(Howard)

CRIMINAL LAW & PROCEDURE. Whether the government
constructively amended the indictment; sufficiency of the
evidence.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:30 a.m.

THURSDAY, FEBRUARY 3, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1883

Federal Insurance v. Evian Horizontal
(Blatt)

INSURANCE. Whether exclusion in policy applied to claim of negligent failure of directors to procure liability insurance to cover association members.

04-1576

JG Furniture Group v. Great West Life
(Tilley)

BANKRUPTCY. Whether unpaid health insurance premiums, paid medical claims of employees and administrative fees under an employee benefit plan are given priority status.

04-1986

Builders Mutual v. Marc Homebuilders
(Anderson)

INSURANCE. Challenge to summary judgment in declaratory judgment action determining that builder's policy did not cover "loss of use" damages by homeowners.

04-1763

US v. Duke Energy Corp
(Bullock)

CLEAN AIR ACT. Challenge to the district court's findings in favor of Duke Power in civil enforcement action by the EPA alleging violations of the Prevention of Significant Deterioration program of the Clean Air Act at eight coal-fired power plants.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
9:30 a.m.

THURSDAY, FEBRUARY 3, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1376

Allstate Insurance v. Repass
(Jones)

CIVIL. Whether district court correctly interpreted term in automobile insurance policy.

04-1753

Lambeth v. Bd of Comm Davidson
(Osteen)

CONSTITUTIONAL LAW. Whether inscription at county government center violates the Establishment Clause.

03-2452

Simms v. Mutual Benefit Ins
(Harvey)

INSURANCE. Whether district judge erred in instructions to jury on standard of proof or in exclusion of evidence on insured's financial status.

04-1314 (L), 04-1328

Ridpath v. Bd of Gov Marshall
(Staker)

CIVIL RIGHTS. Challenge to denial of qualified immunity to state university officials in action alleging termination of employee for negative comments he made during NCAA investigation.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

THURSDAY, FEBRUARY 3, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-4149 (L), 04-4150
US v. Ramirez-Guardado
(Ellis)

CRIMINAL LAW & PROCEDURE. Whether the district court erred in admitting statements under Fed. R. Evid. 804(b)(6); whether the district court properly denied Ramirez-Guardado's motion for severance.

03-4932
US v. Eric Mashburn
(Osteen)

CRIMINAL LAW & PROCEDURE. Whether district court should have suppressed statements defendant made after receiving Miranda warnings when police officers elicited inculpatory statements before they gave Miranda warnings.

04-4103
US v. Rajul Ruhbayan
(Smith)

CRIMINAL LAW & PROCEDURE. Whether government was collaterally estopped from presenting evidence on issues previously litigated between the parties; other issues.

04-1945
Harleysville Mutual v. Mungo Homes
(Anderson)

INSURANCE. Whether district court erred in determining insurer's duty to defend or indemnify when underlying actions were withdrawn prior to district court's ruling.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
8:30 a.m.

FRIDAY, FEBRUARY 4, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-3

Simpson v. Polk
(Osteen)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

04-1216

Diamond v. Maurer
(Moon)

CIVIL. Whether the district court erred in granting defendant employer's motion for summary judgment in action alleging employment discrimination based on race.

03-4842

US v. Jason Thompson
(Chambers)

SENTENCING GUIDELINES. Conversion of currency to equivalent amount of drugs; adequacy of district court's findings. USSG Section 2D1.1, comment. (n.12).
15 mins. per side

03-2192

Martinez v. Duke Energy Corp
(Herlong)

FEDERAL JURISDICTION. Whether citizenship of limited partnership defeated diversity jurisdiction and whether court exceeded its discretion in dismissing action, rather than dismissing nondiverse party.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
8:30 a.m.

FRIDAY, FEBRUARY 4, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

03-4552
US v. Larry Lamont Bush
(Davis)

03-4960
US v. Bennie Isom
(Osteen)

04-1131 (L), 04-1200
NLRB v. TNT Logistics NA Inc

04-6481
Slade v. Hampton Roads Region
(Smith)

CRIMINAL LAW & PROCEDURE. Right to self-representation at trial; other issues.

CRIMINAL LAW & PROCEDURE. Whether identification by photographic line-up was unduly suggestive; other issues.

LABOR. Whether employee's termination was motivated by anti-unionism.

PRISONER RIGHTS. Challenge to state statute allowing the imposition of a fee on pretrial detainees to defray the cost of their detention.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
8:30 a.m.

FRIDAY, FEBRUARY 4, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-4357
US v. Neville A. Meikle
(Duffy)

CRIMINAL LAW & PROCEDURE. Whether seizure exceeded permissible scope of traffic stop, rendering subsequent consent to search involuntary; other issues.

02-4990
US v. Josephine Gray
(Chasanow)

CRIMINAL LAW. Whether the government produced sufficient evidence to convict defendant of multiple counts of mail fraud and wire fraud; other evidentiary issues.

04-4672
US v. Amaya-Portillo
(Chasanow)

SENTENCING GUIDELINES. Whether state misdemeanor drug conviction can be considered an aggravated felony under U.S.S.G. Section 2L1.2(b) (1) (C) .
15 mins. per side

04-4564
US v. T.M.
(Goodwin)

CRIMINAL LAW. Whether certification was proper and a substantial federal interest supported prosecuting juvenile.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
8:30 a.m.

FRIDAY, FEBRUARY 4, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(02/01/2005 - 02/04/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1708

Hanover Insurance Co v. Corrpro Companies
(Smith)

CONTRACTS. Whether plaintiff can maintain a breach of contract claim based on a third-party beneficiary theory.

04-4340

US v. Joseph Wayne Loftin
(Tilley)

JURY INSTRUCTIONS. Whether evidence supported jury instruction on aiding and abetting; other issues.

04-6902

Frasch v. Peguese
(Motz)

HABEAS CORPUS. Whether a belated right of direct review restarts the one-year statute of limitations; whether petitioner is entitled to equitable tolling.

04-1441

Amer Auto Ins Co v. Valentine
(Duffy)

INSURANCE. Whether insurance company had duty to indemnify insurance brokers in action brought for placing health insurance coverage with fraudulent and now-defunct health plan.

PANEL V
COURTROOM FIVE
Courtroom of Judge Spencer
8:30 a.m.

FRIDAY, FEBRUARY 4, 2005