

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

08-4062  
US v. Juvenile Male  
( Chasanow )

CRIMINAL LAW & PROCEDURE. Issues relating to district court's decision to transfer juvenile for adult prosecution.

07-1455  
US v. Jadhav  
( Williams )

CIVIL. Whether district court had subject matter jurisdiction under False Claims Act; whether district court abused its discretion in awarding attorneys' fees to appellee.

07-4607  
US v. Damian Murphy  
( Williams )

CRIMINAL LAW & PROCEDURE. Whether district court erred in denying motion to suppress evidence seized without a warrant, particularly defendant's cellular phone and contents thereof.

Monday, October 27, 2008

PANEL I  
Courtroom 3  
Room 223 (Tan Carpet)  
2:30 p.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

03-1821  
Richmond Medical Ctr v. Herring  
( Williams )

Rehearing en banc.

Tuesday, October 28, 2008

En Banc Courtroom  
En Banc Courtroom (Green)  
9:00 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

08-0002  
Phillip Davis v. Gerald Branker  
( Whitney )

HABEAS CORPUS. Federal habeas issues on review of state capital conviction and sentence.

06-2287  
Adcock v. Intl Union United

CIVIL. Whether employer acted in contravention of Section 302(a)(2) of Labor-Management Relations Act when it provided labor organization with access to employees.

Tuesday, October 28, 2008

PANEL II  
Courtroom 2  
Room 201 (Green Carpet)  
After the en banc session

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

07-6551  
McLeod v. Peguese  
( Davis )

HABEAS CORPUS: Whether Brady claim was properly brought in a successive habeas application; whether petitioner established that state court acted unreasonably in rejecting Brady claim.

07-1738  
Rein v. US Patent& Trademark  
( Hilton )

FREEDOM OF INFORMATION ACT: Whether the Patent and Trademark Office and the Department of Commerce wrongfully withheld from disclosure documents sought pursuant to FOIA.

07-1704  
In Re: Royal Ahold  
( Blake )

SECURITIES: Whether proposed amended securities class action complaint adequately alleged a strong inference that accountants acted with scienter in providing materially false and misleading audit opinions or reports.

Tuesday, October 28, 2008

PANEL III  
Courtroom 3  
Room 223 (Tan Carpet)  
After the en banc session

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

06-1404  
Browning v. Tiger's Eye Benefits  
( Hilton )

ERISA. Whether defendants acted as fiduciaries under the Act; timeliness of action.

07-2105  
National Gas Distributors, LLC v. E. I. DuPont De  
( Small )

BANKRUPTCY LAW. Whether contracts qualify as "swap agreements" pursuant to Section 101(53B)(A) of the Bankruptcy Code.

07-2134  
In re: Donnie Ennis, et al  
( Anderson )

BANKRUPTCY LAW: Whether 2005 amendment to the Bankruptcy Code allows modification of a secured claim on debtors' mobile home located on rented lot.

Tuesday, October 28, 2008

PANEL IV  
Courtroom 4  
Room 414-D (Tweed Carpet)  
After the en banc session

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

08-1434  
Paul Rangolan v. Michael Mukasey

IMMIGRATION. Jurisdiction to review Convention Against Torture claim on petition for review from denial of motion to reopen filed by alien convicted of aggravated felony.

07-1885  
Howard v. INOVA Health Care  
( Hilton )

FAMILY AND MEDICAL LEAVE ACT. Whether there was a genuine issue of material fact with respect to appellant's claim he was terminated in violation of the FMLA; related issues.

07-2127  
Andrew Cibula v. US  
( Lee )

FEDERAL TORT CLAIMS ACT: Whether California law relating to periodic payment of future damages from reversionary trust applies to medical malpractice case filed under the FTCA.

Tuesday, October 28, 2008

PANEL V  
Courtroom 5  
Room 339 (Spencer)  
After the en banc session

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

08-0006 HABEAS CORPUS. Federal habeas issues on review of state capital conviction and sentence.

Thomas Ivey v. Jon Ozmint  
( Anderson )

08-0183 FEDERAL JURISDICTION. Proper construction of "minimal diversity" requirement of Class Action  
Fairness Act; applicability of "home state" exception; other issues.

Carolina Payday Loans, Inc. v. Carrie Dennison

( Duffy )

08-0167 FEDERAL JURISDICTION: Proper construction of "minimal diversity" requirement of Class Action  
Fairness Act; applicability of "home state" exception; other issues.

Advance America Cash Advance C v. Lisa Johnson

( Duffy )

Wednesday, October 29, 2008

PANEL I  
Courtroom 1  
Room 412 (Red Carpet)  
9:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

07-2032  
WV Assn Club Owners v. Musgrave  
( Goodwin )

FIRST AMENDMENT. Whether state ownership of limited video lottery enabled state to restrict lottery advertising and whether district court abused discretion in granting preliminary injunction.

07-4904  
US v. Veselin Vidacak  
( Tilley )

CRIMINAL. Admissibility of foreign military records; other issues.

07-4926  
US v. Ugljesa Pantic  
( Tilley )

CRIMINAL. Admissibility of foreign military records.

08-6919  
US v. Gena Dunphy  
( Bailey )

SENTENCING. Whether the district court erred in finding that it lacked authority to consider a sentence reduction greater than two offense levels based on the language in Section 3582(c) and U. S. Sentencing Guidelines Manual Section 1B1.10.

Wednesday, October 29, 2008

PANEL III  
Courtroom 3  
Room 223 (Tan Carpet)  
9:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

07-1986  
Philips v. Pitt County Memorial  
( Fox )

CIVIL. In Section 1983 action, whether defendants acted under color of state law in suspending doctor's medical privileges; other issues.

08-1241  
Hawa Mosere v. Michael Mukasey

IMMIGRATION LAW: Whether Board abused its discretion in finding petitioner failed to establish "exceptional circumstances" for failure to depart voluntarily or in denying petitioner's motion to reopen.

07-2140  
Igor Belyakov v. Michael Leavitt  
( Chasanow )

TITLE VII. Whether district court improperly granted summary judgment on national origin discrimination claim; other issues.

07-2010  
White v. Eaton Corp Short  
( Floyd )

ERISA. Whether district court applied correct review standard; eligibility for benefits.

Wednesday, October 29, 2008

PANEL IV  
Courtroom 4  
Room 414-D (Tweed Carpet)  
9:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

07-2107  
Celeste Nader v. Floyd Blair  
( Quarles )

CIVIL. Whether district court erred in granting summary judgment to defendants on complaint alleging improper termination from state employment based upon political affiliation.

07-1794  
Cole v. Champion Enterprises  
( Osteen )

CONTRACT LAW. Numerous issues regarding dismissal of plaintiff's breach of contract, state Wage and Hour Act, restraint of trade and Unfair Trade Practices claims.

08-4358  
US v. Steven Rosen  
( Ellis )

CLASSIFIED INFORMATION PROCEDURES ACT. Government appeal of pre-trial finding that classified memorandum was relevant and admissible and that government's classified information privilege had been overcome.

Wednesday, October 29, 2008

PANEL V  
Courtroom 5  
Room 339 (Spencer)  
9:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

07-4832  
US v. Derrick Sparks  
( Anderson )

CRIMINAL LAW & PROCEDURE. Whether trial court must instruct jury not to consider acts while a juvenile as evidence of participation in conspiracy; other issues.

07-4996  
US v. Karyna Y. Ordonez  
( Friedman )

CRIMINAL LAW & PROCEDURE. Whether district court properly applied U. S. Sentencing Guidelines Section 3C1.3 (2006) to enhance defendant's sentence for failing to appear for service of sentence, 18 U.S.C. Sections 3146, 3147 (2000).

07-1900  
Pitt County v. Hotels.com, L.P.  
( Boyle )

TAX LAW. Whether county's hotel occupancy tax applies to online travel companies that book hotel rooms; related issues.

Thursday, October 30, 2008

PANEL I  
Courtroom 1  
Room 412 (Red Carpet)  
9:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

07-0007  
Thomas Larry v. Gerald Branker  
( Osteen )

HABEAS CORPUS. Federal habeas issues on review of state capital conviction and sentence.

07-1948  
Schwartz v. Blum  
( Bennett )

CIVIL. Whether CEO, President, and Director breached fiduciary duties and engaged in self-dealing during merger; other issues.

07-1698  
Orgain v. City of Salisbury MD  
( Legg )

CONSTITUTIONAL LAW. Whether similarly situated clubs were treated differently by authorities based on race in violation of the Equal Protection Clause; other issues.

07-1680  
Jones v. Calvert Group  
( Chasanow )

TITLE VII. Whether district court erred in dismissing appellant's retaliatory termination claim; whether district court erred in granting summary judgment; other issues.

Thursday, October 30, 2008

PANEL II  
Courtroom 2  
Room 201 (Green Carpet)  
8:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

08-4014  
US v. Darnell Williams  
( Bennett )

CRIMINAL LAW & PROCEDURE. Whether district court erred in finding that warrant was so lacking in probable cause as to defeat good faith belief in its validity and to require suppression of evidence seized thereunder.

07-1981  
Swann v. City of Richmond  
( Payne )

CONSTITUTIONAL LAW. Challenge to summary judgment in favor of defendants on Section 1983 and municipal liability claims.

07-1970  
CFA Institute v. Inst Chartered Finan  
( Spencer )

FEDERAL PROCEDURE. Whether district court had discretion to exercise jurisdiction over foreign defendant under Rule 4(K)(2); other issues relating to jurisdiction.

08-0113  
AT&T Mobility v. Charlene Shorts  
( Keeley )

Class Action Fairness Act: Challenge to district court order remanding class action to state court on ground that additional counterclaim defendant could not remove action under CAFA.

Thursday, October 30, 2008

PANEL III  
Courtroom 3  
Room 223 (Tan Carpet)  
9:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

07-4770  
US v. Jermal Daniels  
( Conrad )

CRIMINAL LAW & PROCEDURE. Propriety of strip search and use of key without warrant; motion to suppress; jury instructions; sentencing.

07-4803  
US v. Fausto Uribe-Rios  
( Conrad )

CRIMINAL LAW & PROCEDURE. When statute of limitations begins to run for a previously deported alien charged with illegal reentry; other issues.

07-1965  
Hopkins v. Horizon Management  
( Herlong )

REAL ESTATE SETTLEMENT PROCEDURES ACT: Whether record contained sufficient evidence that bank and its mortgage servicing company agent violated Section 9 of RESPA in selling a foreclosure property.

07-1995  
Valladares v. Cordero  
( Cacheris )

QUALIFIED IMMUNITY. Challenge to denial of officer's motion for summary judgment based on qualified immunity in case of excessive force.

Thursday, October 30, 2008

PANEL IV  
Courtroom 4  
Room 414-D (Tweed Carpet)  
9:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

07-1851 David Cozzarelli v. Deutsche Bank Securities Inc. ( Osteen )	SECURITIES LAW: Whether plaintiffs' complaint failed to state a claim under the Securities Act and/or the Exchange Act; other issues.
07-2017 Thomas v. Branch Banking Trust ( Keeley )	SECURITIES. Breach of contract and UCC claims arising from bank's alleged duty to oversee transfer of stock.
07-1725 Johnson v. Mechanics & Farmers ( Whitney )	EMPLOYMENT LAW. Propriety of summary judgment in ADEA action.
07-4812 US v. George Powell Jr. ( Flanagan )	SENTENCING. Whether refusal to grant a third level of reduction for acceptance of responsibility after upward departure was error.

Thursday, October 30, 2008

PANEL V  
Courtroom 5  
Room 339 (Spencer)  
9:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

07-4839  
US v. William T. Hatcher  
( Jones )

CRIMINAL LAW & PROCEDURE: Constitutional challenges to Sex Offender Registration and Notification Act.

PANEL IV  
Courtroom IV  
Room 414-D (Tweed Carpet)  
2:00 p.m.

Thursday, October 30, 2008

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

05-0005 US v. Brandon Basham ( Anderson )	CRIMINAL LAW & PROCEDURE. Numerous issues on direct appeal of federal capital conviction and sentence.
07-4529 US v. Dawson ( Blake )	FOURTH AMENDMENT. Whether the district court erred in denying motion to suppress; other issues.
07-4326 US v. Carl K. Graham ( Beaty )	CRIMINAL LAW & PROCEDURE. Sufficiency of the evidence to support drug conviction when bag containing drugs was found next to defendant's car in a public parking lot; other issues.
07-4417 US v. James Wesley Myers ( Voorhees )	SENTENCING GUIDELINES. Whether application of 2006 Guidelines Manual violated Ex Post Facto Clause; other issues.

Friday, October 31, 2008

PANEL I  
Courtroom 1  
Room 412 (Red Carpet)  
8:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

07-1511  
Tsai v. Maryland Aviation  
( Quarles )

CIVIL. Propriety of treating motion to dismiss as summary judgment motion, granting defendant judgment prior to allowing plaintiff discovery; other issues.

06-1769  
OBX-STOCK Inc v. Bicast, Incorporated  
( Boyle )

TRADEMARK: Whether plaintiff presented sufficient evidence at summary judgment stage of valid, protectable trademark; whether district court's failure to cancel mark was error; other issues.

07-1323  
McNeal v. Montgomery County MD  
( Garbis )

CIVIL. Whether genuine issues of material fact existed sufficient to warrant the denial of defendants' summary judgment motion on McNeal's discrimination, harassment, and retaliation claims; other issues.

Friday, October 31, 2008

PANEL II  
Courtroom 2  
Room 201 (Green Carpet)  
8:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

06-1788  
Wiggenhorn v. AXA Equitable Life  
( Motz )

SECURITIES LAW. Whether removal of class actions was proper; whether claims are preempted by Securities Litigation Uniform Standards Act, Investment Company Act of 1940 or National Securities Markets Improvement Act.

07-1607  
First Derivative Tr v. Janus Capital Group  
( Motz )

SECURITIES LAW: Whether common stock investors are entitled to bring securities fraud claims against company and its wholly owned subsidiary regarding alleged misleading statements in mutual fund prospectuses.

06-4693  
US v. Kad C. Elswick  
( Jones )

CRIMINAL LAW. Propriety of Elswick's 18 U.S.C.A. Section 924(c)(1) (West 2000 & Supp. 2007) conviction in light of Watson v. United States, \_\_\_ U.S. \_\_\_, 128 S. Ct. 579 (2007).

07-4978  
US v. Ronald E. Ketchum  
( Conrad )

CRIMINAL LAW & PROCEDURE. Whether evidence of intimidation was sufficient to provide a factual basis for guilty plea to bank robbery under 18 U.S.C. Section 2113(a); standard of review.

Friday, October 31, 2008

PANEL III  
Courtroom 3  
Room 223 (Tan Carpet)  
8:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(10/27/2008 - 10/31/2008 Session)

08-0213  
NVR, Incorporated v. Nicholas Bartnikowski  
( Beaty )

CLASS ACTION FAIRNESS ACT. Petition for permission to appeal district court's determination that class action did not satisfy amount in controversy requirement of 28 U.S.C. section 1453(c), requiring remand to state court.

07-4181  
US v. Walter Robert Hawes  
( Duffy )

SENTENCING GUIDELINES. Extent of upward departure under USSG Section 2B1.1. 15 mins. per side

07-4750  
US v. Antwonne D. White  
( Copenhaver )

CRIMINAL LAW & PROCEDURE. Whether the district court erred by denying motion to suppress evidence; sentencing.

Friday, October 31, 2008

PANEL IV  
Courtroom 4  
Room 414-D (Tweed Carpet)  
8:30 a.m.