

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(09/18/2006 - 09/21/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-12  
McNeill v. Polk  
(Howard)

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

04-2538  
Green v. Seymour  
(Howard)

CIVIL RIGHTS. Whether the complaint was sufficient to state  
a claim for racial profiling.

05-1810  
Washington v. City of Charlotte  
(Keesler)

EMPLOYMENT DISCRIMINATION. Whether plaintiff demonstrated a  
genuine issue of material fact warranting a trial.

06-1572  
US v. Under Seal  
(Ellis)

EXPEDITED.

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

MONDAY, SEPTEMBER 18, 2006

REVD 9/15/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(09/18/2006 - 09/21/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-2069

Great American Ins v. Gross  
(Spencer)

ABSTENTION. Challenge to district court's abstention in action seeking declaratory relief and rescision of directors' and officers' liability insurance policy on grounds of fraud.

06-1122

Ohio River Valley v. Norton  
(Chambers)

SURFACE MINING CONTROL AND RECLAMATION ACT. Did Secretary of the Interior act arbitrarily and capriciously in approving West Virginia's regulatory amendments implementing the Surface Mining Control and Reclamation Act which deleted the definition of "cumulative impact" and added a definition for "material damage."

06-6126

Ordinola v. Hackman  
(Lee)

EXTRADITION. Whether district court correctly concluded that Ordinola's extradition was barred by the political offense exception to the extradition treaty.

05-2392 (L), 05-2393

In Re: Cotton Yarn  
(Beaty)

ARBITRATION. Whether arbitration agreements were unenforceable because they burdened plaintiff's ability to pursue their antitrust claims; other issues.

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

MONDAY, SEPTEMBER 18, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(09/18/2006 - 09/21/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1538

N.J. v. Prince George's Cnty  
(Williams)

CIVIL. Whether district court erred in dismissing wrongful death claimants' Section 1983 complaint; mootness issues.

05-1539

Jackson v. Prince George's Cnty  
(Williams)

CIVIL. Whether district court erred in denying wrongful death claimants' motion to intervene and consolidate; mootness issues.

05-2386

Jani v. Bert Bell/Pete  
(Quarles)

ERISA. Whether administrators of NFL Player Retirement Plan abused their discretion in setting effective date of player's full disability.

05-2375

Pension Benefit v. Aircraft Mechanics  
(Hilton)

ERISA. Whether Pension Benefit Guaranty Corporation's publication of notice of termination on the termination date constituted reasonable notice to plan participants.

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

MONDAY, SEPTEMBER 18, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(09/18/2006 - 09/21/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-13

Lynch v. Polk  
(Voorhees)

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

05-2063 (L), 05-2342

Studio Frames LTD. v. Standard Fire Ins Co  
(Tilley)

INSURANCE. Whether government's Standard Flood Insurance Policy prohibits building coverage for tenant's leasehold improvements where owner also has building coverage.

06-1393

RSM, Incorporated v. Herbert  
(Nickerson)

GUN CONTROL ACT. Whether requirement for license revocation that firearms dealer "willfully" violated law was met; whether acts constituted violation of a regulation; statutory construction and statute of limitations issues.

06-1466

McGough v. Nalco Company  
(Goodwin)

CONTRACT. Whether preliminary injunction should have been granted to enforce non-compete claims and non-disclosure of trade secrets in alleged employment agreement; conflict of law issue.

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

MONDAY, SEPTEMBER 18, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(09/18/2006 - 09/21/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-17

Stroud v. Polk  
(Osteen)

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

06-1020

Eckelberry v. ReliaStar Life  
(Goodwin)

ERISA. Whether district court erred in reversing plan administrator's denial of accidental death benefits where deceased was driving while legally intoxicated.

06-1107

Waller v. City of Danville VA  
(Kiser)

FOURTH AMENDMENT. Whether officers were entitled to qualified immunity on Fourth Amendment deadly force claims in execution of arrest warrant; other issues.

06-1171 (I), 06-1237

Laurel Baye Health v. NLRB

LABOR. Challenge to results of union election based on alleged election misconduct and disaffiliation of union from AFL-CIO.

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

TUESDAY, SEPTEMBER 19, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(09/18/2006 - 09/21/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1764

Rampengan v. Gonzales

IMMIGRATION. Whether the case should be remanded for consideration or corroborative evidence not discussed by the immigration judge of the Board.

05-1671

Space Technology Dev v. Boeing Corporation  
(Brinkema)

CIVIL. Challenge to dismissal under Rule 12(b)(6) of breach of contract case.

05-1726

Westport Ins Co v. Albert  
(Williams)

INSURANCE. Whether insurer may deny coverage under professional liability policy for claim made during renewal period, potential for which insured knew about during previous policy period but failed to disclose.

05-1495 (L), 05-2168

Newport News Shipbld v. DOWCP

LONGSHORE BENEFITS. Whether issue of cause of claimant's knee injury was ripe for adjudication; whether ALJ properly awarded attorney's fees.  
15 mins. per side

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

TUESDAY, SEPTEMBER 19, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(09/18/2006 - 09/21/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1078

Buchbinder v. Natanzon  
(Motz)

CONTRACTS. Whether defendant is obligated to indemnify draw on letters of credit by terms of written settlement agreement.

05-1616

Briggs v. Marriott Intl  
(Williams)

ERISA. Whether district court properly granted summary judgment for benefit denial.

05-1634

Board of Trustees v. BES Services Incorp  
(Jones)

ERISA. Whether reduction in withdrawal liability precluded because employer failed to first present issue to arbitrator.

05-2350

Hussain v. Gonzales

IMMIGRATION. Whether the Board considered petitioner's motion for remand.

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

TUESDAY, SEPTEMBER 19, 2006

REVD 9/15/06

UNITED STATES COURT OF APPEALS  
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NUMBER AND STYLE

NATURE OF CASE

05-6489

Jahed v. Acri  
(Friedman)

HABEAS CORPUS. Whether district court erred in denying Section 2241 petition for failure to exhaust administrative remedies; whether district court lacked jurisdiction to consider derivative citizenship claim; other issues.

05-4939

US v. Robert Jay Hecht  
(Herlong)

SENTENCING. Applicability of United States v. Booker, 543 U.S. 220 (2005) to sentencing under 18 U.S.C. Section 3553(b)(2) and this appeal.

05-2295

Synergistic Intl LLC v. Korman  
(Morgan)

TRADEMARK. Whether company's "The Windshield Doctor" trademark is likely to cause confusion with competing company's "The Glass Doctor" trademark; other issues.

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

TUESDAY, SEPTEMBER 19, 2006

UNITED STATES COURT OF APPEALS  
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(09/18/2006 - 09/21/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-2180

AtlantiGas v. Columbia Gas  
(Chambers)

CONTRACT. Whether seller under asset purchase agreement had standing after sale of assets to pursue previously unknown claims arising from illegal kickback scheme.

06-1045 (L), 06-1046

Republic Western Ins v. Williams  
(Duffy)

INSURANCE. Whether permissive use provision of trucking company's liability policy provided coverage for accident.

PANEL V  
COURTROOM FIVE  
Courthouse Room 103  
9:30 a.m.

TUESDAY, SEPTEMBER 19, 2006

REVD 8/31/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(09/18/2006 - 09/21/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-2406

Newport News Shipbld v. DOWCP

LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT. Whether award of attorney's fee to claimant's counsel was proper where employer tendered compensation benefits with added stipulation.

05-2304

Gross v. SES Americom Inc  
(Titus)

CONTRACT. Whether disputed issues of material fact exist that precluded summary judgment; whether district court correctly concluded appellants could not prove essential elements of their claim.

04-5010

US v. Nathan A. Chapman  
(Quarles)

CRIMINAL LAW & PROCEDURE. Multiple challenges arising from mail and wire fraud convictions of former CEO of investment firm.

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

WEDNESDAY, SEPTEMBER 20, 2006

REVD 8/18/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(09/18/2006 - 09/21/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1179

Willcox v. Stroup  
(Duffy)

PROPERTY RIGHTS. Whether documents consisting of records of two former Governors are Debtor's personal property or public records belonging to the State of South Carolina.

05-1988

Teachers Ret Sys v. Cree Inc.  
(Dixon)

SECURITIES FRAUD. Whether class action complaint alleged fraud with requisite particularity, plead facts giving rise to strong inference of scienter, and plead requisite elements of loss causation to survive dismissal under Fed. R. Civ. P. 9 and 12(b)(6). purposes of removability.

04-2569

Chevy Chase Bank v. Wachovia Bank NA  
(Lee)

CIVIL. Whether entry of declaratory judgment was appropriate; whether bank breached presentment warranty under Virginia Commercial Code; other issues.

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

WEDNESDAY, SEPTEMBER 20, 2006

REVD 9/19/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(09/18/2006 - 09/21/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

04-6092

US v. Jack L. Nicholson  
(Morgan)

HABEAS CORPUS. Whether counsel had an actual conflict of interest preventing him from raising an affirmative defense.

05-1469

Bellagio Insurance v. Digital Broadcast  
(Wilson)

CONTRACTS. Whether the district court correctly interpreted two promissory notes, properly determined that the appellant failed to prove that the loan agreements were usurious, and properly awarded a money judgment and specific performance.

05-1342

Jones v. Ford Motor Company  
(Lee)

PERSONAL INJURY. Whether district court abused its discretion in admitting NHTSA Sudden Acceleration Incidents report and excluding study that would have impeached its reliability.

05-1571

Gervais v. Gonzales

IMMIGRATION. Whether the immigration judge's rejection of CAT claim solely on grounds of negative credibility finding made in asylum context runs afoul of Camara v. Ashcroft.

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

WEDNESDAY, SEPTEMBER 20, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
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NUMBER AND STYLE

NATURE OF CASE

05-1532

Lettieri v. Equant Incorporated  
(Cacheris)

TITLE VII. Challenge to summary judgment on claims of  
gender discrimination, retaliation and breach of contract.

05-2224

Yates v. UMWA 1974 Pension Pl  
(Williams)

ERISA. Whether signatory status of parent company to  
National Bituminous Coal Wage Agreements was properly  
imputed to wholly-owned subsidiary in giving plaintiff  
pension credit for time he was employed.

05-2395

Rahrig v. Alcatel USA Marketng  
(Lee)

CONTRACTS. Numerous issues arising from alleged breach of  
sales compensation plan.

05-2357

Selective Insurance v. Oglebay  
(Davis)

INSURANCE. Whether insurance company had duty under  
commercial liability policy issued to driving school to  
defend driving instructor in action alleging sexual abuse  
of student.

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

WEDNESDAY, SEPTEMBER 20, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(09/18/2006 - 09/21/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1967 (L), 05-1998

Newport News Shipblld v. Melvin Davis

LONGSHORE. Whether employer's second appeal to Benefits Review Board was timely; whether ALJ's decision awarding benefits is supported by substantial evidence.  
Petitioner & Respondent 15 mins. per side

PANEL IV  
COURTROOM FOUR  
Courthouse Room 414-D (Tweed Carpet)  
3:30 p.m.

WEDNESDAY, SEPTEMBER 20, 2006

REVD 9/01/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(09/18/2006 - 09/21/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1491

Vaughan v. Recall Total Info  
(Floyd)

CONTRACTS. Whether certain "acquisition revenues" should be included in earnout formula under contract for purchase of business; other issues.

05-2060

Carolina Care Inc v. McKenzie  
(Houck)

ERISA. Whether group health plan administrator abused its discretion in denying coverage for cochlear implant; attorney's fees.

05-2138

Southprint, Inc. v. H3, Inc.  
(Moon)

CIVIL. Various claims arising out of award of contract to one of two competitors that distribute and sell apparel bearing logos related to stock car industry.

05-1448

Collins Holding Corp v. Wausau Underwriters  
(Herlong)

CIVIL. Whether district court erred in granting directed verdict to defendants on plaintiffs' claim of anticipatory breach of insurance contract; other issues.

PANEL V  
COURTROOM FIVE  
Courthouse Annex Room 223  
9:30 a.m.

WEDNESDAY, SEPTEMBER 20, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(09/18/2006 - 09/21/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-2080

Omega World Travel v. Mummagraphics Inc  
(Brinkema)

PREEMPTION. Whether district court erred in finding  
CAN-SPAM Act preempted claim under Oklahoma law and in  
finding no violation under CAN-SPAM Act; other issues.

05-4884

US v. Ronald A. McIver  
(Floyd)

CRIMINAL LAW & PROCEDURE. Whether there was sufficient  
evidence that doctor acted outside bounds of professional  
practice; jury instruction; admission of expert testimony;  
related issues.

06-1013

MCI v. Paetec Communication  
(Hilton)

TELECOMMUNICATIONS. Whether local exchange carrier violated  
47 U.S.C. Section 203 by charging MCI for telecommunication  
services allegedly outside its tariff; other issues.

05-4707

US v. Oswin Abraham  
(Broadwater)

SEARCH & SEIZURE. Whether statement made at police station  
must be suppressed when police transported declarant, a  
detainee not under arrest, to station while they executed  
search warrant.

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

THURSDAY, SEPTEMBER 21, 2006

REVD 8/18/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(09/18/2006 - 09/21/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-7050

Dragenice v. Gonzales  
(Blake)

IMMIGRATION. Whether petitioner qualifies as a national of the United States.

05-4735

US v. Casual Lyons  
(Boyle)

CRIMINAL LAW & PROCEDURE. Whether government breached the plea agreement by failing to inform the district court of the full extent of appellant's cooperation.

05-1638

Republic Bank v. Kucan  
(Flanagan)

ARBITRATION. Challenge to denial of motion to compel arbitration.

05-1996 (I), 05-2215

A T Massey Coal Co v. Holland  
(Bennett)

COAL INDUSTRY RETIREE HEALTH BENEFIT ACT. Whether Social Security Administration's calculation of premiums payable by operators under the Act is arbitrary, capricious, or unlawful.

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

THURSDAY, SEPTEMBER 21, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
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(09/18/2006 - 09/21/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1154  
Clinchfield Coal Co v. Lambert

BLACK LUNG. Whether Board's decision awarding benefits is supported by substantial evidence.  
15 mins. per side

06-4219  
US v. Kevin Newland  
(Bennett)

CRIMINAL LAW & PROCEDURE. Whether continued detention after lawful traffic stop was illegal; probable cause and suppression of evidence issues.

05-4798  
US v. Michael R. Perkins  
(Spencer)

CRIMINAL LAW & PROCEDURE. Whether district court erred in admitting opinion evidence regarding use of force; whether evidence of bodily injury was sufficient.

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

THURSDAY, SEPTEMBER 21, 2006

REVD 9/15/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(09/18/2006 - 09/21/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-4727

US v. Emilio Chase  
(Broadwater)

CRIMINAL LAW & PROCEDURE. Whether the district court properly declined to reduce appellant's sentence pursuant to USSG Section 3E1.1(b) (2004) based on the absence of a government motion for such a reduction.

05-4805

US v. Brian L. Tribble  
(Broadwater)

INDICTMENT. Whether the government's evidence and argument constructively amended the indictment.

05-4500

US v. Dane A. Mason  
(Goodwin)

FORFEITURE. Whether the district court's forfeiture order was proper given the limited nature of defendant's participation in the conspiracy.

PANEL IV  
COURTROOM FOUR  
Courthouse Room 414-D (Tweed Carpet)  
8:00 a.m.

THURSDAY, SEPTEMBER 21, 2006

REVD 9/01/06