

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/19/2005 - 09/22/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1679

Itoe v. Gonzales

IMMIGRATION. Whether the immigration judge properly denied Itoe's applications for asylum, withholding of removal, and protection under the Convention Against Torture.

05-1005

Taylor v. Siemens VDO
(Doumar)

LABOR. Challenge to summary judgment in action against employer for breach of collective bargaining agreement and union for breach of fair representation for joint memorandum of understanding.

04-2072

Parikh v. Gonzales

IMMIGRATION. Whether this Court has jurisdiction over criminal alien's petition for review.

04-1483

Scurlock-Ferguson v. City of Durham
(Beaty)

TITLE VII. Whether plaintiff presented evidence of disputed material fact in employment discrimination action.

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

MONDAY, SEPTEMBER 19, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/19/2005 - 09/22/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1739

Webster v. Rumsfeld
(Titus)

TITLE VII. Whether a petitioner's Fed. R. Civ. P. 56(f) affidavit was sufficient to support his request for additional discovery prior to summary judgment; other issues.

04-4710

US v. Larry Aikens
(Thornburg)

CRIMINAL LAW & PROCEDURE. Sufficiency of the evidence to support marijuana conspiracy conviction.

04-2252

American Genl Life v. Wood
(Copenhaver)

ARBITRATION. Challenge to order compelling arbitration in employment dispute.

04-2140

Yogi Mining Company v. Fife

BLACK LUNG BENEFITS. Whether ALJ's conclusion that Fife suffers from complicated pneumoconiosis is supported by substantial evidence.
15 mins. per side

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

MONDAY, SEPTEMBER 19, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/19/2005 - 09/22/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

05-6287

Holly v. Scott
(Flanagan)

PRISONER RIGHTS. Whether a federal prisoner incarcerated in a privately operated prison may bring a Bivens claim against the employees of the contractor.

05-4176

US v. Patricia Gonzalez
(Turk)

SENTENCING. Whether district court erred in sentencing defendant below statutory minimum based on substantial assistance.

04-2450

Caine Mitter & Assoc v. Lane
(Bennett)

CIVIL. Whether genuine issues of material fact existed to preclude summary judgment on claims of fraud arising from contract dispute.

04-4665

US v. Ronald Forrest
(Williams)

CRIMINAL LAW & PROCEDURE. Whether sufficient nexus existed between charged conduct and interstate commerce to support child pornography conviction; whether admission of adult pornography was unduly prejudicial; other issues.

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

MONDAY, SEPTEMBER 19, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/19/2005 - 09/22/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-2250 (L), 04-2331
Strawbridge v. Sugar Mountain
(Thornburg)

TORTS. Challenge to jury selection; denial of motion to enforce settlement; denial of summary judgment on alter-ego claims; denial of jury instruction on assumption of risk.

05-1162
Thorn v. Jefferson Pilot Life
(Currie)

INSURANCE. Denial of class certification in action alleging intentional racial discrimination in the premiums charged by insurer to African-Americans for industrial life insurance policies.

04-2447
Jennings v. UNC
(Tilley)

TITLE IX. Whether the district court erred in granting summary judgment on Jennings' sexual harassment claims; other issues.

03-4585 (L), 03-4835
US v. Leo Hinson
(Moon)

CRIMINAL LAW & PROCEDURE. Motion to sever; waiver of Miranda rights; motion for acquittal; sentence under Blakely.

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

MONDAY, SEPTEMBER 19, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/19/2005 - 09/22/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-2129 (L), 04-2137 04-2402

Ohio Valley Environ v. Green Valley Coal Co
(Goodwin)

CLEAN WATER ACT. Challenge to the Corps' nationwide general permit for the discharge of dredged or fill materials from surface mining into waters of the United States.

03-4850

US v. Alexander Lapteff
(Hudson)

CRIMINAL LAW & PROCEDURE. Clean Water Act; evidentiary issues; Blakely sentencing issues.

04-2110 (L), 04-2131

Gibson v. LTD, Incorporated
(Brinkema)

TRUTH IN LENDING ACT. Challenge to liability, statutory damages and attorney's fees.

04-2492

Brenda Collier v. United States
(Faber)

BANKRUPTCY. Whether federal tax lien had priority over judgment lien based on recordation dates.

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

MONDAY, SEPTEMBER 19, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/19/2005 - 09/22/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1609

Cantor v. Cohen
(Williams)

INTERNATIONAL CHILD ABDUCTION REMEDIES ACT. Whether Act creates a private cause of action for enforcement of access to children.

04-1901

Lolavar v. Ikon Holdings Inc
(Cacheris)

CIVIL. Whether the district court appropriately dismissed on grounds of lack of personal jurisdiction.

04-2135 (L), 04-2136

Mullins v. AT&T Corporation
(Lee)

ERISA. Challenge to denial of benefits; challenge to civil sanctions for failing to timely provide Summary Plan Description.

04-2383

Alstom Power Inc v. Norfolk Southern
(Legg)

INTERSTATE COMMERCE ACT. Damages for delay under the Carmack Amendment for railroad's failure to deliver shipment with reasonable dispatch.

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

TUESDAY, SEPTEMBER 20, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/19/2005 - 09/22/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-7889

US v. Morris
(Anderson)

HABEAS. Whether petitioner may raise a Blakely v. Washington or United States v. Booker claim for the first time in a petition filed under 28 U.S.C. Section 2255 (2000) and, thus, whether Booker applies retroactively to her final judgment of conviction entered before Booker.

05-1095

Colucci v. AGFA Corporation
(Herlong)

ERISA. Whether plan administrator erred in interpreting employment commencement as claimant's most recent hire date, not original hire date.

04-2566

Kloth v. Microsoft Corp
(Motz)

ANTITRUST. Whether money damages and injunctive relief claims were properly dismissed for failure to state a claim upon which relief may be granted.

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

TUESDAY, SEPTEMBER 20, 2005

REVD 9/16/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/19/2005 - 09/22/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1013

Aikens v. Microsoft Corp
(Motz)

CIVIL. Whether district court had jurisdiction over plaintiffs' claims; challenge to dismissal of claims of rehibitory defect, breach of contract, misrepresentation and unjust enrichment.

05-1146

Hartford Fire Insur v. Adcor Industries Inc
(Blake)

INSURANCE. Challenge to district court review of appraisal award.

04-2542

Harford Mutual Ins v. Apria Healthcare Inc
(Titus)

INSURANCE. Challenge to summary judgment in subrogation action alleging negligence in the delivery, installation and maintenance of medical oxygen cylinders in a private residence.

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

TUESDAY, SEPTEMBER 20, 2005

REVD 9/19/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/19/2005 - 09/22/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-2553

Educational Credit v. Frushour
(Herlong)

BANKRUPTCY. Challenge to discharge of student loan under
"undue hardship" standard.

04-2328

Salah v. Gonzales

IMMIGRATION. Whether an inconsistency that does not itself
"strike at the heart" of petitioner's asylum claim can
nonetheless support an IJ's adverse credibility
determination.

04-2442

Four L Coal Co v. DOWCP

BLACK LUNG. Whether ALJ properly applied the Doris Coal
presumption to require employer to reimburse medical
payments.
15 mins. per side

04-2444

Saudi v. Northrop Grumman Cor
(Morgan)

ADMIRALTY. Whether district court abused its discretion by
excluding expert witnesses absent specific order; other
issues.

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

TUESDAY, SEPTEMBER 20, 2005

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

NATURE OF CASE

04-2491

Wilson v. Flynn
(Howard)

CIVIL RIGHTS. Excessive use of force during arrest;
qualified immunity; other issues.

04-2529

Adams v. Louisiana-Pacific
(Mullen)

ERISA. Whether plan administrator abused its discretion in
excluding stock option income from plaintiff's retirement
benefits and actuarially reducing benefits for early
retirement.

04-2281

Miller v. Augusta Mutual
(Wilson)

INSURANCE. Whether district court erred in retaining
jurisdiction after dismissal of defendant; whether insured
breached duty to cooperate with insurer.

04-2056

Taylor v. Federal Express Corp
(Bennett)

ADA. Whether appellant was substantially limited in the
major life activity of working; other issues.

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

WEDNESDAY, SEPTEMBER 21, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/19/2005 - 09/22/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

03-2173 (L), 03-2174 03-2389 04-1008
Bouchat v. 7-Eleven Inc
(Garbis)

COPYRIGHT INFRINGEMENT. Whether plaintiff's claims are
barred by res judicata and collateral estoppel.

04-2562
Stone v. Duke Energy Corp
(Mullen)

CIVIL. Whether district court properly dismissed
whistleblower action under the Sarbanes-Oxley Act.

04-2166 (L), 04-2213
Network Computing v. Cisco Systems, Inc
(Anderson)

UNFAIR TRADE PRACTICES. Propriety of summary judgment on
unfair trade practices and fraud claims.

04-2505
Eddy v. Waffle House Inc
(Norton)

CIVIL RIGHTS. Challenge to summary judgment on claims
arising out of alleged racial discrimination at restaurant;
challenge to exclusion of evidence of other complaints
against restaurant chain.

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

WEDNESDAY, SEPTEMBER 21, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
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(09/19/2005 - 09/22/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-2369

Baqir v. Principi
(Thornburg)

EMPLOYMENT DISCRIMINATION. Whether summary judgment was proper for Title VII and age claims; whether there was direct evidence of age discrimination.

04-2253

Obioha v. Gonzales

IMMIGRATION. Whether this Court lacks jurisdiction to review the denial of petitioner's application for cancellation of removal pursuant to 8 U.S.C. Section 1252(a)(2)(B)(i)(2000).

05-1001

Hackworth v. Commissioner, IRS

TAX. Whether taxpayer is entitled to a deduction for illegal gambling proceeds which were forfeited to the state.

04-2177

Imaging Center Inc v. Western Maryland Hea
(Nickerson)

ANTITRUST. Challenge to summary judgment in action alleging group boycott and unfair competition in radiology services.

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

WEDNESDAY, SEPTEMBER 21, 2005

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

NATURE OF CASE

04-2311

Cincinnati Ins Co v. Dynamic Development
(Beaty)

SURETY. Whether district court erred in refusing to
instruct jury on alternate theory of negligence.

04-2500

Miles v. Dell, Incorporated
(Lee)

TITLE VII. Whether the district court erred in granting
summary judgment on Miles' gender and pregnancy
discrimination claims; other issues.

04-2048

Twin City Fire Ins v. Ben Arnold Sunbelt
(Anderson)

INSURANCE. Whether insurer's issuance of reservation of
rights letter identifying both covered and uncovered claims
creates conflict of interest entitling insured to counsel
of its choosing.

04-2509

Dogwood Realty Inc v. Goodwin
(Dohnal)

CIVIL RIGHTS. Whether magistrate judge erred in denying
relief on plaintiff's claims alleging discriminatory denial
and revocation of licenses for assisted living facilities.

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

WEDNESDAY, SEPTEMBER 21, 2005

UNITED STATES COURT OF APPEALS
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(09/19/2005 - 09/22/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-2146

Sun Chemicals Tradin v. SGS Control Svc
(Osteen)

JUDGMENTS. Whether, under North Carolina's one-satisfaction doctrine, arbitration award against joint tortfeasor extinguished claims against defendants even though defendants had not been able to litigate claims and arbitration award was only partial.

04-2567

Metalmecanica Del v. Kelleher
(Norton)

TORTS. Challenge to district court's setting aside verdict and granting judgment as a matter of law in conversion/unjust enrichment action.

04-2517

Permanent General v. Moore
(Herlong)

INSURANCE. Challenge to dismissal of declaratory judgment action filed to determine whether insurer delayed settlement in bad faith.

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.

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

WEDNESDAY, SEPTEMBER 21, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/19/2005 - 09/22/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

03-4829 (L), 03-4878 04-4117
US v. Karl E. Moore Sr.
(Jackson)

CRIMINAL LAW & PROCEDURE. Various issues stemming from jury convictions of drug conspiracy charges; validity of sentencing in light of Blakely v. Washington.

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.

04-4967
US v. Samuel Adams
(Friedman)

CRIMINAL LAW & PROCEDURE. Whether temporarily closed federal wildlife gravel road is "highway" under Virginia law.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
8:15 a.m.

THURSDAY, SEPTEMBER 22, 2005

REVD 8/17/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/19/2005 - 09/22/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-4736

US v. Algernon E. Monroe
(Copenhaver)

CRIMINAL LAW & PROCEDURE. Whether the district court erred by sua sponte and without notice imposing a special condition of supervised release; other issues.

05-4099

US v. Gregory Custis
(Davis)

SEARCH & SEIZURE. Whether warrant was supported by probable cause or falls within the "good faith" exception.

04-4543

US v. John Wilder
(Fox)

SENTENCING GUIDELINES. Whether waiver precludes appeal; whether court erred in imposing statutory minimum sentence without deciding whether safety valve provisions apply, 18 U.S.C. Section 3553(f); USSG Section 5C1.2.

05-4240

US v. Richard Rizzi
(Motz)

SEARCH & SEIZURE. Challenge to suppression of evidence seized after execution of search warrant at residence at 4:30 a.m.

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

THURSDAY, SEPTEMBER 22, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/19/2005 - 09/22/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1265

Wendt v. Leonard
(Howard)

ATTORNEY FEES. Whether attorney fees are available under 42 U.S.C. Section 1988 where underlying Section 1983 action dismissed for lack of jurisdiction.

04-4834

US v. Cisneros-Garcia
(Voorhees)

CRIMINAL LAW & PROCEDURE. Whether resident alien deprived of opportunity to apply for relief and appeal to BIA can collaterally challenge deportation under 8 U.S.C. Section 1326(d) during trial.

04-2021

Ham v. Washington Subrb San
(Titus)

TITLE VII. Whether appellants demonstrated that employer's proffered non-discriminatory reason for failing to promote is pretextual.

04-4484 (I), 04-4504

US v. Jenny Nunez
(Williams)

CRIMINAL LAW & PROCEDURE. Whether the court erred in reopening the evidence during jury deliberations; related issues.

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

THURSDAY, SEPTEMBER 22, 2005

REVD 9/21/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/19/2005 - 09/22/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1
Robinson v. Polk
(Fox)

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

04-7269
US v. Andrews
(Williams)

CIVIL/PRISONER. Whether BOP officers are exempt from liability under 28 U.S.C. Section 2680(c) of the FTCA.

04-4820
US v. Sean Fitzgerald
(Jackson)

SENTENCING GUIDELINES. Whether district court properly applied an enhancement for committing a new crime while released on bond.

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

THURSDAY, SEPTEMBER 22, 2005

REVD 9/13/05