

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/28/2004 - 10/01/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

04-12
Syriani v. Polk
(Mullen)

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

03-1374
Tewelde v. Ashcroft

IMMIGRATION. Whether the Board erred in finding that petitioner is a citizen or national of Ethiopia; other issues.

03-6717
Dragenice v. Ridge
(Blake)

IMMIGRATION. Whether this Court has jurisdiction to consider nationality claim in Section 2241 petition transferred by the district court.

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

TUESDAY, SEPTEMBER 28, 2004

REVD 9/27/04

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/28/2004 - 10/01/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

04-14

McHone v. Polk
(Beaty)

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

04-1138 (L), 04-1166

Stewart v. State of NC
(Howard)

SOVEREIGN IMMUNITY. Whether state defendants, by removing case from state to federal court, waived their defense of sovereign immunity against common law tort claims.

03-2155

Givens v. O'Quinn
(Jones)

CIVIL. Whether the district court properly dismissed prison guard's 42 U.S.C. Section 1983 (2000) action based on alleged hazing incident for failure to state a claim.

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

TUESDAY, SEPTEMBER 28, 2004

REVD 9/25/04

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/28/2004 - 10/01/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

02-1646 (L), 02-1795

Donald Cromer v. Kraft Foods Inc
(Horn)

CIVIL. Propriety of magistrate judge's pre-filing
injunction.

04-1082

Tatum v. RJ Reynolds Tobacco
(Tilley)

ERISA. Whether liquidation of assets under plan was
strictly a settlor function or a fiduciary function
subjecting the plan's administrator to a claim of breach of
fiduciary duties.

03-7016

US v. Bazilio
(Fox)

PRISONER. Whether the district court properly determined
that Bazilio's filing should be considered under Fed. R.
Civ. P. 60(b) rather than 28 U.S.C. Section 2255 (2000).

03-1645

Bovovo v. Ashcroft

IMMIGRATION. Whether the Board abused its discretion in
denying motion to reconsider summary dismissal of appeal.

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

TUESDAY, SEPTEMBER 28, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/28/2004 - 10/01/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1867
College Loan Corp v. SLM Corporation
(Cacheris)

HIGHER EDUCATION ACT. Whether defendants violated the Act's ten-day and single holder rules in processing student loan applications.

03-2299
Walsh v. Restoration Hardware
(Mullen)

PRODUCT LIABILITY. Whether retailer is entitled to the "sealed container" defense in the sale of allegedly defective Christmas tree lights.

03-2344
Renew v. General Electric Cap
(Wooten)

BANKRUPTCY. Whether former employees have laborers' liens under state law that are entitled to priority over claim of successor corporation.

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

TUESDAY, SEPTEMBER 28, 2004

REVD 9/27/04

UNITED STATES COURT OF APPEALS
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(09/28/2004 - 10/01/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-2209
Wofford v. Evans
(Kiser)

CIVIL RIGHTS. Whether due process rights were violated in the questioning of student by school officials and law enforcement regarding the presence of a gun on school property; qualified immunity.

04-1147
Westmoreland Coal Co v. Amick

BLACK LUNG BENEFITS. Whether ALJ impermissibly retroactively applied amended regulations; other issues.

04-1198
Phelps v. Saco Lowell
(Herlong)

ERISA. Whether employer breached a fiduciary duty by not fully funding plan, commingling funds and not providing accurate information as to the financial status of the plan.

04-1102
Hyatt v. Town of Lake Lure
(Thornburg)

CIVIL. Constitutionality of municipal land use regulation as applied to proposed construction of seawall and boathouse.

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

TUESDAY, SEPTEMBER 28, 2004

UNITED STATES COURT OF APPEALS
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(09/28/2004 - 10/01/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

02-4708 (L), 02-4734 04-4124 04-4241
US v. Judith Lugo
(Davis)

CRIMINAL LAW & PROCEDURE. Whether the loss was properly
computed under the sentencing guidelines; other issues.

03-7394
Draughn v. Johnson
(Smith)

HABEAS CORPUS. Whether trial counsel was ineffective in his
handling of defendant's request that he move to withdraw
from criminal case.

03-2470
Scottsdale Ins Co v. Lynnhaven Inlet Fish
(Stillman)

INSURANCE. Whether deterioration, decay and rotting of
subfloor constitutes a "collapse" under the terms of the
policy.

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

WEDNESDAY, SEPTEMBER 29, 2004

REVD. 9/27/04

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/28/2004 - 10/01/2004 Session)

NUMBER AND STYLE

03-1788 (L), 03-1918 03-2357
United Automobile v. Performance Friction

03-2034
Newsom v. Barnhart
(Howard)

03-2406
Wheatley v. Wicomico Cty MD
(Motz)

04-1162 (L), 04-1728
Hensley v. Intl Business
(Chambers)

NATURE OF CASE

LABOR. Challenge to back pay award to unlawfully discharged employees.

TITLE VII. Whether district court properly denied plaintiff's discovery request and granted summary judgment to employer.

EQUAL PAY ACT. Whether equally graded jobs are fair comparators; whether disparity in pay was the result of discrimination under Title VII.

ERISA. Challenge to summary judgment overturning denial of long-term benefits.

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

WEDNESDAY, SEPTEMBER 29, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
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(09/28/2004 - 10/01/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1178
Grecon Dimter Inc v. Horner Flooring Co
(Mullen)

CONTRACTS. Whether plaintiff waived contract's choice of foreign law provision by filing in state court and relying exclusively on state statutory and common law.

04-1111
Weldon v. Innovative Mgmt
(Hilton)

CONTRACTS. Challenge to summary judgment in action alleging breach of contract, quantum meruit, and misappropriation of trade secrets.

03-1883 (L), 03-1947
Gallina v. Mintz Levin Cohn
(Ellis)

TITLE VII. Challenge to the sufficiency of the evidence and jury instructions on retaliation claim; challenge to denial of punitive damages and front pay.

REVD 8/30/04

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

WEDNESDAY, SEPTEMBER 29, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/28/2004 - 10/01/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-2338
Cnty School Board v. Z.P.
(Williams)

EDUCATION. Challenge to district court's reversal of hearing officer's determination that student was not provided with a free, appropriate education under IDEA.

04-1236
CTI/DC Inc v. Selective Insurance
(Titus)

SURETY. Whether public construction project supplier properly notified general contractor of its claim against payment bond.

04-1129
UK Ministry v. Trimble Navigation
(Lee)

CONTRACT DISPUTES ACT. Whether a third party beneficiary under a federal procurement contract may sue directly in federal court.

03-2162
Burns v. Anderson
(Cacheris)

COMMERCIAL TRANSACTION. Whether a secured creditor complied with the state U.C.C. "disposition" provisions by transferring ownership of collateral to himself.

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

WEDNESDAY, SEPTEMBER 29, 2004

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

NATURE OF CASE

04-1115

Arnold v. CSX Hotels, Inc
(Faber)

ERISA. Challenge to summary judgment in action seeking post-retirement life insurance coverage.

03-2311 (L), 04-1044

Moore v. UNUM Provident Corp
(Wooten)

ERISA. Whether insured's death was the result of an accident under terms of the policy and recovery is not barred by the "controlled substance" rider; attorney fees.

04-1117 (L), 04-1170

Fanczi Screw Company v. ORIX Financial
(Wooten)

CONTRACTS. Whether waiver and choice of law provisions are applicable to action alleging breach of contract in financing of equipment purchase; whether defendant willfully violated state unfair trade practices law.

03-2091

Wall v. Fruehauf Trailer Svc
(Wooten)

EMPLOYMENT. Challenge to amendment of complaint, jurisdictional amount, and treble damages; attorney's fees and costs for violation of state Payment of Wages Act.

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

WEDNESDAY, SEPTEMBER 29, 2004

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

NATURE OF CASE

03-7781
US v. Charles W. McHan
(Voorhees)

SENTENCING. Whether appellant should be resentenced based upon amendment to commentary on USSG Section 5G1.3; other issues.

04-1067 (L), 04-1068 04-1069 04-1070 04-1071
Bessinger v. Food Lion LLC
(Anderson)

UNFAIR TRADE PRACTICES. Challenge to dismissal of action alleging that retailers removed plaintiffs' products from their stores due to plaintiffs' exercise of their First Amendment rights.

03-2425
Abromitis v. Continental Casualty
(Cogburn)

ERISA. Whether possible conflict of interest should have precluded summary judgment in action alleging wrongful denial of long-term disability benefits.

03-4975 (L), 03-4977
US v. Juvenile Male
(Bennett)

CRIMINAL LAW & PROCEDURE. Whether magistrate judge possessed subject matter jurisdiction under 18 U.S.C. Section 3401(g) to hear juvenile defendants' cases without certification pursuant to 18 U.S.C. Section 5032.

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

THURSDAY, SEPTEMBER 30, 2004

UNITED STATES COURT OF APPEALS
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(09/28/2004 - 10/01/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-4630
US v. Jimmy Husband
(Smith)

CRIMINAL. Whether the district court's instruction at the Rule 11 hearing that the defendant faced a statutory maximum of 20 years' imprisonment, when he in fact faced a maximum of 10 years, rendered the defendant's plea involuntary; other issues.

03-2318
Greenhouse v. MCG Capital Corp
(Brinkema)

SECURITIES. Challenge to dismissal of action alleging diminution of stock value due to misrepresentation of a material fact regarding a CEO.

03-2188
Glaser v. Enzo Biochem, Inc
(Lee)

SECURITIES. Challenge to dismissal of action alleging securities fraud concerning misstatements about corporation's scientific advances in gene therapy.

03-2172
Citicorp USA Inc v. Edwards
(Grimm)

ATTORNEY FEES. Whether the district court erred in reducing attorney's fees and expenses sought pursuant to loan agreement.

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

THURSDAY, SEPTEMBER 30, 2004

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

NATURE OF CASE

03-2446

Smith v. Isle of Wight Cnty
(Miller)

EDUCATION. Whether state statutory notice requirement for a claim under the Federal Rehabilitation Act violates the Supremacy Clause; challenge to summary judgment on Section 1983 claim.

03-2436

Argaw v. Ashcroft

IMMIGRATION. Whether the Board erred in treating lawful permanent resident as arriving alien on the ground that he committed a controlled substance offense; other issues.

04-1065

Smith v. Continental Ins Co
(Turk)

SECURITIES. Challenge to summary judgment and denial of class certification in action alleging fraudulent inducement to invest in unregistered securities.

03-4848 (L), 03-4895

US v. Collins
(Brinkema)

CRIMINAL LAW & PROCEDURE. Late disclosure of Brady material; failure to allege facts in indictment that increased sentencing guidelines range; reduction of criminal history at sentencing by disregarding previous DWI convictions.

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

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UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

NATURE OF CASE

03-2433
Harless v. CSX Hotels, Inc
(Chambers)

FEDERAL JURISDICTION. Whether plaintiff should be permitted to amend complaint to eliminate federal claims from the case; whether remaining claims are preempted by federal law.

04-1096
Waterman v. Batton
(Blake)

CIVIL RIGHTS. Challenge to denial of qualified immunity to law enforcement officers for shooting death.

03-2526
Stup v. UNUM Life Insurance
(Quarles)

ERISA. Challenge to summary judgment awarding claimant long-term disability benefits.

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

THURSDAY, SEPTEMBER 30, 2004

REVD. 9/27/04

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

NATURE OF CASE

04-4044

US v. John W. Beard
(Spencer)

CRIMINAL LAW & PROCEDURE. Challenge to granting of motion to suppress for failure to comply with Miranda v. Arizona.

03-4111

US v. Tyrone M. Servance
(Garbis)

FOURTH AMENDMENT. Whether magistrate was neutral and detached when he assisted in writing affidavit supporting search warrant; other issues.

03-2082

Lu v. Zurich American Ins
(Messitte)

INSURANCE. Challenge to award of only nominal damages for insurer's failure to consult with insured prior to settling claim against him.

03-2163

Goldstein v. ColomboBank F.S.B.
(Quarles)

BANKRUPTCY. Whether bank is entitled to a credit for money returned directly to creditors as a result of debtor's fraud.

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

THURSDAY, SEPTEMBER 30, 2004

REVD 9/25/04

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

NATURE OF CASE

03-4511 (L), 03-4518 03-4519
US v. William Parros
(Legg)

SENTENCING. Propriety of district court's re-sentencing after remand under United States v. Cotton, 535 U.S. 625 (2002).

03-6586
James v. Harrison
(Wooten)

HABEAS CORPUS. Whether counsel's absence during jury selection violated petitioner's sixth amendment right to counsel.

02-4576
US v. James Anthony Savage
(Osteen)

CRIMINAL. Did the district court's instructions to the jury regarding money laundering amount to plain error, and if so, whether such error seriously affects the fairness, integrity or public reputation of the judicial proceedings.

04-1305 (L), 04-1306
State of NC v. McGuirt
(Mullen)

CIVIL PROCEDURE. Challenge to dismissal with prejudice and denial of motion to amend complaint.

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

FRIDAY, OCTOBER 1, 2004

REVD 9/27/04

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/28/2004 - 10/01/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

01-4633
US v. Darrell Pendergraph
(Osteen)

CRIMINAL LAW & PROCEDURE. Whether trial court improperly interfered with defendant's testimony at trial and improperly denied judgment of acquittal; other evidentiary and sentencing issues.

03-1433
Pinney v. Nokia Inc
(Blake)

TELECOMMUNICATIONS ACT. Whether federal law preempts state law actions alleging health risks from wireless phone use.

03-2504
Deutsche Post Global v. Conrad
(Motz)

EMPLOYMENT CONTRACTS. Challenge to summary judgment in action seeking to enforce a non-compete restrictive covenant.

04-1351
Brown v. Ryan's Family Steak
(Duffy)

ARBITRATION. Challenge to order denying motion to compel arbitration.

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

FRIDAY, OCTOBER 1, 2004

UNITED STATES COURT OF APPEALS
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Richmond, Virginia
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NUMBER AND STYLE

03-4599
US v. Stephen G. Bundy
(Jones)

04-1222 (L), 04-1339
NLRB v. Media General Opera

NATURE OF CASE

CRIMINAL. Issues arising under Fifth Amendment and
United States v. Freed, 401 U.S. 601 (1971); other issues.

LABOR. Whether company violated the NLRA by suspending and
terminating disruptive employee.

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

FRIDAY, OCTOBER 1, 2004

REVD 9/21/04

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/28/2004 - 10/01/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-4719
US v. William Turner
(Jones)

CRIMINAL LAW & PROCEDURE. Whether evidence was sufficient to convict of violation of 18 U.S.C. Section 2113(e); other issues.

04-4052
US v. Grayson Ramsburg Jr.
(Blake)

SEARCH & SEIZURE. Whether search warrant affidavit that alleges that individual subscribed to child pornography websites establishes probable cause to search home and seize computer equipment.

03-4215
US v. Lafayette McKoy
(Nickerson)

CRIMINAL LAW & PROCEDURE. Challenge to preindictment delay and admission into evidence of a deceased coconspirator's grand jury testimony.

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

FRIDAY, OCTOBER 1, 2004

REVD 9/27/04

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

NATURE OF CASE

04-4091 US v. Luis Perez (Haden)	SEARCH & SEIZURE. Challenge to sufficiency of affidavit supporting search warrant.
03-4761 US v. Jesse B. Pollard (Lee)	CRIMINAL LAW & PROCEDURE. Whether the right to counsel applies where defendant is sentenced to probation.
04-4032 US v. Steve Fullilove (Perry)	SENTENCING. Whether defendant should be held accountable for quantity of drugs removed by law enforcement from package prior to delivering it to him.

PANEL V
COURTROOM FIVE
United States Courthouse Room 103
8:15 a.m.

FRIDAY, OCTOBER 1, 2004

REVD. 9/30/04