U.S. Supreme Court RUNDOWN

This year's U.S. Supreme Court term has been significant for business. The Court has issued opinions expanding public access to potentially sensitive company documents, expanding manufacturers' liability in product-liability suits, changing the landscape of employer liability in employee discrimination suits, and narrowing the field of potential defendants in securities suits.

6 RECENT DECISIONS THAT COULD AFFECT YOUR BUSINESS

PRIVACY In *FCC v AT&T*, the Court held that a corporation does not have a right of "personal" privacy such that it can object to a Freedom of Information Act (FOIA) request on the ground that the request seeks documents obtained by a government agency that are embarrassing or sensitive to the corporation. The case eliminates a protection for companies following a government investigation – sensitive internal emails, for example, now may be fair game to the public with a simple FOIA request.

REGULATORY In *Williamson v Mazda Motor*, the Court revived an accident victim's suit against Mazda for failing to install lap-and-shoulder seatbelts – as opposed to lap belts only – in the middle seats of its minivans. Mazda's lap belts fully complied with federal safety standards, but the Court nonetheless held that those standards did not preempt state tort suits like the accident-victim plaintiff's. The case has potentially significant implications for automobile manufacturers and suppliers and for companies in other heavily regulated industries. Even full compliance with federal regulations may not protect a company from suit.

EMPLOYMENT In *Wal-Mart v Dukes*, the Court held "in one of the most expansive class actions ever" that a class of approximately 1.5 million current and former female Wal-Mart employees could not collectively sue the company for alleged gender discrimination. The Court held that the various individuals in the class could not show that their claims involved sufficiently common elements of law or fact to bring a single class action against the company. The case is a significant victory for employers nationwide, who otherwise might have faced similar mass discrimination suits in the future.

The Court held in *Staub v Proctor Hospital* that an employer can be held liable for employment discrimination based on the discriminatory motives of a supervisor who influenced, but did not make, the decision to terminate an employee. The case is significant for employers because some courts had previously held that to prove discrimination an employee generally had to show animus on the part of the supervisor who made the ultimate termination decision. The case therefore potentially expands liability for employers based on the actions of lower-level managers and supervisors.

In *Kasten v Saint-Gobain*, the Court held that an employee who was retaliated against for making workplace-safety complaints may sue even where the employee did not make the complaints in writing. The case is significant for employers because it will likely expand the number of retaliation suits. Under *Kasten*, a disgruntled terminated employee could claim after the fact that he or she made an oral complaint to a supervisor prior to termination.

SECURITIES In *Janus Capital Group, Inc. v First Derivative Traders*, the Court rejected a claim seeking to impose liability on an investment advisor that was significantly involved in preparing a mutual-fund prospectus that allegedly contained false and misleading statements. The Court held that only the "maker" of the statements, defined as the entity with "ultimate authority" over the statements, may be held primarily liable under Securities and Exchange Rule 10(b)-5. The case is significant because it potentially limits exposure for advisors and entities that contribute to statements in connection with securities transactions but do not have ultimate authority over their contents, further narrowing the field of potential defendants in a trend started with the *First Chicago* case.

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MICHIGAN SUPREME COURT

Recent changes in the make-up of the court

The Michigan Supreme Court has undergone dramatic changes in recent times. It is important to be aware of those changes, and to craft your appeal arguments accordingly.

Over the course of his 11 years on the Michigan Supreme Court, Justice Clifford Taylor, who recently joined Miller Canfield as Of Counsel in the appellate section of the Litigation and Trial Group, was the intellectual leader of what came to be known as the "Taylor Court," one that many described as the finest Court in the country. When he left the Court in 2009, the philosophy of the Court shifted, but in 2011 it returned to a more conservative majority with the addition of Justices Mary Beth Kelly and Brian Zahra.

No one knows the personnel and philosophies on the Court better than Justice Taylor. Having participated in hundreds of Michigan Supreme Court weekly conferences and studied many years of Court of Appeals opinions, Justice Taylor has keen insight into the thinking of the Michigan Supreme Court Justices and Court of Appeals Judges on the myriad significant issues that come before those courts. Those insights will be invaluable on any appeal.