Litigation Insights

JULY 2024

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Moore's Federal Practice

—TOP THREE HIGHLIGHTS

The following three summaries are this month's Editor's Top Picks from the dozens of decisions added to Moore's Federal Practice and Procedure.

BIFURCATION

Bifurcation on Court's Own Motion

Craddock v. FedEx Corp. Servs.

102 F.4th 832, 2024 U.S. App. LEXIS 12290 (6th Cir. May 22, 2024)

The Sixth Circuit holds that a court may bifurcate a trial on its own motion to promote convenience or avoid prejudice, or for reasons of expedition and economy, despite a lack of agreement by the parties.

JUMP TO SUMMARY

DISCOVERY

Expert Witness Disclosures

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RELIEF FROM JUDGMENT

Postjudgment Amendment of Pleadings

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Citing Moore's and "inadvertent" and "gratuitous" dictum in an earlier decision suggesting that Rule 60(b)'s standard could be collapsed with Rule 15(a)'s standard for pleading amendments, the Fourth Circuit clarified that a district court may apply Rule 15(a)'s standard to a request for leave to amend only if a postjudgment motion to vacate is brought under Rule 59(e), but not if it is brought under Rule 60(b).

JUMP TO SUMMARY

Native American and Tribal Law on LexisNexis

Native American Law is, for many people, a lesser known aspect of American jurisprudence. And even if you are an expert in the area, knowing what is available on LexisNexis may also be a challenge. This note will discuss the relevant content found on Lexis+, as well as best practices for locating that content. Along the way, it will touch on two general fields of Native American law:

- Tribal law – the law created by the tribe or nation itself, and
- Federal or State Law that governs or is specifically about tribes and tribal members such as Title 25 of the United States Code.

Primary Law – Tribal Codes and Tribal Courts

LexisNexis has 96 different tribal codes. To see a full list of these it is best to go to Explore, click on the Practice Area tab, and then choose Native American law. Then, click on Individual Tribal Codes (blue arrow, below) you'll see a list of all 96. Clicking on any will allow you to search that specific code. Our tribal codes support the same Table of Contents browsing and search methodology as the United States Code or state codes

As with the codes, clicking on Tribal Case by Court (yellow arrow, above) will display a list of covered courts. LexisNexis offers opinions from over 110 Tribal courts from over 85 tribes. These include both trial and appellate level courts. And happily, these opinions are fully included in Shepard's so you can check their appellate and citing history.

Primary Law – Federal Material

Much of the federal authority over Native Americans and their tribes is found in the United States Code and the Code of Federal Regulations. In each, Title 25 is the relevant title. But one must also look at administrative bodies to get the bigger picture of the law. The same Native American practice area page mentioned above also lists some of the most important:

First on the list are ***Native American Solicitor's Opinions***, a digital representation of the two-volume print set "Opinions of the Solicitor, Department of the Interior, Native Americans." While the Solicitor's opinions are not binding on courts, they are authoritative within the Department of the Interior and play a crucial role in the administration and interpretation of laws affecting Indian tribes. These opinions help shape policies and decisions that impact the governance and rights of Indian tribes under U.S. Federal jurisdiction. As mentioned, this file contains the historic collection through 1974. To see more recent opinions, you will want to use the ***Department of Interior Solicitor's Opinions.***

Also on the list are the Department of Interior Board of Indian Appeals Decisions. This board is an appellate review body with the authority to issue final decisions for the Department of the Interior in appeals involving Indian matters. They may review cases dealing with the following:

- Appeals from a variety of decisions rendered by BIA officials, including but not limited to decisions regarding the use of Indian trust lands, and mineral resources;
- Recognition of tribal officials for government-to-government relations between the Department and a tribe;
- Appeals from decisions from the Office of Hearings and Appeals Probate Hearings Division;
- Appeals from decisions of agency officials and administrative law judges under the Indian Self-Determination and Education Assistance Act.

For housing issues there is the ***HUD NAHASDA Program Guidance***. This file contains program guidance documents and opinions issued by Office of Native American Programs under the Native American Housing Assistance and Self Determination Act of 1996, with coverage from 1997 forward.

For other useful sources, use the Explore menu Sources tab (see below) to conduct a search by name. A search for DOI BIA will bring back 18 different Bureau of Indian Affairs sources such as BIA Handbooks, Gaming Compacts and Decisions, Energy And Mineral Development Leases, and more. A search for NIGC will find all of the National Indian Gaming Commission sources.

Primary Law – Treaties

In 1871 the Indian Appropriations Act ended the use of treaties as a means of governing the relationship between tribal governments and the United States. However, that act also explicitly stated that the rights

and duties listed within these treaties would continue in force. LexisNexis has several sources of Indian treaties. One is the ***Statutes at Large*** where you can find many (but not all) Indian treaties in PDF files. You can conduct a search here as you normally would. However, since the actual text is in PDF files, some of which are older PDFs, we suggest simpler search such as the tribe name and the word "treaty". You may retrieve a document with its Stat cite if you know it, e.g., 15 Stat 619.

As mentioned above, the Statutes at Large do not contain every Indian treaty. There is a historic printed collection called Indian Affairs: Laws and Treaties, by Charles Kappler. Volume 2 of the collection contains over 300 treaties, including many missing from the Statutes at Large. These can be found in a LexisNexis file called ***Native American People Treaties, Ratified and Unratified***. These treaties are in "regular" LexisNexis text, allowing you to use as simple or complex search as you prefer.

Secondary Law

LexisNexis provides several valuable Native American law treatises and journals. First and foremost of these is ***Cohen's Handbook of Federal Indian Law***. This is an updated and revised edition of what has been referred to as the "bible" of federal Indian law. This Matthew Bender LexisNexis exclusive publication provides general overviews of the subject and in-depth study of specific areas. A few current topics include Indian gaming and taxation; history and structure of tribal governments and tribal law; tribal and individual Indian property rights, including intellectual property rights, water rights, and hunting, fishing, and gathering rights; and economic development issues.

Other titles include:

- ***American Indian Law Review***. Devoted exclusively to Indian law, this publication provides a forum for scholarly writing in the areas of the law that particularly affect American Indians and their unique relationship with the federal and state governments.
- ***Restatement of the Law, The Law of American Indians - Official Text***. This is the American Legal Institutes first project restating the law of American Indians
- ***Tribal Law Journal***, with articles discussing internal indigenous laws.

Pinning Sources and Recently Viewed Sources is Now Available in Lexis+

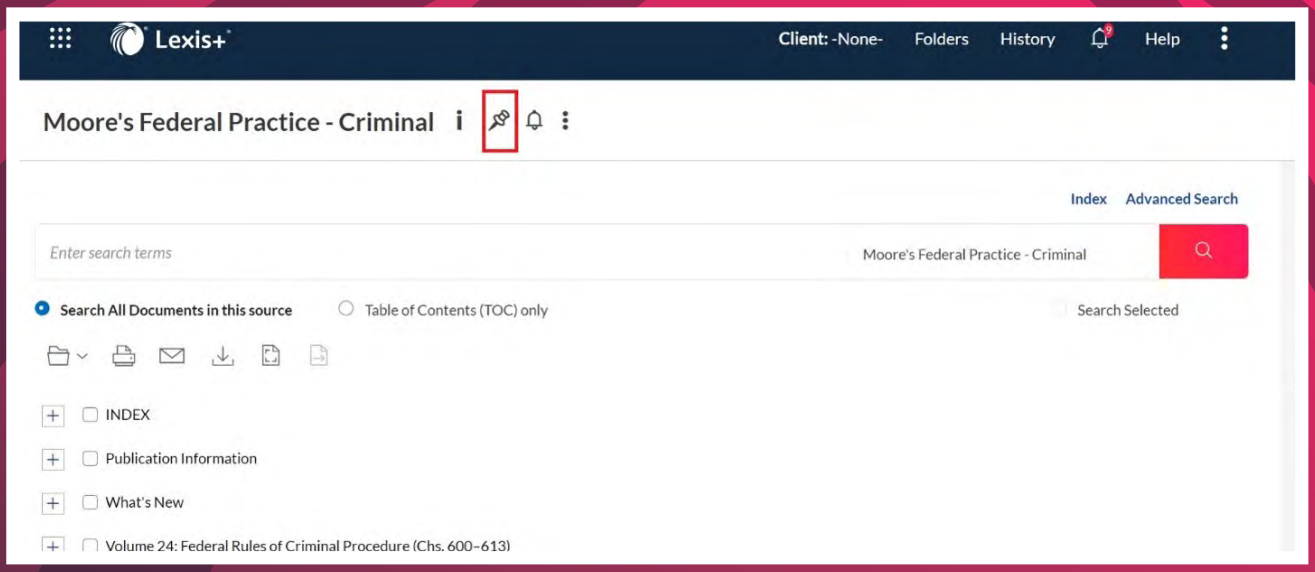
By: Marisa L. Beirne

Now users can pin sources and recently viewed sources on Lexis+. Users asked and LexisNexis listened! User feedback indicated that it was difficult to quickly access their most frequently used content sources from the Lexis+ landing page.

To solve this pain point, Lexis+ has added the ability to pin **up to 30** favorite sources and see the **last 5** recently viewed sources under the Sources tab. This new enhancement will allow end users to customize their sources to increase productivity throughout their legal research.

This new pinning functionality allows you to customize the Sources tab with the sources you use most often. Moreover, pinned sources can easily be edited and deleted as the end user's frequently used sources change. Follow the instructions below to begin pinning your most used sources!

1. When an end user locates a Source that she would like to pin to her Lexis+ Landing Page, all she must do is click the pin icon at the top of the screen (seen in red below).



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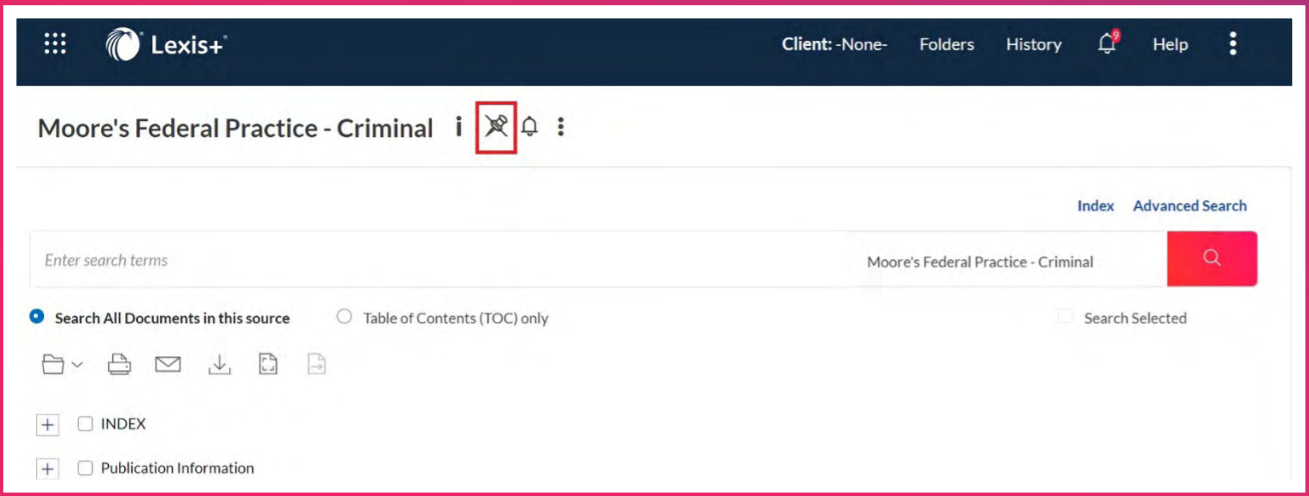
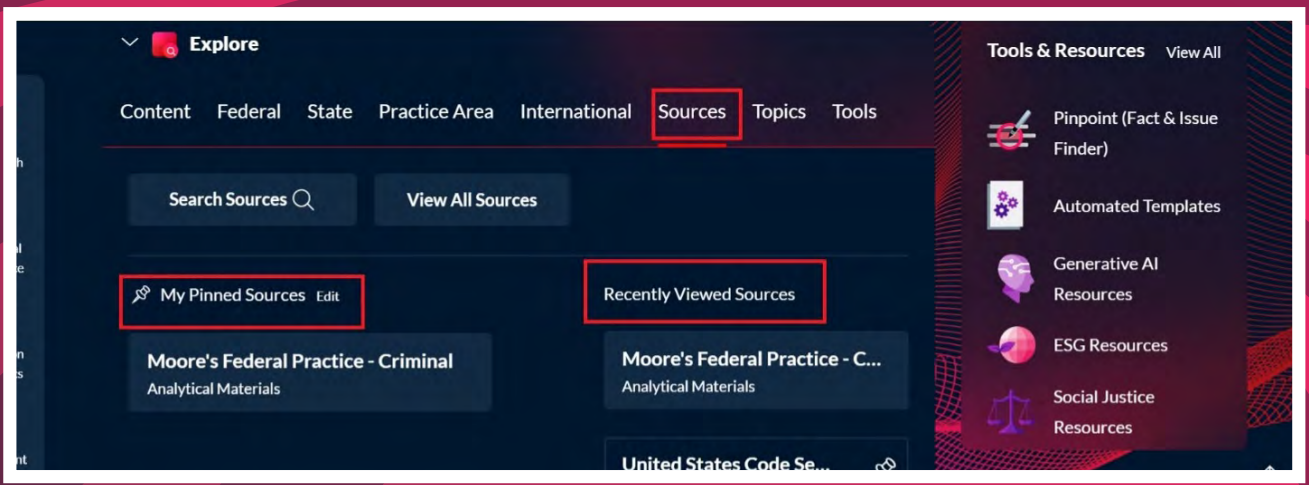
2. Users will know that they have already pinned a specific Source if the pin icon has a line through it (as shown in red below).



3. As stated above, end users can pin up to 30 sources. End users can locate their sources on the Lexis+ Landing Page under the "Sources" tab. End users can edit their pinned sources from this page as well. Additionally, under the Sources Tab, end users can access 5 of their most recently view sources. (all seen in red below).



End users pinned sources will always appear to the right of the Sources tab for one-click access now! This new Lexis+ enhancement is one more enhancement provided to end users to make their research experience as customized and productive as possible.

If you have any questions or need any further training, do not hesitate to reach out to your Dedicated Solutions Consultant!

BIFURCATION

Bifurcation on Court's Own Motion

Craddock v. FedEx Corp. Servs.

102 F.4th 832, 2024 U.S. App. LEXIS 12290 (6th Cir. May 22, 2024)

The Sixth Circuit holds that a court may bifurcate a trial on its own motion to promote convenience or avoid prejudice, or for reasons of expedition and economy, despite a lack of agreement by the parties.

Background. FedEx Corporate Services terminated Yvonne Craddock's employment following a workplace altercation. FedEx alleged that Craddock confronted and pushed another employee. Craddock, an African American, sued FedEx, alleging that she was terminated because of her race in violation of Title VII of the Civil Rights Act of 1964.

FedEx moved for sanctions against Craddock for failure to meet deadlines to produce financial information, such as bank statements or tax returns reflecting her sources of income since leaving FedEx, despite FedEx's repeated requests for this information; also, the evidence she had provided contained conflicting information regarding her damages. At a September 2022 pretrial conference, the court delayed the trial date until November 2022. At that conference, Craddock was ordered to supplement her discovery responses regarding damages by October 7.

FedEx renewed its motion for sanctions in October 2022, arguing that "[t]o date, FedEx has not been provided the information that it needs to evaluate and defend against a claim by Craddock for economic damages," and that "Craddock's continued failure to comply with discovery obligations" warranted dismissal with prejudice under Federal Rule of Civil Procedure 41(b) or a prohibition on Craddock presenting any evidence of alleged damages at trial. During a pretrial conference on November 4, the court expressed its concerns with Craddock's failure to produce the relevant financial records, despite FedEx "asking for this information now for years," and concluded that sanctions were appropriate. As to dismissal, the court stated, "it's a very close question about dismissing the case outright," declined to resolve the issue of what sanctions to issue, and converted the November trial date to a status conference. At that conference, the court expressed concern that it was "struggling . . . with how we can proceed in this case" because Craddock still had not provided FedEx with accurate financial information. The court explained that it "could dismiss this case on the basis of the plaintiff's failure to prosecute her damages claims"; however, because "both sides have everything they need to" litigate "the question of liability," the court could bifurcate the trial and present only the issue of liability to the jury, with the court deciding the issue of damages, if needed. When the court told Craddock that she could choose between dismissal of her case for failure to prosecute or agree to bifurcate the trial, Craddock chose bifurcation.

Following the pretrial conference, the court bifurcated the trial "[t]o avoid unfair prejudice to Defendants and misleading the jury on the issue of damages," ordering presentation of the issue of liability to the jury and reserving the issue of damages, if necessary, for a bench trial. Additionally, the court cautioned Craddock that if her pattern of providing incomplete and inaccurate responses about her financial status and her claim for damages continued, the Court might dismiss the case and impose other sanctions.

At a final pretrial conference, Craddock's counsel objected to bifurcation, stating that the plaintiff didn't really have "much of a choice." The court emphasized that Craddock's failure to sufficiently prosecute her case could "easily" justify dismissal of the action, noting that it raised the possibility of bifurcation because it was trying to give Craddock an opportunity to be heard.

The jury returned a verdict finding that the termination was not based on race discrimination. Craddock appealed on several grounds, including the court's requirement that she bifurcate the trial or face dismissal of her claims.

District Court Did Not Abuse Its Discretion in Bifurcating Case. Under Federal Rule of Civil Procedure 42(b), a court may bifurcate a trial on its own motion. Pursuant to the rule, a district court may bifurcate a trial to promote convenience or avoid prejudice, or in service of expedition and economy. The decision to bifurcate is dependent on the facts and circumstances of each case. So far as practicable, the trial court's decision to bifurcate proceedings should occur prior to trial.

Federal Rule of Civil Procedure 41(b) provides for involuntary dismissal of a plaintiff's entire case or individual claims for failure to prosecute or comply with court orders or procedural rules. Dismissal under this rule operates as an adjudication on the merits. Courts have found that dismissal with prejudice is a harsh remedy not to be employed easily. Nevertheless, this most severe sanction must remain available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter others who might be tempted to engage in such conduct in the absence of such a deterrent.

After Craddock responded to FedEx's discovery requests with incomplete financial information, FedEx attempted unsuccessfully to depose Craddock three times. On November 3, barely a week before the then-mid-November trial date, Craddock sent FedEx additional financial information to supplement her responses to interrogatories. This information was incomplete, as it did not include information on Craddock's proceeds from "flipping" houses through her real estate business, which FedEx later located through public records. For years, Craddock failed to provide FedEx with complete and accurate disclosures, which were necessary for Craddock to prove and for FedEx to defend against claimed damages.

The Sixth Circuit found that, in light of Craddock's persistent failure to abide by her disclosure obligations, the years-long discovery in the case, and the need to efficiently resolve the matter, the court's decision to bifurcate the trial advanced convenience, avoided prejudice, and moved toward resolving the case in an expeditious and economical manner. The district court also ordered the bifurcation prior to trial, in accordance with "sound judicial practice." Therefore, the district court's decision to bifurcate the case was not an abuse of its discretion.

The appellate court rejected Craddock's argument that she "had no choice" but to agree to bifurcation because otherwise, she faced dismissal with prejudice. Because the district court could have rendered its bifurcation decision without the parties' agreement, it did not abuse its discretion by taking the extra step of obtaining the parties' responses to that action.

The court also discounted Craddock's argument that bifurcation of the trial forced her to relinquish her right to have a jury determine the amount of damages she could receive had she proven FedEx's liability. The court acknowledged that when a plaintiff seeks compensatory or punitive damages in a Title VII suit, he or she has the right to have a jury decide any fact necessary to determining the amount of damages. Crucially, though, for Craddock to succeed on a claim that the district court violated her right to a jury determination of damages, there must have been a determination of liability and resulting damage. The district court did not conduct a bench trial on damages because, as the jury determined, FedEx was not liable to Craddock. Because the district court did not abuse its discretion in bifurcating the trial, and Craddock did not argue that the court's proposed choice prejudiced her during the liability trial, she could not show that she was entitled to relief regarding damages when the jury found against her on liability.

Conclusion. For these reasons, the Sixth Circuit affirmed the district court's decision to bifurcate the trial.

DISCOVERY

Expert Witness Disclosures

KOKO Dev., LLC v. Phillips & Jordan, Inc.

101 F.4th 544, 2024 U.S. App. LEXIS 11112 (8th Cir. May 7, 2024)

The Eighth Circuit holds that witnesses presenting expert testimony must be specifically identified as witnesses presenting expert testimony, not as fact witnesses under Rule 26(a).

Background. In 2014, KOKO Development was created to develop Commons, a 180-acre tract of undeveloped land in Watford City, North Dakota. To subdivide it and sell lots with infrastructure for houses, KOKO contracted with DW Excavating and Phillips & Jordan, Inc. Phillips & Jordan subcontracted part of its work to BKW, Inc. To inspect and supervise the work of all parties, KOKO hired Thomas Dean & Hoskins, Inc. (TD&H).

After the end of the North Dakota oil boom, the Commons project sat dormant and without maintenance. When the price of oil recovered—and after some defendants completed some of their tasks—KOKO sought to complete the project and sell the lots. However, the lots had numerous issues, requiring KOKO to spend more money to prepare them for sale. KOKO sued the defendants for breach of contract and negligence. TD&H removed the case to federal court.

KOKO served its Rule 26(a) disclosures, identifying only 12 fact witnesses. The district court set a deadline for disclosing expert witnesses. KOKO did not disclose expert witnesses by the deadline, ask for an extension, or even indicate an intent to disclose expert witnesses. All defendants moved for summary judgment, arguing that to prove negligence and breach of contract, KOKO needed expert testimony, because the issues were complex and highly technical. KOKO responded it sought to elicit, from three fact witnesses, testimony "that is expert in nature."

The district court granted summary judgment, finding that KOKO "clearly failed to meet the requirements of Rule 26 by not disclosing the witnesses as experts and not disclosing their opinions." The district court ruled that the three witnesses were disclosed as fact witnesses, not expert witnesses, and thus "precluded from testifying as expert witnesses." The district court found that expert testimony was necessary for KOKO to prove its case. KOKO appealed, arguing that the district court erred in finding (1) KOKO did not properly disclose witnesses providing expert testimony and (2) expert testimony was necessary for the case.

District Court Properly Excluded Undisclosed Experts. The Eighth Circuit explained that Federal Rule of Civil Procedure 26 requires litigants to disclose information about their witnesses. Specifically, parties must disclose the identity of any witness a party may use at trial to present expert testimony [Fed. R. Civ. P. 26(a)(2)]. Under Rule 26(a)(2)(C), expert witness disclosures must contain (1) "the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705"; and (2) "a summary of the facts and opinions to which the witness is expected to testify."

KOKO disclosed the identities of 12 fact witnesses, three of whom it claimed could provide expert testimony, though it never disclosed them as expert witnesses. Nor did it provide the required information about which the witnesses were expected to testify. The appellate court observed that, under a plain reading of the rule, witnesses presenting expert testimony must be specifically identified as witnesses presenting expert testimony—not as fact witnesses. Disclosing a person as a witness and disclosing a person as an expert witness are two distinct matters. Thus, although the witnesses could still testify as fact witnesses, they could not

testify as experts. Opposing parties need knowledge of what an expert will testify to, in order to conduct their own discovery and proffer responsive experts. That is why failure to comply with Rule 26(a)(2)(A) leads to the exclusion of expert testimony by a witness not identified as an expert. In fact, a district court has discretion to exclude a witness's testimony if not properly disclosed, unless "the failure was substantially justified or is harmless" [see Fed. R. Civ. P. 37(c)(1)].

KOKO contended that the lack of disclosure was harmless because the witnesses would be testifying as to their personal knowledge. The court disagreed, noting that the expert witness disclosure requirements would be rendered meaningless if a party could ignore them and then claim that the nondisclosure was harmless because the testimony did not require expertise. Furthermore, in 2000, Federal Rule of Evidence 701 was amended "to eliminate the risk that the reliability requirements set forth in Rule 702 will be evaded through the simple expedient of proffering an expert in lay witness clothing" [see Fed. R. Evid. 702, Advisory Committee Note of 2000]. Federal Rule of Evidence 701(c) provides that lay testimony is "not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Under the amendment, a witness's testimony must be scrutinized under the rules regulating expert opinion to the extent that the witness is providing testimony based on scientific, technical, or other specialized knowledge within the scope of Rule 702. Occurrence witnesses, including those providing "lay opinions," cannot provide opinions based on scientific, technical, or other specialized knowledge within the scope of Rule 702 [see Fed. R. Evid. 701]. Thus, a witness is providing expert testimony if the testimony consists of opinions based on scientific, technical, or other specialized knowledge, regardless of whether those opinions were formed during the scope of interaction with a party prior to litigation.

The Eighth Circuit rejected KOKO's request to reclassify the three witnesses as "hybrid witnesses"—an issue raised for the first time on appeal. A federal appellate court generally will not consider an issue not ruled on in the lower court. Under KOKO's theory, a hybrid witness could serve both as a fact witness and provide expert testimony. The court noted that it has never even used the term "hybrid witness." Because KOKO did not raise this issue below, the court denied KOKO's request to recognize witnesses providing expert testimony who do not satisfy the requirements of Rule 26(a)(2).

Expert Testimony Needed to Prove Plaintiff's Claims. KOKO argued that its negligence and breach-of-contract claims did not require expert testimony because the issues were not beyond common knowledge or lay comprehension. The Eighth Circuit agreed with the district court that both the negligence and breach-of-contract claims required expert testimony. While there generally is no requirement in ordinary negligence cases for expert testimony to establish the elements of the tort, KOKO's negligence claim required complex infrastructure and engineering analysis. Similarly, the alleged 15 breaches of its agreements with the defendants also involved technical issues that required an understanding of infrastructure and engineering. The court found that determining which party was responsible for each allegation in the list and how each of the alleged wrongdoings damaged KOKO was beyond the ordinary knowledge, comprehension, and experience of jurors. Thus, in its broad discretion, the district court found expert testimony was required for the breach-of-contract claim, and the appellate court agreed.

Conclusion. Therefore, the Eighth Circuit affirmed the judgment, finding that the district court properly excluded expert testimony for failure to disclose any expert witnesses. Further, because expert testimony was necessary to prove the plaintiff's claims, the district court properly granted summary judgment to the defendants.

RELIEF FROM JUDGMENT

Postjudgment Amendment of Pleadings

Daulatzai v. Maryland

97 F.4th 166, 2024 U.S. App. LEXIS 6623 (4th Cir. Mar. 20, 2024)

Citing Moore's and "inadvertent" and "gratuitous" dictum in an earlier decision suggesting that Rule 60(b)'s standard could be collapsed with Rule 15(a)'s standard for pleading amendments, the Fourth Circuit clarified that a district court may apply Rule 15(a)'s standard to a request for leave to amend only if a postjudgment motion to vacate is brought under Rule 59(e), but not if it is brought under Rule 60(b).

On September 26, 2017, Anila Daulatzai was forcibly removed from a Southwest Airlines flight preparing to take off from Baltimore, Maryland, en route to Los Angeles, California. Maryland Transportation Police physically removed Daulatzai when several flight attendants became unwilling to fly with her after they learned she was allergic to dogs and there were two dogs on the flight. Daulatzai was arrested and charged with several counts, including disorderly conduct and resisting arrest. With Daulatzai's consent, a Maryland state-court judge found her guilty of disorderly conduct on an agreed statement of facts and placed her on six months' unsupervised "probation before judgment," which under Maryland law is only permitted when a defendant pleads guilty or nolo contendere or is found guilty of a crime.

Approximately three years after the incident, in September 2020, Daulatzai filed suit against Southwest Airlines and Maryland for common-law battery and negligence. Daulatzai alleged that she had been removed from the flight on the mistaken belief that her allergies were life-threatening and that the state police used unnecessary force when they removed her from the plane. The defendants moved to dismiss her complaint.

Daulatzai retained a new attorney, who filed an amended complaint that added federal-law violations. Based on the addition of the federal-law claims, the airline and the state removed the case to the U.S. District Court for the District of Maryland and again filed motions to dismiss. Instead of responding to the motion to dismiss, Daulatzai filed a motion for leave to file a Second Amended Complaint. The district court granted her motion. Daulatzai then filed her Second Amended Complaint (her third complaint) and alleged six claims arising under state and federal law. Daulatzai also filed a motion for more time to respond to the defendants' motion, which the court granted, but she never did respond.

The district court granted the defendants' unopposed motion to dismiss, entered a final judgment dismissing Daulatzai's Second Amended Complaint, and directed the clerk of court to "close the case." Daulatzai filed a timely appeal. While her appeal was pending, Daulatzai filed a motion in the district court under Rule 60(b) for relief from the district court's final judgment and asked the court to grant her leave under Rule 15(a)(2) to file a Third Amended Complaint. The district court denied Daulatzai's Rule 60(b) motion and declined to rule on her motion for leave to amend under Rule 15(a)(2), citing a lack of jurisdiction given the pending appeal. However, the district court issued an indicative ruling under Rule 62.1, noting that it was "doubtful" that Daulatzai's proposed Third Amended Complaint would render her claims viable.

The Fourth Circuit granted Daulatzai a limited remand so the district court could address her request for leave to amend to file a Third Amended Complaint. On June 8, 2022, in a 40-page memorandum opinion, the district court denied Daulatzai's request to file her proposed Third Amended Complaint. The court outlined several independent reasons for its decision.

First, the district court noted that before it could consider Daulatzai's motion to amend her pleading under Rule 15(a), its previous judgment would need to be vacated under Rule 60(b). And although the court found that Daulatzai had "provided no reason for [it] to find that the Rule 60(b) standard [was] satisfied in this case," it did not find that this failure was dispositive, because the Fourth Circuit had noted in a previous case, Katyle v. Penn Nat'l Gaming, Inc., that the Rule 60(b) standard collapsed into the Rule 15(a) standard [see Katyle v. Penn Nat'l Gaming, Inc., 637 F.3d 462, 470–471 (4th Cir. 2011)]. Therefore, the district court analyzed Daulatzai's motion to amend under Rule 15(a)'s standard—just as it would with any prejudgment motion to amend under Rule 15(a).

To that end, the district court denied Daulatzai's motion to amend on procedural and substantive grounds. Procedurally, the district court found undue delay between the time when the court dismissed Daulatzai's Second Amended Complaint and when Daulatzai sought leave to amend to file her Third Amended Complaint, and it found that Daulatzai's development of the pleadings included unexplained overhauled portions of her factual contentions that failed to cure legal deficiencies that the defendants contended warranted dismissal.

The district court summarized its substantive reasons for denying Daulatzai's motion to amend: (1) Daulatzai's repeated amendments had been made in bad faith, alleging facts that revealed incurable flaws and alleging facts in her Third Amended Complaint that were inconsistent with facts alleged in her prior pleadings; (2) Daulatzai's repeated failure to cure defects in her pleadings were prejudicial to the defendants; and (3) Daulatzai's Third Amended Complaint would be futile because the new allegations did not relate back to her earlier pleading and were thus untimely and because her claims continued to fail as a matter of law.

Daulatzai filed a second appeal based on the district court's denial of her motion for leave to amend, which the Fourth Circuit consolidated with her first appeal.

On appeal, the Fourth Circuit first affirmed the district court's order dismissing Daulatzai's Second Amended Complaint. As to her second appeal challenging the district court's denial of Daulatzai's Rule 60(b) motion and request for leave to file a Third Amended Complaint, the Fourth Circuit also affirmed the district court's order denying those motions.

District Court May Not Grant Postjudgment Motion to Amend Under Rule 15(a) Unless Judgment Is Vacated. The Fourth Circuit initially recognized that it "must sort out . . . the distinct standards required by Rules 60(b) and 15(a)(2), mindful that each rule 'serves a procedural purpose that fits into the larger function of providing an orderly process to adjudicate actions.'" It then started with the "well established" and "indeed logical" rule, articulated in Laber v. Harvey, that a "district court may not grant [a] post-judgment motion [to amend] unless the judgment is vacated pursuant to Rule 59(e) or [Rule] 60(b)" [see Laber v. Harvey, 438 F.3d 404, 427 (4th Cir. 2006) (en banc)], and its complement that a "plaintiff may only amend her complaint following a judgment if [she] file[s] a motion to reopen or to vacate the judgment under [Rule] 59(e) or [Rule] 60(b)."

Relying on the Katyle decision, Daulatzai argued that the court should resolve both her Rule 60(b) motion and her Rule 15(a) motion to amend by applying Rule 15(a)'s liberal standard for freely granting leave to amend "when justice so requires," as opposed to first resolving whether her Rule 60(b) motion merited relief under that rule's more restrictive standard, which requires a movant to satisfy one of the specific Rule 60(b) grounds for relief. The Fourth Circuit rejected this argument, noting that in both its Katyle and Laber decisions, the court was addressing the Rule 15(a) motions to amend brought in conjunction with postjudgment motions for relief under Rule 59(e)—not under Rule 60(b)—and that both decisions "were grounded on the reality that the standard for granting a Rule 59(e) motion is so broad and open ended that the court should apply the more specific standard of Rule 15(a) where prejudice, bad faith, or futility are brought to bear."

The court acknowledged that in its Katyle decision it conflated the standards for Rules 59(e) and 60(b). The court said that in Katyle, it "inadvertently indicated that the . . . collapsing of standards that occurs when both Rule 59(e) and Rule 15(a) are invoked would also occur if Rule 60(b) were invoked to vacate the judgment," when it stated that while "a district court may not grant a post-judgment motion to amend the complaint unless the court first vacates its judgment pursuant to [Rule] 59(e) or [Rule] 60(b) [t]o determine whether vacatur is warranted . . . the court need not concern itself with either of those rules' legal standards," thus referring to both Rule 59(e) and Rule 60(b) (quoting Katyle v. Penn Nat'l Gaming, Inc., 637 F.3d 462, 470–471 (4th Cir. 2011)).

The court explained that while the first part of that statement was a correct quote from its Laber decision, the latter inclusion of Rule 60(b) and reference to both rules' legal standards was "gratuitous" because in both cases the court had only Rule 59(e) motions before it; it was "inadvertent because it was made in purported reliance on Laber, even though Laber did not similarly indicate that the Rule 60(b) standard could be disregarded;" and "[f]ortunately, it was dictum."

After Final Judgment of Dismissal, There Is No Pending Complaint to Amend. Citing Moore's, which refers to the Fourth Circuit's Katyle statement as "curious[]" and noting that the Fourth Circuit also failed to provide a rationale for including Rule 60(b) and overlooked that the purpose of Rule 60(b) is "to protect the finality of judgments," the Fourth Circuit said that if the statement were binding, it would be "alone in the Nation in collapsing the Rule 60(b) standard with the standard for Rule 15(a)." From there, the court reiterated that "a motion to amend filed after a judgment of dismissal has been entered cannot be considered until the judgment is vacated," whether that be under Rule 59(e) or Rule 60(b), delineating the rules' different standards and purposes.

Rule 59(e) Gives District Court Broad Discretion to Rectify Mistakes Immediately Following Entry of Judgment. Noting that Rule 59(e) is generally invoked only to support reconsideration of matters properly encompassed in a decision on the merits, the Fourth Circuit recognized the broad standard for granting such motions that, when timely filed, suspend the finality of the judgment, which is restored only upon disposition of the motion. Thus, the court's ruling on the motion merges with the prior ruling of the judgment to constitute a single judgment, so that an appellate court reviews that single judgment and considers any attack on the Rule 59(e) ruling as part of its review of the underlying decision.

Rule 60(b) Authorizes District Court to Relieve Party From Final Judgment Based Only on Six Enumerated Grounds. Rule 60(b) favors finality; a Rule 60(b) motion does not merge into the judgment but grants relief from it. Thus, citing Moore's, the Fourth Circuit noted that while the review of a Rule 59(e) ruling merges with review of the underlying judgment, an appeal from the denial of a Rule 60(b) motion does not preserve for appellate review the underlying judgment.

District Court May Apply Rule 15(a)'s Standard Only If Postjudgment Motion to Vacate and for Leave to Amend Is Brought Under Rule 59(e), But Not Under Rule 60(b). After satisfying the standard for vacating the judgment under either Rule 59(e) or Rule 60(b), the court may consider the motion to amend under Rule 15(a)'s standard. However, the court noted that because the broad standard applies when a motion to vacate is made under Rule 59(e), in those cases, district courts may "simply turn to the standard applicable to the motion to amend." But when a motion to vacate is filed under Rule 60(b), the more restrictive standard for granting the motion applies, and that standard must be satisfied before the district court may consider the motion to amend and apply Rule 15(a)'s standard.

Because Daulatzai sought postjudgment relief under Rule 60(b), the Fourth Circuit found that when Daulatzai failed to satisfy the requirements of Rule 60(b), that should have ended the matter and the district court was not required to concern itself with Rule 15(a)'s legal standard. As for the district court's conclusion that Daulatzai failed to satisfy Rule 60(b)'s requirements, the Fourth Circuit did not find that the district court abused its discretion or acted in any arbitrary or irrational manner, or that it failed to consider the correct factors or relied on faulty legal or factual premises.

Holding. Accordingly, the Fourth Circuit affirmed the district court's order denying Daulatzai's Rule 60(b) motion.