Litigation Insights

JANUARY 2025

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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.

APPEALS

Premature Notice of Appeal

Gelin v. Baltimore County

122 F.4th 531, 2024 U.S. App. LEXIS 30566 (4th Cir. Dec. 4, 2024)

The Fourth Circuit holds that if a notice of appeal is filed before the district court fully disposes of a timely postjudgment motion, the appellate panel cannot reach the merits of the appeal until the district court finishes dealing with the motion.

JUMP TO SUMMARY

ARBITRATION

Arbitration Act

Brock v. Flowers Foods, Inc.

121 F.4th 753, 2024 U.S. App. LEXIS 28589 (10th Cir. Nov. 12, 2024)

The Tenth Circuit holds that the Federal Arbitration Act does not apply to the class of "last-mile" workers who make local deliveries of goods produced out of state.

JUMP TO SUMMARY

PERSONAL JURISDICTION

Fiduciary Shield Doctrine

Savoie v. Pritchard

122 F.4th 185, 2024 U.S. App. LEXIS 29937 (5th Cir. Nov. 25, 2024)

The Fifth Circuit has applied the fiduciary shield doctrine to preclude personal jurisdiction based on the defendant's purely corporate contacts with the forum state, Louisiana.

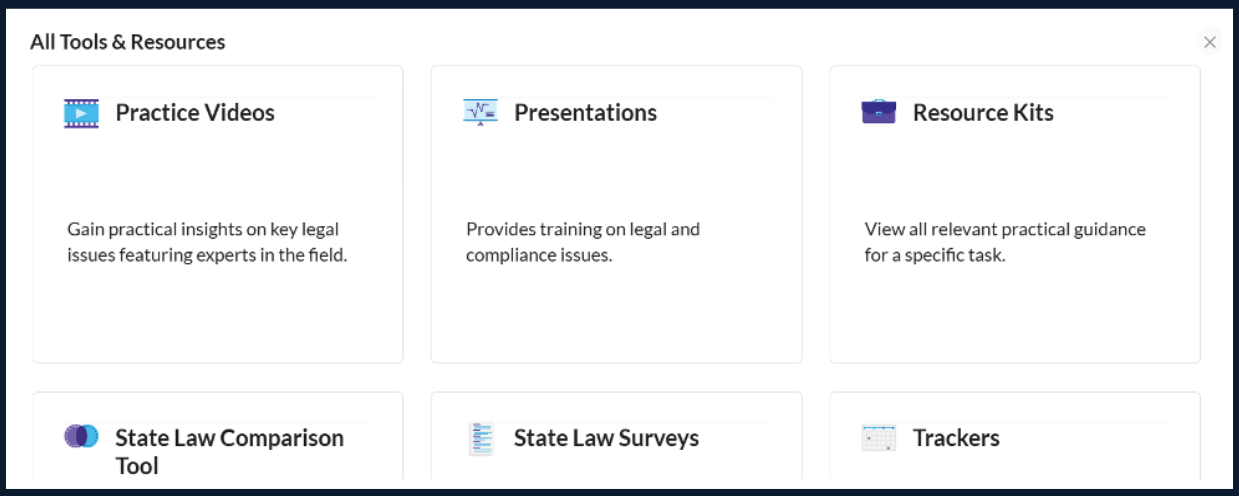
JUMP TO SUMMARY

Environmental, Social, and Governance (ESG) Practical Guidance Update

By: Noah Kanary, LexisNexis Solutions Consultant, Federal Government

Happy new year everyone! I am excited to share an update to Practical Guidance geared toward employers and HR professionals. Across many of the host of LexisNexis products, resources are included for Environmental, Social, and Governance (ESG), which can help customers as they seek to implement and evaluate business strategies with a focus on sustainability and global responsibility. This update introduces an ESG Training Presentation, which centers around both understanding and implementing ESG principles effectively. The new presentation comes complete with detailed slides and crucial talking points, which will save employers and HR professionals time in preparing for an informative and effective presentation. The presentation can also be customized to include or exclude information based on the needs and interests of your organization.

To access this presentation, first navigate to the Practical Guidance homepage, then select the Labor and Employment practice area from the Practice Area tab. Within the Labor and Employment practice area page, select the "View All" button in the tools and resources section, before then selecting the Presentations option. Then, on the Presentations page, select the fourth option to open the Environmental, Social, and Governance (ESG) for Employers and HR: Training Presentation. Finally, click the blue hyperlinked text to download the presentation for your use. You can also see the steps I have just described in screenshot form included below.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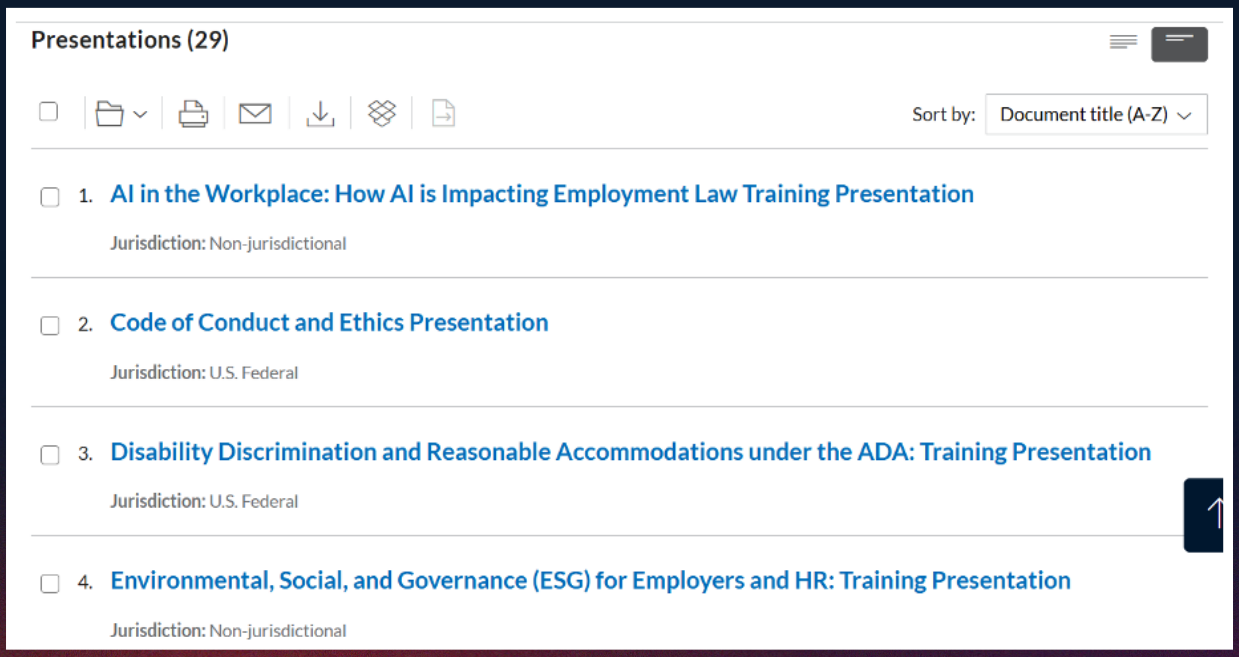
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1. AI in the Workplace: How AI is Impacting Employment Law Training Presentation
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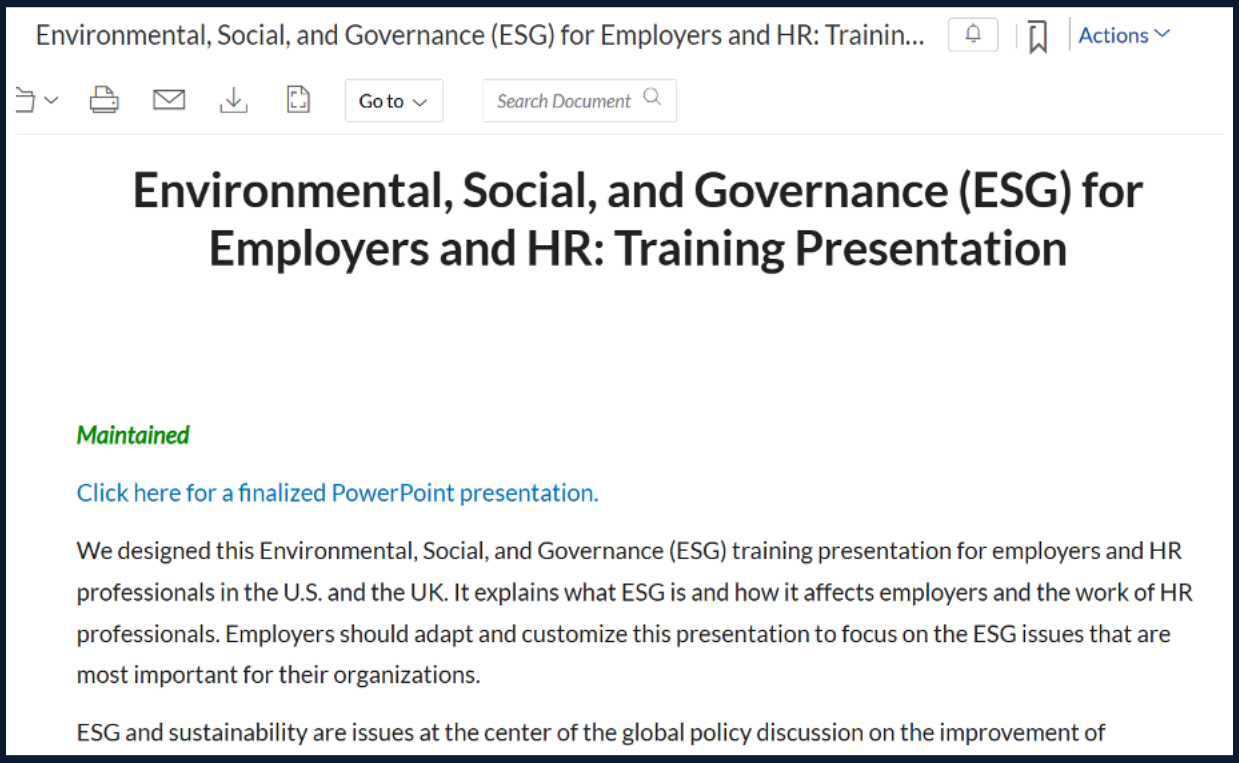
2. Code of Conduct and Ethics Presentation
Jurisdiction: U.S. Federal
3. Disability Discrimination and Reasonable Accommodations under the ADA: Training Presentation
Jurisdiction: U.S. Federal
4. Environmental, Social, and Governance (ESG) for Employers and HR: Training Presentation
Jurisdiction: Non-jurisdictional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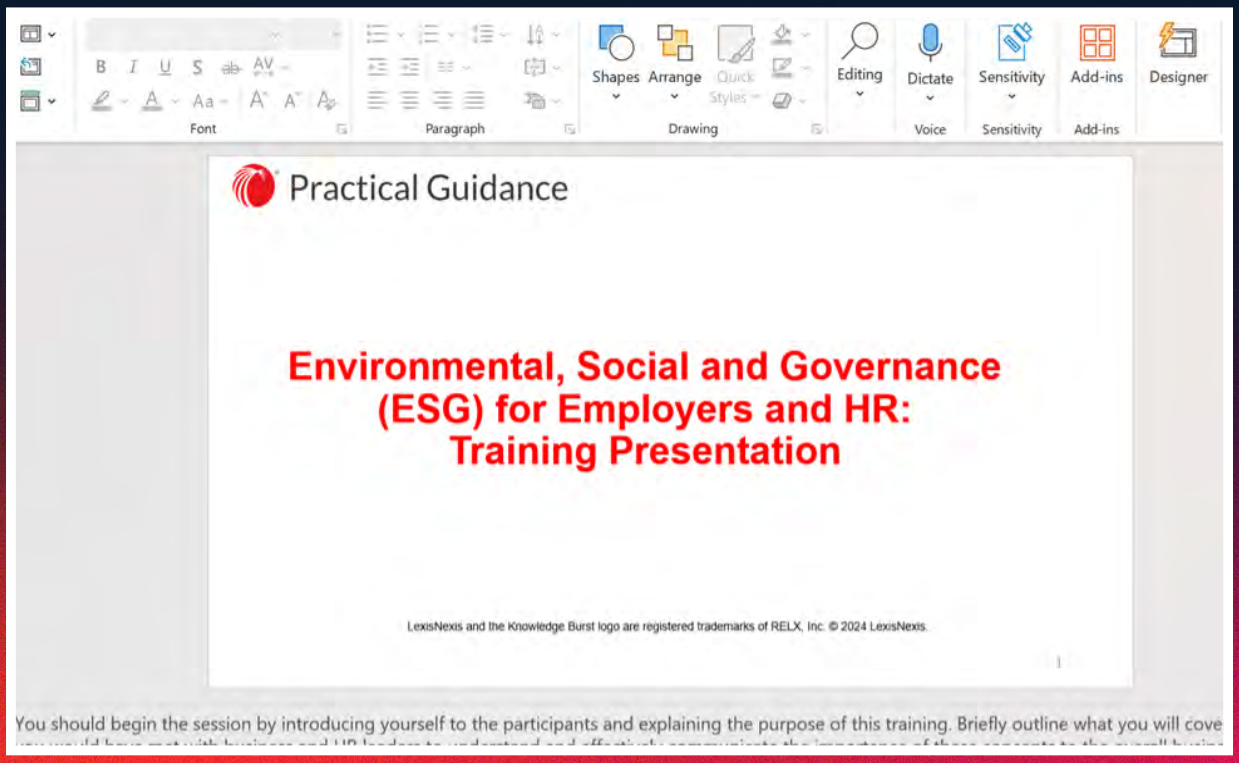
We designed this Environmental, Social, and Governance (ESG) training presentation for employers and HR professionals in the U.S. and the UK. It explains what ESG is and how it affects employers and the work of HR professionals. Employers should adapt and customize this presentation to focus on the ESG issues that are most important for their organizations.
ESG and sustainability are issues at the center of the global policy discussion on the improvement of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Environmental, Social and Governance (ESG) for Employers and HR: Training Presentation
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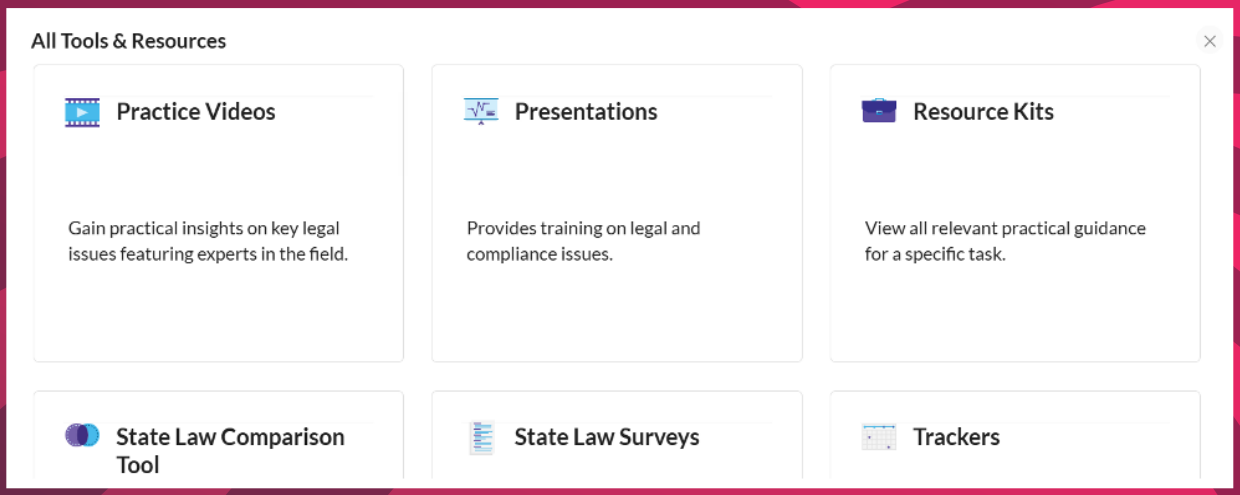
Tips for Searching Codes on LexisNexis®

Searching the United States Code and state codes on LexisNexis offers a few options and capabilities beyond your search string that can make your research more focused and on point. Of course, statutory codes are automatically included in your search results when you conduct a normal search across all sources. But these tips can make your targeted code search more productive.

To use these tips, you must first specify which code you want to search. The easiest way to do so is to type its name into the search box and then click on the proper source from the suggested results. For instance, if you type in USC, one of the suggested sources will be "USCS - United States Code Service - Titles 1 through 54," the LexisNexis version of the USC. Clicking on that will bring you to the dedicated search page for the USC. (Note – you can use the same steps for a state code as well.) This dedicated search page will allow you to browse or search the code. Browsing is easy – simply click the plus signs next to a title, chapter, etc., to expand each and to drill down to the desired section. (Number 1 in the attached screenshot)



Searching has a variety of options. You may use either natural language or Boolean (terms and connectors) searching in the main search box (Item 2, above). Please note that a search here will run across the entire source, e.g., across the full text of the entire USC. So, for instance a search for "assault" will find 1,336 sections that include the term anywhere in the text, in any title. For a more focused search you can click the **Table of Contents (TOC)** only option (#3 above). This will limit your search to the text of the TOC only. That is, you'll be searching only the section, chapter and title headers. A search for "assault" in the TOC only brings back just 68 results.

Another way of focusing your search is to click the check box next to a desired title or chapter. That will limit your search to just the chosen segment of the code. For instance, if you were to check off Title 18, you'd be searching just that title. So, a full text search for "assault" in Title 18 finds just 402 results, as opposed to the 1,336 found in the entire code. Note that you can combine this option with the TOC Only search for the most targeted search experience.

At the top right of the search form there is a link to Advanced Search (#5). Clicking this will take you to a new search form with additional capabilities, including several targeted search boxes. One of these is of particular interest, the Unannotated box. This search is invaluable when you only want to find statutory language.
A search for word added here be restricted to just the text of the statutory language, omitting all the annotations that follow. This will allow you find only those sections where your search term is specifically part of the statute, rather than those sections where it is mentioned in the case notes, amendment notes, research references and practice aids. For instance, our search for "assault" found 1,336 results in the annotated version, but only 482 where the term occurred in the body of the statute, the language passed by Congress.

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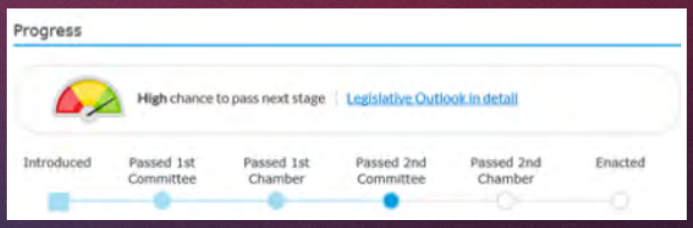

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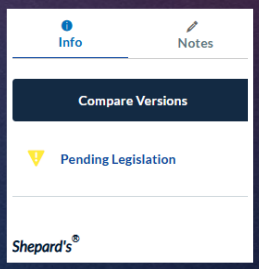

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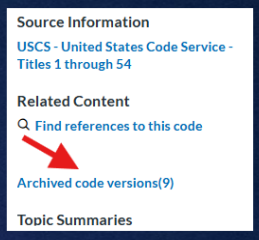

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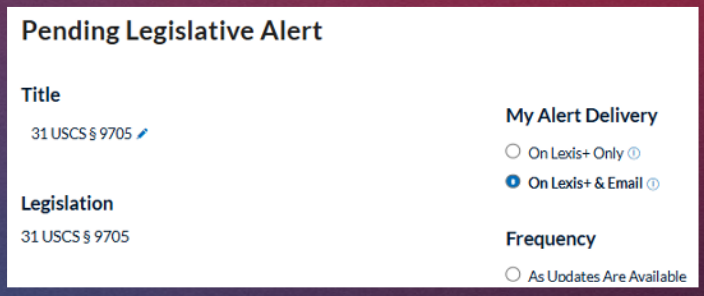

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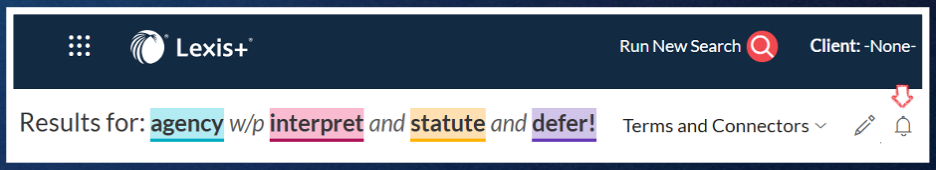

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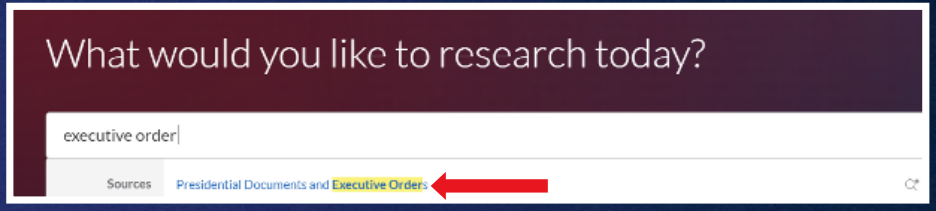

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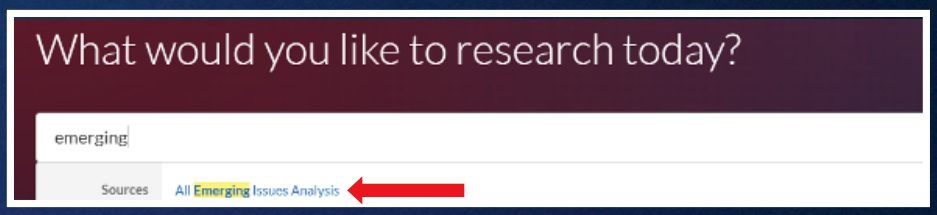

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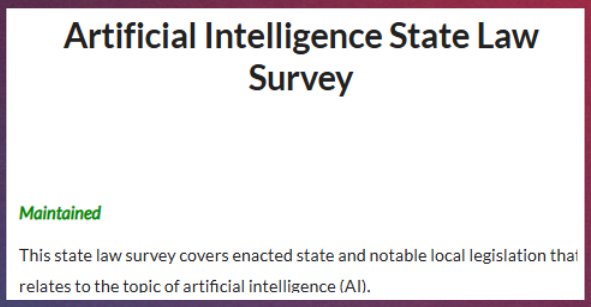

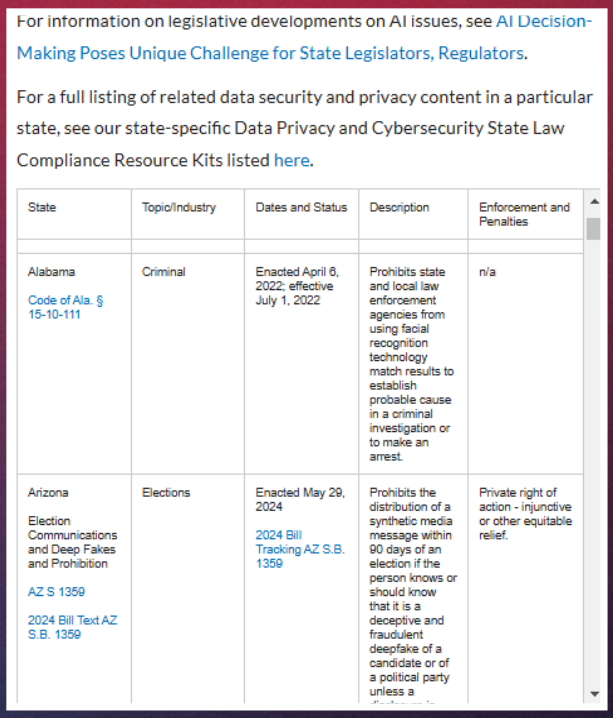

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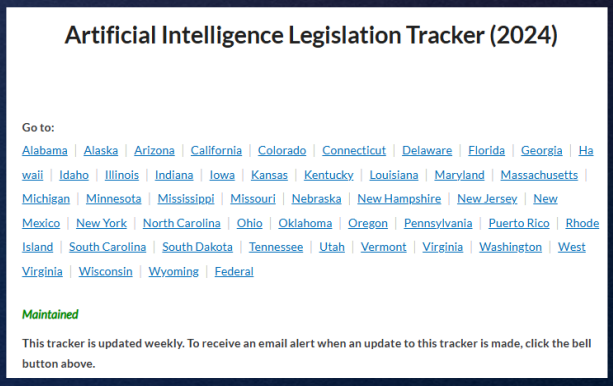

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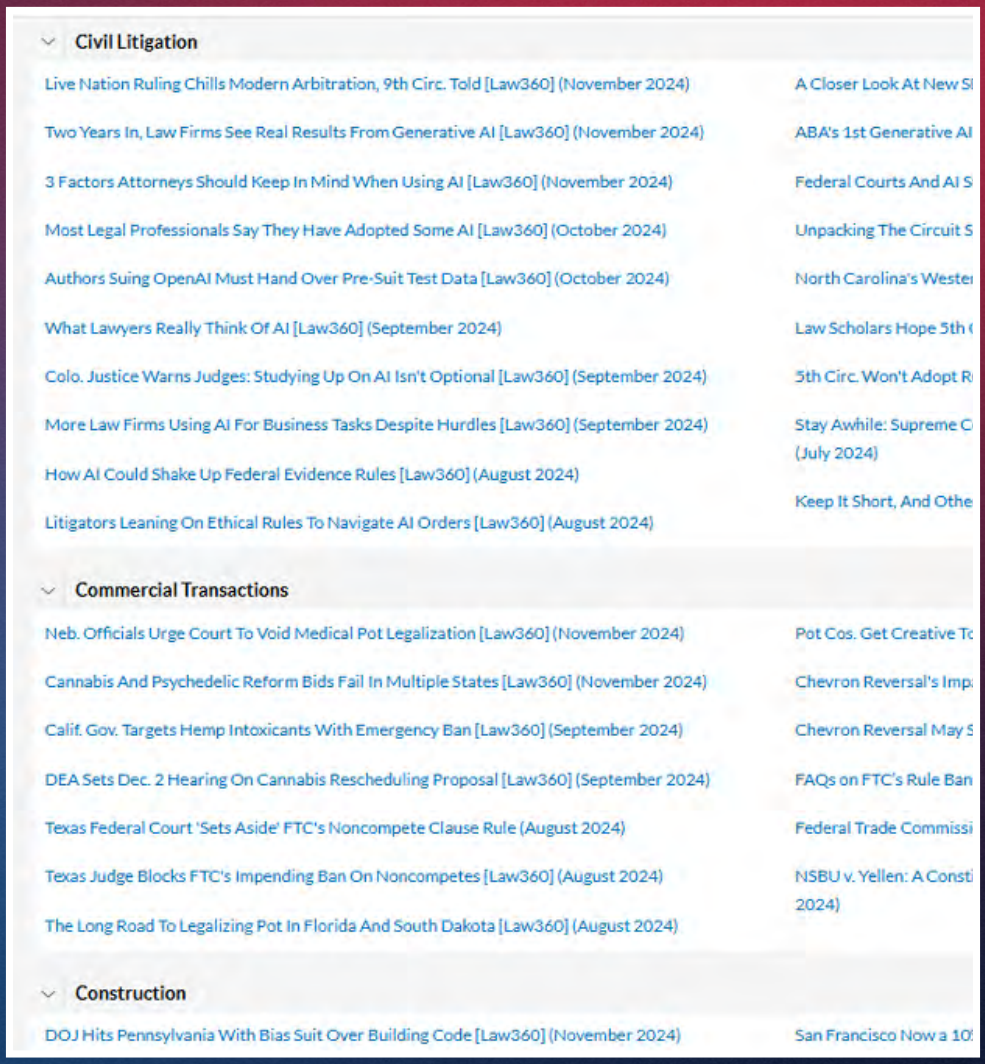

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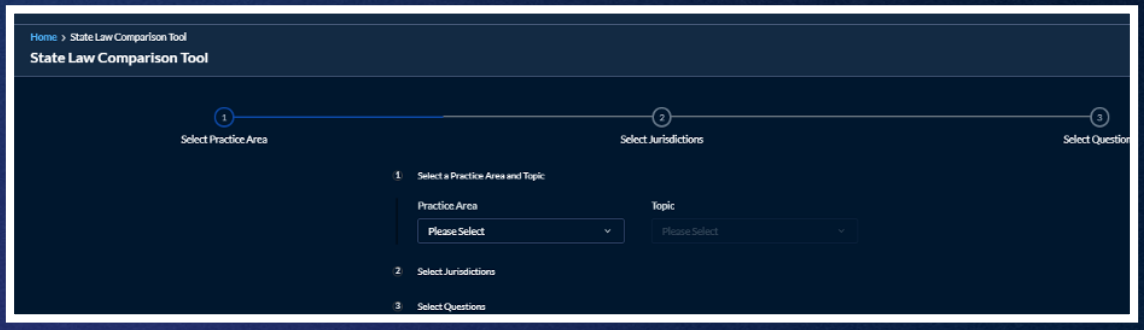

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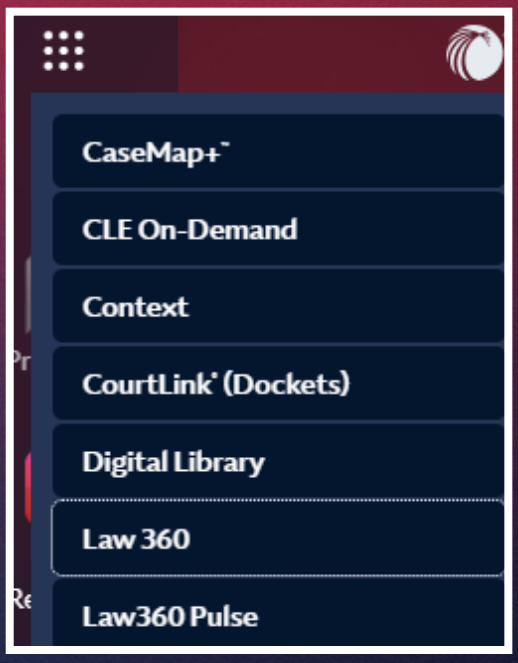

APPEALS

Premature Notice of Appeal

Gelin v. Baltimore County

122 F.4th 531, 2024 U.S. App. LEXIS 30566 (4th Cir. Dec. 4, 2024)

The Fourth Circuit holds that if a notice of appeal is filed before the district court fully disposes of a timely postjudgment motion, the appellate panel cannot reach the merits of the appeal until the district court finishes dealing with the motion.

Procedural Background. AIn this action against a county and several of its correctional officers, the defendants moved for judgment on the pleadings. After the district court granted the motion in part and denied it in part, the defendants asked the court to reconsider the denial and enter judgment in their favor on all claims. The district court entered an order addressing all but one of the issues raised in the reconsideration motion. On that issue—whether public-officer immunity under state law barred the plaintiffs' claim of common-law negligence—the court ordered the plaintiffs to file a response to the defendants' argument. But before the district court could rule on the remaining issue, the defendants appealed.

The threshold question for the Fourth Circuit panel was whether it could consider the merits of the appeal.

Requirements and Scope of Notice of Appeal. The appellate panel began with a brief overview of the procedure for bringing an appeal. Appellate Rules 3 and 4 govern when and how a notice of appeal is filed. Generally, a notice must be filed within 30 days after entry of the judgment or order appealed from [28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A)]. But under Appellate Rule 4(a)(4)(A), if any party timely moves for certain forms of relief—such as a motion to alter or amend the judgment under Civil Rule 59(e)—the time to file an appeal runs from the entry of the order disposing of the last such remaining motion [Fed. R. App. P. 4(a)(4)(A); see Fed. R. Civ. P. 59(e)]. If the ensuing notice of appeal names only an order disposing of such a motion, the notice of appeal will be deemed to encompass the final judgment too [Fed. R. App. P. 3(c)(5)].

A notice of appeal that is filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry [Fed. R. App. P. 4(a)(2)]. Similarly, if a notice of appeal is filed while a motion listed in Appellate Rule 4(a)(4)(A) is pending, the notice becomes effective "when the order disposing of the last such remaining motion is entered" [Fed. R. App. P. 4(a)(4)(B)(i)].

Application of Rules to Present Appeal. The Fourth Circuit panel found that the events in the district court leading up to the filing of this appeal created "a curious problem of appellate procedure." The defendants' notice of appeal designated an order partly denying reconsideration, but not the order being reconsidered. The court of appeals thus had to decide whether that notice was timely and sufficient to appeal the district court's decision denying judgment on the pleadings.

The defendants had labeled their reconsideration motion as a "Rule 52(b)" motion for amended findings of fact [see Fed. R. Civ. P. 52(b) (motion to amend findings after bench trial)], and the district court had treated the motion as seeking reconsideration of an interlocutory order under Civil Rule 54(b) [see Fed. R. Civ. P. 54(b) (judgment as to fewer than all claims or parties)]. However, the court of appeals found that the reconsideration motion was properly viewed as a Rule 59(e) motion to alter or amend the district court's judgment denying the defendants' claim of qualified immunity under federal law [see Fed. R. Civ. P. 59(e)]. Because such a motion is listed in Appellate Rule 4(a)(4)(A), and the motion in this case was timely under Rule 59(e), the start of the time for appeal was tolled until the entry of the district court's order disposing of the motion [Fed. R. App. P. 4(a)(4)(A)(iv)].

The defendants therefore would have had 30 days to appeal from "the entry of the order disposing of" the reconsideration motion [see Fed. R. App. P. 4(a)(4)(A)]. But the Fourth Circuit pointed out that the district court's ruling on the motion for reconsideration did not dispose of the motion. Rather, the ruling left a portion of the motion unaddressed: it did not grant or deny the defendants' request for a judgment in their favor on the plaintiffs' common-law negligence claim. And in the absence of a disposition of the motion, the defendants' notice of appeal had not yet become effective [see Fed. R. App. P. 4(a)(4)(B)(i)].

Consequences of Premature Filing of Appeal. Since the defendants' notice of appeal was not yet effective, the Fourth Circuit panel found that it could not proceed. That led the court to three conclusions.

First, the court of appeals had jurisdiction. The defendants filed their notice of appeal within 30 days of the order that it tried to bring up for appellate review [see 28 U.S.C. § 2107(a)]. An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal [Fed. R. App. P. 3(a)(2); see Hamer v. Neighborhood Hous. Servs. of Chi., 583 U.S. 17, 20, 138 S. Ct. 13, 199 L. Ed. 2d 249 (2017)].

Second, the proper course was to stay the appellate proceedings. The court of appeals observed that when it is clear early on that an appeal has been filed before the district court has fully disposed of a motion whose pendency tolled the start of the appeal period, it may be appropriate to dismiss the appeal as premature. But the court opined that when the problem does not become apparent until significant judicial and attorney resources have been expended, it has the option to stay the appeal until the motion below is decided [see Katerinos v. U.S. Dep't of Treasury, 368 F.3d 733, 738 (7th Cir. 2004) (per curiam)]. The court found that to be the case in this instance. The defendants' notice would ripen into an effective appeal on disposition of its motion, "and when that happens, we'll return to the case" [see Fed. R. App. P. 4, Advisory Committee Note of 1993].

Finally, the appellate panel concluded that it did not have to formally remand this case. The district court retained jurisdiction to resolve the defendants' motion without any action on the part of the court of appeals [see Stone v. J & M Secs., LLC, 55 F.4th 1150, 1152 (8th Cir. 2022); Fontanillas-Lopez v. Morell Bauzá Cartagena & Dapena, LLC, 832 F.3d 50, 62 n.10 (1st Cir. 2016)]. The panel acknowledged that the filing of a notice of appeal typically transfers adjudicatory authority from the district court to the court of appeals [see Manrique v. United States, 581 U.S. 116, 120, 137 S. Ct. 1266, 197 L. Ed. 2d 599 (2017)]. But that is a "background principle," not an absolute rule [see Coinbase, Inc. v. Bielski, 599 U.S. 736, 740, 143 S. Ct. 1915, 216 L. Ed. 2d 671 (2023)]. The panel explained that when, as in this case, the notice of appeal lies dormant pending some action by the district court, the district court has the power to act in aid of the appeal [see Wolfe v. Clarke, 718 F.3d 277, 281 n.3 (4th Cir. 2013)].

Disposition. The Fourth Circuit panel directed that, when the district court fully disposes of the defendants' motion for reconsideration, the parties are to file that ruling on the appellate docket. "Until then, we hold this appeal in abeyance."

ARBITRATION

Arbitration Act

Brock v. Flowers Foods, Inc.

121 F.4th 753, 2024 U.S. App. LEXIS 28589 (10th Cir. Nov. 12, 2024)

The Tenth Circuit holds that the Federal Arbitration Act does not apply to the class of "last-mile" workers who make local deliveries of goods produced out of state.

Federal Arbitration Act and Its Exemption for Transportation Workers. The Federal Arbitration Act (FAA) provides generally that arbitration agreements are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract" [9 U.S.C. § 2]. Section 1 of the FAA, however, provides an exemption: "[N]othing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" [9 U.S.C. § 1].

Factual and Procedural Background. This putative class action involved claims of wage and hour violations against a group of affiliated companies that produced and marketed baked goods. Working as an independent distributor for one of the defendants, the plaintiff delivered baked goods produced out of state to various retail stores in Colorado. The plaintiff sued the defendants, on behalf of himself and similarly situated workers, alleging violations of the Fair Labor Standards Act and Colorado labor law.

The defendants moved to compel arbitration, based on the parties' arbitration agreement, which required that "any claim, dispute, and/or controversy" be arbitrated "exclusively" under the Federal Arbitration Act (FAA), "except as otherwise agreed to by the parties and/or specified herein."

The district court denied the motion, concluding that the plaintiff fell within the FAA's exemption for transportation workers. Specifically, the court found that the plaintiff belonged to a class of workers who delivered the defendants' goods and therefore actively engaged in the transportation of those goods across state lines into Colorado.

On appeal by the defendants, a panel of the Tenth Circuit affirmed the district court's decision.

Two-Step Analysis of FAA's Transportation-Worker Exemption. The Tenth Circuit's review of the district court's application of the transportation-worker exemption focused on the residual clause of the exemption: "any other class of workers engaged in foreign or interstate commerce" [*see* 9 U.S.C. § 1]. The court of appeals applied the Supreme Court's two-step framework to analyze whether an individual falls within this clause (and therefore falls within the exemption). The first step is to define the relevant class of workers to which the individual belongs; the second step is to determine whether that class of workers is engaged in foreign or interstate commerce [*see Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 455, 142 S. Ct. 1783, 213 L. Ed. 2d 27 (2022)].

Step One: Plaintiff's Class of Workers. At step one, the court of appeals noted that the Supreme Court recently held that a transportation worker need not work in the transportation industry to fall within the FAA's transportation-worker exemption [*see* Bissonnette v. LePage Bakeries Park St., LLC, 601 U.S. 246, 256, 144 S. Ct. 905, 218 L. Ed. 2d 204 (2024)]. And the defendants did not challenge the district court's finding that the plaintiff belonged to a class of workers who delivered the defendants' goods in trucks to their customers by loading and unloading the defendants' goods, that is, a class of independent distributors who loaded and unloaded the defendants' products. The Tenth Circuit panel therefore accepted this definition of the relevant class of

workers, as well as the district court's conclusion that the plaintiff qualified as a transportation worker under this definition.

Step Two: Whether Class of Workers Is Engaged in Interstate Commerce. Turning to the second step of the analysis, the Tenth Circuit panel acknowledged that the plaintiff did not cross state lines to deliver goods in connection with the operation of his business. However, this fact alone is not dispositive. In *Sw. Airlines Co. v. Saxon*, the Supreme Court held that any class of workers directly involved in transporting goods across state or international borders falls within the FAA exemption. In holding that a class of airplane cargo loaders was "engaged in foreign or interstate commerce," the Court rejected the view that the FAA exemption applies only to workers who physically move goods or people across state or international borders. Thus, a worker who loads or unloads cargo "from a vehicle carrying goods in interstate transit" is engaged in interstate commerce [*Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 456–461, 142 S. Ct. 1783, 213 L. Ed. 2d 27 (2022)].

Applying this reasoning, the Tenth Circuit panel observed that like the airplane cargo loaders in Saxon, the plaintiff in this case did not physically cross state borders when delivering the defendants' products from the warehouse to his customers. Since the plaintiff's intrastate deliveries could still qualify as engagement in interstate commerce, the court of appeals examined the plaintiff's intrastate delivery role in relation to the goods' interstate journey.

To engage in interstate commerce for purposes of the FAA exemption, a class of workers must at least play a direct and necessary role in the free flow of goods across borders [*see Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 458, 142 S. Ct. 1783, 213 L. Ed. 2d 27 (2022)]. Whether a class of workers making intrastate deliveries can qualify as engaging in interstate commerce was a question of first impression in the Tenth Circuit, but other circuits have considered the question.

Last-Mile Delivery Drivers. The First and Ninth Circuits have concluded that last-mile delivery drivers—who make the last intrastate leg of an interstate delivery route—are directly engaged in interstate commerce. Both circuits focused on whether the goods moved in a continuous interstate journey or as part of multiple independent transactions.

In *Waithaka v. Amazon.com, Inc.*, the First Circuit held that last-mile delivery drivers for Amazon engaged in interstate commerce, despite transporting goods entirely within a single state. The First Circuit relied on the Supreme Court's line of cases addressing whether employees were "engaged in interstate commerce" under the Federal Employers' Liability Act. In those cases, the Supreme Court distinguished intrastate railroad workers who operated railroad cars carrying "interstate freight" from those who operated cars carrying "intrastate freight"; the former are "engaged in interstate commerce," while the latter are not [*see* Phila. & Reading Ry. v. Hancock, 253 U.S. 284, 286, 40 S. Ct. 512, 64 L. Ed. 907 (1920); Ill. Cent. R.R. Co. v. Behrens, 233 U.S. 473, 478, 34 S. Ct. 646, 58 L. Ed. 1051 (1914)]. With this context, the First Circuit concluded that last-mile delivery workers "who haul goods on the final [intrastate] legs of interstate journeys are transportation workers engaged in interstate commerce" [*Waithaka v. Amazon.com, Inc.*, 966 F.3d 10, 26 (1st Cir. 2020)].

In *Rittmann v. Amazon.com, Inc.*, the Ninth Circuit held that Amazon's last-mile delivery providers engaged in interstate commerce when transporting packages in the final intrastate leg of the interstate journey. The Ninth Circuit reasoned that the packages the delivery providers carried were "goods that remain in the stream of interstate commerce until they are delivered." The Ninth Circuit distinguished the circumstances in A.L.A. Schechter Poultry Corp. v. United States, in which the Supreme Court concluded that the interstate

transportation of live poultry ended when the poultry reached slaughterhouses for slaughter. At that point, the poultry had come to a permanent rest within the state, and any subsequent sales to retail dealers and butchers were local sales [see A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495, 543, 55 S. Ct. 837, 79 L. Ed. 1570 (1935)]. By contrast, the Ninth Circuit in Rittmann explained that Amazon packages did not come to rest at Amazon warehouses, so the interstate transactions did not conclude at those warehouses. Instead, the packages were held at the warehouse as "part of a process by which a delivery provider transfers the packages to a different vehicle for the last mile of the packages' interstate journeys." Therefore, "[t]he interstate transactions between Amazon and the customer do not conclude until the packages reach their intended destinations." For that reason, the Ninth Circuit concluded that last-mile delivery drivers were "engaged in the movement of interstate commerce" [*Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 915–916 (9th Cir. 2020)].

The Fifth Circuit, in *Lopez v. Cintas Corp.*, reached the opposite conclusion. There, the Fifth Circuit found that last-mile delivery drivers did not engage in interstate commerce, reasoning that "[o]nce the goods arrived at the [local] warehouse and were unloaded, anyone interacting with those goods was no longer engaged in interstate commerce." The Fifth Circuit focused on the last-mile drivers' "customer-facing role" to support its conclusion that they did not fall within the FAA exemption [Lopez v. Cintas Corp., 47 F.4th 428, 432–433 (5th Cir. 2022)].

Tenth Circuit Agrees With First and Ninth Circuits. In this case, the Tenth Circuit panel found the reasoning of the First and Ninth Circuits persuasive. Specifically, the Tenth Circuit concluded that, as in Waithaka and Rittmann, the final intrastate leg of a journey is part of a continuous interstate journey when the product's originating company contracts with both the customer and the intrastate delivery driver. In such a circumstance, the last-mile delivery driver is engaged in interstate commerce for purposes of the FAA's transportation-worker exemption.

The Tenth Circuit thus rejected the Fifth Circuit's reasoning in Lopez, noting that the Lopez opinion included only an abbreviated analysis of the relevant class of workers' engagement with interstate commerce and did not provide much factual background for comparison.

The Tenth Circuit also agreed with several circuits that the class of app-based intrastate rideshare and food-delivery drivers (e.g., Uber and Lyft drivers) are not engaged in interstate commerce. The critical distinction is that such drivers render their services separate from any buyer-seller relationship between their customers and an interstate seller of goods or transportation services. Thus, for example, "Uber drivers are unaffiliated, independent participants in the passenger's overall trip, rather than an integral part of a single, unbroken stream of interstate commerce like [Amazon's last-mile delivery] workers" [see Capriole v. Uber Techs., Inc., 7 F.4th 854, 863–864, 866–867 (9th Cir. 2021); see also Cunningham v. Lyft, Inc., 17 F.4th 244, 253 (1st Cir. 2021); Singh v. Uber Techs., Inc., 67 F.4th 550, 560 (3d Cir. 2023); Wallace v. Grubhub Holdings, Inc., 970 F.3d 798, 802–803 (7th Cir. 2020)].

Conclusion and Disposition. The Tenth Circuit panel concluded that the plaintiff was exempt from coverage of the FAA. The panel went on to hold that it lacked jurisdiction to consider an interlocutory appeal of the district court's secondary holding that state law did not apply in this case to require arbitration of the plaintiff's claims. Accordingly, the court of appeals affirmed the district court's order denying the motion to compel arbitration.

PERSONAL JURISDICTION

Fiduciary Shield Doctrine

Savoie v. Pritchard

122 F.4th 185, 2024 U.S. App. LEXIS 29937 (5th Cir. Nov. 25, 2024)

The Fifth Circuit has applied the fiduciary shield doctrine to preclude personal jurisdiction based on the defendant's purely corporate contacts with the forum state, Louisiana.

Background. The plaintiff filed his complaint in the U.S. District Court for the Western District of Louisiana asserting claims for breach of contract and violations of the Louisiana Wage Payment Act. One defendant was the plaintiff's former employer, a Texas LLC and financial services company that raised capital to facilitate oil and gas transactions. The plaintiff alleged that the employer received ample fees and revenue as a result of the plaintiff's work, but that the employer failed to pay him commissions due under an offer letter.

A second defendant was the co-owner of the company. As to this defendant, the plaintiff alleged that he had breached the offer letter and the Louisiana Wage Payment Act by personally engaging in fraudulent and deceitful conduct when he informed the plaintiff that the company had not received any retainer money or any payments on the defendant's projects and that the plaintiff was therefore not entitled to any compensation.

After jurisdictional discovery and briefing, the district court dismissed the individual defendant for lack of personal jurisdiction. The court concluded that his suit-related contacts were covered by the fiduciary shield doctrine and that the plaintiff had failed to establish any exception that would permit those contacts to be attributed to the individual defendant personally.

Personal Jurisdiction. A federal court sitting in diversity may assert personal jurisdiction over a defendant if (1) the state's long-arm statute permits it, and (2) exercising jurisdiction would not violate due process. Louisiana's long-arm statute is coextensive with the limits of constitutional due process, so the due process question became the sole inquiry. Due process is satisfied if the defendant purposefully availed himself or herself of the benefits and protections of the forum state by establishing minimum contacts with the forum state, and the exercise of jurisdiction over that defendant does not offend traditional notions of play and substantial justice. Only specific personal jurisdiction was at issue here, for which the Fifth Circuit applies a three-part test: (1) whether the defendant has minimum contacts with the forum state, i.e., whether it purposely directed its activities toward the forum state or purposefully availed itself of the privileges of conducting activities there; (2) whether the plaintiff's cause of action arises out of or results from the defendant's forum-related contacts; and (3) whether the exercise of personal jurisdiction is fair and reasonable.

Fiduciary Shield Doctrine. The fiduciary shield doctrine, if applicable, prevents the exercise of personal jurisdiction if based solely on acts undertaken in a defendant's corporate capacity. This doctrine originates from judicial interpretations of long-arm statutes, not from the federal due process clause, and therefore exists to the extent state law recognizes it.

The Louisiana Supreme Court has implicitly recognized this doctrine and explained that the shield is rooted in the principle that the acts of a corporate officer in a corporate capacity cannot form the basis for jurisdiction over the officer in an individual capacity [see Se. Wireless Network, Inc. v. U.S. Telemetry Corp., 954 So. 2d 120, 128–129 (La. 2007)]. Nevertheless, the shield will not defeat personal jurisdiction when a nonresident corporate agent commits a tort within a forum state that would subject the agent to personal liability under the laws of that state.

When a defendant raises the shield, contacts made in a corporate capacity do not count for purposes of personal jurisdiction unless one of two exceptions applies: (1) the defendant allegedly engaged in a tort for which he or she may be personally liable, or (2) the plaintiff demonstrates cause to pierce the corporate veil. In the present case, the plaintiff conceded that all the individual defendant's suit-related contacts were made in his corporate capacity, so that the plaintiff needed to establish an exception to assert personal jurisdiction.

The plaintiff was unable to establish either exception. The veil-piercing or alter-ego exception is met when the party asserting the exception shows that the individual exerts control of the corporation's internal business operations and affairs such that the individual and the corporation cease to be separate. Control is the key factor, but courts may also consider other matters, such as the degree to which corporate and individual property have been kept separate, the amount of financial interest, ownership, and control the individual maintains over the corporation, and whether the corporation has been used for personal purposes. The district court had concluded that the plaintiff presented no evidence as to these factors, and the court of appeals agreed.

Similarly, the plaintiff failed to establish the tort exception. The plaintiff here asserted only contract claims. A court cannot predicate jurisdiction on a defendant's allusion to potential tort claims that were not pleaded. The tort exception did not apply.

Accordingly, the defendant had raised the fiduciary shield, and the plaintiff had not raised an exception to overcome it. The court of appeals affirmed the district court's dismissal of the defendant for lack of personal jurisdiction.