
Legal Updates & News

Legal Updates

The U.S. Supreme Court Prepares For Its New Term

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Today's new cases include 2 cases that are of particular significance to the business community. The questions that the Court has been asked to decide in those 2 cases are as follows:

Environmental

Burlington Northern & Santa Fe Railway Co. v. United States, No. 07-1601
Shell Oil Co. v. United States, No. 07-1607
(consolidated)

The questions presented in No. 07-1607 are:

1. "Whether liability for 'arranging' for disposal of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9607(a)(3), may be imposed upon a manufacturer who merely sells and ships, by common carrier, a commercially useful product, transferring ownership and control to a purchaser who then causes contamination involving that product."
2. "Whether joint and several liability may be imposed upon several potentially responsible parties under CERCLA, 42 U.S.C. § 9607(a), even where a district court finds an objectively reasonable basis for divisibility that would suffice at common law."

The question presented in No. 07-1601 is:

"Whether the Ninth Circuit erred by reversing the district court's reasonable apportionment of responsibility under CERCLA, and by adopting a standard of review and proof requirements that depart from common law principles and conflict with decisions of other circuits."

RICO

Boyle v. United States, No. 07-1309

The question presented is:

"Does proof of an association-in-fact enterprise under the [Racketeer Influenced and Corrupt Organizations] statute, 18 U.S.C. §§ 1962(c)-(d), require at least some showing of an ascertainable structure beyond that inherent in the pattern of racketeering activity in which it engages - an exceptionally important question in the administration of federal justice, civil and criminal, that has spawned a three-way

circuit split.”

The schedule for filing briefs with the Court on these issues starts immediately with due dates set for later this Fall.

Please feel free to contact Morrison & Foerster's Appellate and Supreme Court practice group about the business cases listed above or about any of the other cases now pending before the Supreme Court or in lower appellate courts. Email contact: [Beth Brinkmann](#) or [Brian Matsui](#).