

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/26/2004 - 10/29/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1923

DeLoach v. Philip Morris USA
(Osteen)

SETTLEMENT. Challenge to district court's decision that the terms of the settlement agreement were not finalized and approved by the parties until after commencement of trial.

03-1821 (L), 04-1255

Richmond Medical Ctr v. Hicks
(Williams)

CONSTITUTIONAL LAW. Challenge to the constitutionality of state's Partial Birth Infanticide statute.

04-1023

Adams v. American Household
(Williams)

DISCOVERY. Challenge to intervention to modify protective order to allow use of documents in another forum.

04-1196 (L), 04-1499

Plemons v. Gale
(Goodwin)

REAL PROPERTY. Whether landowner received adequate notice of right to redeem property after tax sale.

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

TUESDAY, OCTOBER 26, 2004

REVD 9/1/04

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/26/2004 - 10/29/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-2269

Kress v. Food Employers Labor
(Chasanow)

ERISA. Whether plan provider can require subrogation agreement; whether plan provider unlawfully retaliated for refusal to sign subrogation agreement.

03-2420 (L) , 03-2522

NLRB v. TKC

LABOR. Whether company unlawfully interrogated employee about union activity and laid him off due to his union support.

03-2282

Scipio v. United BankShares
(Keeley)

ERISA. Whether Plan Administrator abused its discretion in its interpretation of the term "earnings" in executive retirement plan.

02-4413

US v. Douglas Johnson Sr.
(Perry)

SENTENCING GUIDELINES. Limit, if any, on the extent of any downward departure from a 5G1.1(b) sentence.
15 mins. per side

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

TUESDAY, OCTOBER 26, 2004

REVD 10/25/04

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/26/2004 - 10/29/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-4177
US v. Timothy Mills
(Osteen)

SENTENCING GUIDELINES. Whether, under the facts of this case, a downward departure was appropriate or compelled. 15 mins. per side

03-7656
Farabee v. Feix
(Morgan)

CIVIL. Whether the district court properly dismissed Farabee's Section 1983 action for failure to state a claim.

03-7553
Farabee v. Johnson
(Morgan)

HABEAS CORPUS. Whether Farabee's Section 2254 claims were properly dismissed by the district court as procedurally defaulted.

04-1250
Archer Daniels v. Brunswick County NC
(Fox)

CONTRACTS. Challenge to summary judgment in action alleging overcharging for water service; damages and interest.

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

TUESDAY, OCTOBER 26, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/26/2004 - 10/29/2004 Session)

NUMBER AND STYLE

03-6681
US v. Little
(Voorhees)

04-1113 (L), 04-1249
US v. Matthews
(Boyle)

NATURE OF CASE

CRIMINAL LAW & PROCEDURE. Whether defendant's lack of notice of entry of judgment allows the district court to vacate and reissue its order so that the defendant may file a timely notice of appeal.

PROPERTY RIGHTS. Challenge to district court's transfer of historic document to state after dismissal of government's forfeiture action.

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

TUESDAY, OCTOBER 26, 2004

REVD 10/20/04

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/26/2004 - 10/29/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-4867

US v. Gay S. Washington
(Copenhaver)

SENTENCING GUIDELINES. Whether conviction for breaking and entering a non-dwelling is a crime of violence under USSG Section 2K2.1(A)(4).
15 mins. per side

02-2259

Mining Energy Inc v. DOWCP

BLACK LUNG. Whether this court retains jurisdiction where petition for review is filed over 60 days after issuance of Board's decision, but within sixty days of actual notice.

03-1208

Bangura v. Ashcroft

IMMIGRATION. Whether the Board properly applied the summary affirmance procedure; other issues.

04-1148

Trinity Outdoor v. City of Rockville
(Motz)

CONSTITUTIONAL LAW. Dismissal of action challenging city sign ordinance.

PANEL V
COURTROOM FIVE
Courthouse Annex Room 229
9:30 a.m.

TUESDAY, OCTOBER 26, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/26/2004 - 10/29/2004 Session)

NUMBER AND STYLE

03-14
Humphries v. Ozmint
(Anderson)

NATURE OF CASE

Rehearing en banc.

WEDNESDAY, OCTOBER 27, 2004

COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:00 a.m.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/26/2004 - 10/29/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-6891

Jones v. Braxton
(Turk)

HABEAS CORPUS. Whether a certificate of appealability is required to appeal the district court's dismissal of a successive 28 U.S.C. Section 2254 petition for lack of jurisdiction.

04-1101

Metric/Kvaerner v. Federal Insurance Co
(Britt)

INSURANCE. Challenge to summary judgment based on policyholder's late notice of claim.

03-2254

Doe v. Shalala, Sec
(Messitte)

CIVIL. Challenge to dismissal as moot action challenging government funding of human stem cell research.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
Beginning at conclusion
of en banc rehearings

WEDNESDAY, OCTOBER 27, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/26/2004 - 10/29/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-2227

Fountainhead Title v. Courthouse Search
(Brinkema)

DAMAGES. Whether plaintiff waived application of the collateral source rule by presenting evidence of collateral payments it received.

04-1105

Walden v. Frame
(Goodwin)

SECTION 1983. Whether district court erred in determining that officers were entitled to qualified immunity.

04-1149 (L), 04-1238

NLRB v. B&G Building Maint

LABOR. Whether the Board abused its discretion in rejecting company's untimely response to the Board's notice to show cause.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
Beginning at conclusion
of en banc rehearings

WEDNESDAY, OCTOBER 27, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/26/2004 - 10/29/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1259

TIG Insurance Co v. Robertson Cecil
(Jones)

INSURANCE. Whether insurer was entitled to rescind policy of professional liability insurance; whether "innocent partner" policy provision was applicable.

03-4183

US v. Michael W. Granger
(Wooten)

CRIMINAL LAW & PROCEDURE. Whether district court abused its discretion in imposing special condition of supervised release prohibiting possession or use of computer that is or has capacity to be connected to any network by defendant convicted of transporting child pornography.

03-2388

Hall v. United Airlines Inc
(Britt)

ANTITRUST. Challenge to summary judgment in action alleging airlines conspired to reduce travel agent commissions.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
Beginning at conclusion
of en banc rehearings

WEDNESDAY, OCTOBER 27, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/26/2004 - 10/29/2004 Session)

NUMBER AND STYLE

03-2223

Fulmer v. City of St. Albans
(Goodwin)

04-1455 (L), 04-1466

BIS Computer v. City of Richmond
(Hudson)

NATURE OF CASE

FAIR LABOR STANDARDS ACT. Whether city's method of
calculating regular hourly rate and overtime rate for
firefighter wages was in compliance with the Act.

CONTRACTS. Whether plaintiff was a third party beneficiary
of city contract; prejudgment interest.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
Beginning at conclusion
of en banc rehearings

WEDNESDAY, OCTOBER 27, 2004

REVD 10/12/04

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/26/2004 - 10/29/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-4907

US v. John Ickes
(Williams)

CRIMINAL. Whether warrantless search and seizure of computer and diskettes violates Fourth Amendment; whether district court's failure to include forfeiture order in written judgment or in oral pronouncement can be corrected under Fed. R. Crim. P. 36.

04-1569

US ex rel Werner v. Fuentez Systems
(Broadwater)

FALSE CLAIMS ACT. Challenge to summary judgment based on "government knowledge" defense.

03-6601

US v. Sheppard
(Fox)

CRIMINAL. Whether McCullough's conflict of interest established ineffective assistance of counsel.

PANEL V
COURTROOM FIVE
Courthouse Annex Room 229
Beginning at conclusion
of en banc rehearings

WEDNESDAY, OCTOBER 27, 2004

REVD 10/6/04

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/26/2004 - 10/29/2004 Session)

NUMBER AND STYLE

04-1454
JH v. Henrico Cnty School
(Williams)

NATURE OF CASE

EDUCATION. Challenge to district court's reversal of
hearing officer's decision under IDEA.

04-1054
Dean v. Pilgrims Pride Corp
(Maxwell)

STATUTORY CONSTRUCTION. Effect of attorney error on
plaintiff's ability to refile action pursuant to West
Virginia "savings statute."

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

THURSDAY, OCTOBER 28, 2004

REVD 10/27/04

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/26/2004 - 10/29/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

02-2347

Burrell v. Commonwealth of VA
(Williams)

FIFTH AMENDMENT. Whether officer violated Burrell's rights by questioning him concerning liability insurance and then issuing a summons after Burrell refused to respond.

04-1203

Choice Hotels Intl v. Patel
(Chasanow)

ARBITRATION. Whether parties received adequate notice of arbitration provision; challenge to arbitration award of liquidated damages.

04-1509

Teletronics Intl v. CNA Insurance
(Williams)

INSURANCE. Whether posting of and directing potential customers to an infringing product manual on a website constitutes "advertising" for policy coverage.

04-1112 (L), 04-1384

Coots v. Wachovia Bank NA
(Messitte)

ARBITRATION. Whether a non-signatory minor's conversion claim is subject to the arbitration provisions of decedent's bank account agreement.

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

THURSDAY, OCTOBER 28, 2004

REVD 10/25/04

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/26/2004 - 10/29/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-2166

Doe v. Pharmacia & Upjohn
(Messitte)

CIVIL. Whether pharmaceutical company owed duty of care to spouse of employee who became infected with HIV while handling the virus at work when workplace testing did not give conclusive diagnosis.

04-1136

Howard Delivery Svc v. Zurich American Ins
(Stamp)

BANKRUPTCY. Whether unpaid workers' compensation insurance premiums are afforded priority.

04-1026 (L), 04-1264

Lovell v. BBNT Solutions LLC
(Ellis)

EMPLOYMENT. Challenge to judgment for violation of Equal Pay Act and Title VII; damages.

04-1211

Ford v. General Electric
(Wilson)

CIVIL RIGHTS. Challenge to summary judgment in action alleging racial discrimination in employee discipline and retaliation for protected activity.

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

THURSDAY, OCTOBER 28, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/26/2004 - 10/29/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1058

Hesson v. Morrison-Knudsen Co
(Copenhaver)

ISSUE. Whether the deliberate intent exception of West
Virginia Worker's Compensation scheme was satisfied;
premise liability issue.

03-2103

Shields v. Federal Express Corp
(Garbis)

TITLE VII. Whether there was sufficient evidence of
discrimination to defeat summary judgment.

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

THURSDAY, OCTOBER 28, 2004

REVD 10/27/04

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

NATURE OF CASE

04-1353

Puglia Marine Inc v. Halter Marine Inc
(Currie)

CONTRACTS. Challenge to summary judgment in action alleging unjust enrichment, promissory estoppel and breach of contract in connection with construction of yacht.

04-1356

Luria v. Standard Fed S&L
(Schulze)

CIVIL. Whether creditor had a duty to ensure payment of trust fund taxes during the time it exercised its remedies under an assignment of rents provision.

04-1444

Harper v. Public Service Co WV
(Stanley)

ABSTENTION. Challenge to dismissal of action regarding state's solid waste disposal regulation based on Younger v. Harris and Burford v. Sun Oil.

PANEL V
COURTROOM FIVE
Courthouse Annex Room 229
9:30 a.m.

THURSDAY, OCTOBER 28, 2004

REVD 10/20/04

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/26/2004 - 10/29/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-4596

US v. Kinte L. Fisher
(Fox)

SENTENCING GUIDELINES. Whether criminal history points were correctly assigned under USSG Section 4A1.2(1); adequacy of district court findings concerning drug amount.
15 mins. per side

04-4024

US v. Lance L. Brown
(Hudson)

SENTENCING GUIDELINES. Whether underage possession of alcohol is similar to a juvenile status offense or public intoxication and should not be included in a defendant's criminal history under U.S.S.G. Section 4A1.2(c)(2).
15 mins. per side

04-4265

US v. Dickey-Bey
(Davis)

SEARCH & SEIZURE. Whether arrest and warrantless search of individual who retrieved package known to contain cocaine was supported by probable cause.

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

FRIDAY, OCTOBER 29, 2004

REVD 10/27/04

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/26/2004 - 10/29/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-2100

Ball v. NCRIC, Incorporated
(Williams)

INSURANCE. Whether claim that physician drugged and sexually assaulted patient was covered under medical malpractice policy; whether notice to insurer was sufficient.

04-4100

US v. Princibe Laguerre
(Turk)

CRIMINAL LAW & PROCEDURE. Whether the district court abused its discretion when it admitted into evidence summary charts of telephone toll records, Fed. R. Evid. 1006.

03-4172

US v. David C. Hughes
(Messitte)

SENTENCING GUIDELINES. Whether statements made during bankruptcy court hearing warranted obstruction of justice enhancement of sentence for bankruptcy fraud; other issues.
15 mins. per side

04-4131

US v. Connell Berry
(Howard)

CRIMINAL LAW. Whether, under plain error review, a forfeiture order, 21 U.S.C. Section 853(a) (2000), was entered absent sufficient evidence linking the assets to the drug offenses in Berry's unwritten guilty plea.

PANEL II

COURTROOM TWO

Courthouse Room 233 (Green Carpet)

** 7:45 a.m. **

FRIDAY, OCTOBER 29, 2004