Current Circuit Splits

The following pages contain brief summaries, drafted by the members of the *Seton Hall Circuit Review*, of circuit splits identified by a federal court of appeals opinion between October 9, 2008 and March 13, 2009. This collection is organized by civil and criminal matters, then by subject matter.

Each summary briefly describes a current circuit split. It is intended to give only the briefest synopsis of the circuit split, not a comprehensive analysis. This compilation makes no claim to be exhaustive, but will hopefully serve the reader well as a reference starting point.

CIVIL MATTERS

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BANKRUPTCY

Involuntary Bankruptcy – Subject Matter Jurisdiction: *Trusted Net Media Holdings, LLC v. The Morrison Agency, Inc.*, 550 F.3d 1035 (11th Cir. 2008)

In this case, the 11th Circuit considered "whether the requirements in 11 U.S.C. § 303(b) for commencing an involuntary bankruptcy petition are elements of subject matter jurisdiction," or whether "the requirements simply constitute elements that must be established to sustain an involuntary proceeding." *Id.* at 1037, 1041. The 9th Circuit and a majority of lower courts have concluded that section 303(b)'s requirements are not subject matter jurisdiction because they can be waived. *Id.* at 1041. The 11th Circuit came to the same conclusion, but rather based on the fact that Congress did "not evince a congressional intent to implicate the bankruptcy courts' subject matter jurisdiction." *Id.* at 1043. As the 11th Circuit explained, Congress had conferred general jurisdiction upon bankruptcy courts in Title 11 cases. *Id.* at 1044. In reaching this conclusion, the 11th Circuit rejected the 2nd Circuit's minority position that parties must satisfy the threshold involuntary bankruptcy requirements before bankruptcy courts can gain subject matter jurisdiction. *Id.* at 1041–42.

CIVIL PROCEDURE

Subject Matter Jurisdiction – Principles of Comity and Federalism Barring Claims: *Commerce Energy, Inc. v. Levin*, 554 F.3d 1094 (6th Cir. 2009)

The 6th Circuit addressed whether principles of comity and federalism bar an otherwise valid 28 U.S.C. § 1341, or Tax Injunction Act claim. *Id.* at 1098. The court adopted the interpretation of the 7th and 9th Circuits, and determined that principles of comity and federalism only bar state taxation challenges where successful litigation would "operate to reduce the flow of state tax revenue," rejecting the 4th Circuit's expansive interpretation. *Id.* at 1097–99. The court determined

that an expansive reading was inappropriate because it "would render an Act of Congress entirely superfluous." *Id.* at 1102. Furthermore, the court stated that the 4th Circuit's expansive reading would *sub silentio* overrule prior Supreme Court and lower court rulings. *Id.* Therefore, in adopting a narrow holding and allowing subject matter jurisdiction to be exercised, the court reasoned that the current claim "would not significantly intrude upon traditional matters of state taxation in Ohio." *Id*.

District Court Discretion – Federal Magistrate Act: *Williams v. McNeil*, 2009 U.S. App. LEXIS 2484 (11th Cir. Feb. 10, 2009)

The 11th Circuit addressed "[w]hether a district court has discretion not to consider a petitioner's arguments regarding the timeliness of his federal habeas petition when the petitioner raises the timeliness arguments for the first time in his objections to a magistrate judge's report and recommendation." *Id.* at *1. The court first noted that under the Federal Magistrates Act, a magistrate judge lacks authority to make a final and binding ruling on a dispositive motion. *Id.* at *8. Further, a district court retains total control "of the entire process if it refers dispositive motions to a magistrate judge for recommendation." *Id.* at *9. The court cited the 4th Circuit's holding that "a district court must consider all arguments, regardless of whether they were raised before the magistrate judge," as compared to opposite holdings in the 1st, 5th, 9th and 10th Circuits. *Id.* at *10. The court agreed with the latter circuit courts that eliminating district court discretion to consider arguments not raised before the magistrate would nullify the very purpose of the Federal Magistrates Act, which was to help relieve a district court's workload. *Id.* at *10–12. The 11th Circuit concluded "that the district court has such discretion and, under the circumstances of this case, did not abuse its discretion." *Id.* at *1.

STATUTORY INTERPRETATION

Carmack Amendment – Required Bill of Ladings: *Regal-Beloit Corp. v. Kawaski Kisen Kaisha, LTD*, 2009 U.S. App. LEXIS 3597 (9th Cir. Feb. 17, 2009)

The 9th Circuit considered whether "the absence of a separate bill of lading" for the domestic, overland leg of an overseas shipment prevents the application of the Carmack Amendment's default forum-selection provisions. *Id.* at *24–27. The court recognized that prior precedent in the 9th Circuit held that the Carmack Amendment does apply to overseas shipments "without any requirement for a separate domestic bill of lading for the inland carriage." *Id.* at *26. Despite contrary authority in the 4th, 6th, 7th, and 11th Circuits, the court dismissed the contention that its prior assertion was dictum. *Id.* Therefore, in reaffirming its stance, the 9th Circuit stated that "the absence of a separate bill of lading does not remove this shipment from Carmack's venue restrictions." *Id.* at *27.

RLUIPA – Sovereign Immunity: *Sossamon v. The Lone Star State of Texas,* 2009 U.S. App. LEXIS 3701 (5th Cir. Feb. 17, 2009)

The 5th Circuit considered whether Texas's sovereign immunity barred official capacity causes of action if they were permitted under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §§ 2000cc–2000cc-5. *Id.* at *28. Recognizing that the RLUIPA was passed under Congress's Spending Clause power, the court determined that "when deciding the validity of a putative waiver of sovereign immunity through a state's participation in a Spending Clause contract, [the court considers] whether Congress spoke with sufficient clarity to put the state on notice that, to accept federal funds, the state must also accept liability for monetary damages." *Id.* at *29–30. While the court acknowledged the divergent opinion of the 11th Circuit on this issue, it sided with the 4th Circuit's emphasis that "appropriate relief" was an ambiguous RLUIPA term that did not favor a waiver of immunity under the Supreme Court's waiver doctrine. *Id.* at *30–32. The 5th Circuit thus held that "whether or not RLUIPA creates a cause of action for damages against Texas and the defendants in their official capacities, any award of damages is barred by Texas's sovereign immunity." *Id*. at *33.

ERISA – Statute of Limitations: *Browning v. Tiger's Eye Benefits Consulting*, 2009 U.S. App. LEXIS 3927 (4th Cir. Feb. 26, 2009)

In this case, the 4th Circuit deviated from the majority of other circuits and held that "actual knowledge" under the ERISA statute of limitations framework of 29 U.S.C. § 1113 should be determined by a "fact intensive" inquiry. *Id.* at *13. The court noted that the 3rd and 5th Circuits have adopted a narrow interpretation that "actual knowledge" under the ERISA statute requires a showing that plaintiffs actually knew of both the events that occurred which constitute a breach or violation and also that those events supported a claim of breach of fiduciary duty or violation under ERISA. *Id.* at *10. The 6th, 7th, 9th, and 11th Circuits only require knowledge of the facts or transaction that constituted the alleged violation. *Id.* at *10–11. The 4th Circuit, by contrast, did not settle on a hard and fast definition of "actual knowledge." *Id.* at *12. The court instead reasoned that because the "point in which one has actual knowledge of the breach of violation" depends on such things as the "complexity of the legal claim and the egregiousness of the alleged violation," as well as whether the "plaintiff knows the essential facts of the transaction or conduct constituting a violation," a "fact intensive" inquiry is required. *Id.* at *12–13.

Federal Magistrates Act – Judicial Discretion: *Williams v. McNeil*, 2009 U.S. App. LEXIS 2484 (11th Cir. Feb. 10, 2009)

The 11th Circuit considered "[w]hether a district court has discretion not to consider a petitioner's arguments" when raised "for the first time in his objections to a magistrate judge's report and recommendation." *Id.* at *1. The court first noted that under the Federal Magistrates Act, a magistrate judge lacks authority to make a final and binding ruling on a dispositive motion. *Id.* at *8. A district court retains total control "of the entire process if it refers dispositive motions to a magistrate judge for recommendation." *Id.* at *9. The court cited the 4th Circuit's holding that "a district court must consider all arguments, regardless of whether they were raised before the magistrate judge," as compared to opposite holdings in the 1st, 5th, 9th and 10th Circuits. *Id.* at *10. The latter circuit courts found that not permitting district courts to have discretion would nullify the very purpose of the Federal Magistrates Act, which was to help relieve a district court's workload. *Id.* at *10–12. Thus, the 11th Circuit concluded "that the district court has such

discretion and, under the circumstances of this case, did not abuse its discretion." *Id.* at *1.

CRIMINAL MATTERS

SENTENCING

Sentencing Guidelines – Imposition of Consecutive Sentences: *United States v. Lowe*, 2009 U.S. App. LEXIS 4184 (8th Cir. Mar. 3, 2009)

The 8th Circuit addressed whether a district court "lacks authority under 18 U.S.C. § 3584(a) to impose a sentence to run consecutive to a yet to be imposed state sentence." *Id.* at *2. The court held that it would remain consistent with its precedent that "the authority to impose such a federal sentence . . . falls within the broad discretion granted to the court." *Id.* The 8th Circuit disagreed with the 2nd Circuit's belief that the legislative history of § 3584(a) allows consecutive sentence "only where multiple terms imposed at the same time or where the defendant is already subject to an undischarged term." *Id.* at *3. Instead, the 8th Circuit agreed with the 10th Circuit that "§ 3584(a) does not prohibit a district court from imposing a consecutive sentence in these circumstances." *Id.* The court also agreed with the 11th Circuit that the federal court does not lack "authority to impose a federal sentence to run consecutive to a yet to be imposed state sentence because it would hinder state sentencing discretion." *Id.* Finally, the 8th Circuit agreed with the 5th Circuit's reasoning that the district court "may consider subsequent sentences anticipated, but not yet imposed, in separate state court proceedings when exercising discretion to impose [a] consecutive sentence." *Id.* at *2–3 (internal quotation marks omitted).

STATUTORY INTERPRETATION

Drug Statutes – Definition: *United States v. Higgins*, 557 F.3d 381 (6th Cir. 2009)

In this case, the 6th Circuit determined that the definition of "cocaine base" in 21 U.S.C. § 841 means only "crack cocaine." *Id.* at

395. After noting that the majority of circuits, including the 1st, 2nd, 3rd, 4th, 5th, and 10th, have refused to limit the definition of "cocaine base" and have instead held that it includes all forms of "cocaine base," the court decided to follow the 7th, 9th, 11th, and D.C. Circuits which have limited § 841's definition to "crack cocaine." *Id.* at 394–95. In coming to its conclusion, the court determined that Congress intended that the enhanced sentencing penalties for "cocaine base" would apply to crimes involving "crack cocaine." *Id.* at 395. Furthermore, the court reasoned that such an interpretation of "cocaine base" would be in line with the Sentencing Guidelines which define "cocaine base" as "crack cocaine." *Id.*