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**Important Labor and Employment Cases
Still Pending on U. S. Supreme Court's Docket for 2008**

This memorandum updates the status of the labor and employment cases that remain pending on the U. S. Supreme Court's docket for 2008. It also provides a summary of the U. S. Supreme Court decisions in labor and employment cases already announced in 2008.

Oral Argument in Fall of 2008

It is anticipated that the U. S. Supreme Court will decide two important labor and employment cases when the Court commences its new term on October 1, 2008. While the cases will not be decided immediately on that date, decisions are expected before the end of 2008.

1. **14 Penn Plaza, LLC v. Pyett, (Docket No. 07-581) (Appeal from 2nd Circuit) (Oral argument anticipated in Fall, 2008).** In this case, the U. S. Supreme Court will decide the extent to which discrimination claims must be arbitrated under collective bargaining agreements, *i.e.*, whether an arbitration clause in a collective bargaining agreement (as opposed to an individual employment contract) can constitute a waiver of a union employee's right to sue in court for violation of the employment discrimination laws.

2. **Crawford v. Metropolitan Government of Nashville & Davidson County, (Docket No. 06-1595) (Appeal from 6th Circuit) (Oral argument scheduled for October 8, 2008).** In this case, the Court will decide the scope of anti-retaliation laws in protecting employees who cooperate in employer internal investigations, *i.e.*, whether Title VII's anti-retaliation provision (Section 704(a)) protects an employee from being discharged based on cooperation with an employer's internal investigation of another employee's claims of sexual harassment.

U. S. Supreme Court Decisions Already Announced in 2008

The U. S. Supreme Court has already decided the following important labor and employment cases, which we have covered in prior client alerts:

1. **Sprint/United Management Co. v. Mendelsohn, 128 S. Ct. 1140 (Docket No. 06-1221) (Appeal from 10th Circuit) (Decision issued on February 26, 2008).** The Court issued a unanimous decision, holding that "me, too" evidence of employment discrimination is not *per se* inadmissible, but admissibility will be decided on a case-by-case basis by the trial court.

2. **Federal Express Corp. v. Holowecki, 128 S. Ct. 1147 (Docket No. 06-1322) (Appeal from 2nd Circuit) (Decision issued on February 27, 2008).** The Court issued a 7-2 decision, holding that an intake questionnaire submitted to the EEOC may suffice for a timely charge of discrimination under the Age Discrimination in Employment Act.

3. **Hall Street Associates, L.L.C. v. Mattel, Inc., 128 S. Ct. 1396 (Docket No. 06-989) (Appeal from 9th Circuit) (Decision issued on March 25, 2008).** The Court held, in a 6-3 decision, that private parties to an arbitration agreement cannot contractually agree to expand the limited scope of judicial review permitted under the Federal Arbitration Act.

4. **CBOCS West, Inc. v. Humphries, 128 S. Ct. 1951 (Docket No. 06-1431) (Appeal from 7th Circuit) (Decision issued on May 27, 2008).** In a 7-2 vote, the Court held that race retaliation claims are actionable under section 1981, 42 U.S.C. § 1981.

5. **Meacham v. Knolls Atomic Power Laboratory, 128 S. Ct. 2395 (Docket No. 06-1505) (Appeal from 2nd Circuit) (Decision issued on June 19, 2008).** In a 7-1 decision without Justice Breyer, the Court held that an employer has the burden of proof when it raises the “reasonable factors other than age” statutory affirmative defense in a disparate impact claim under the Age Discrimination in Employment Act.

6. **Kentucky Retirement Systems v. EEOC, 128 S. Ct. 2361 (Docket No. 06-1037) (Appeal from 6th Circuit) (Decision issued on June 19, 2008).** The Court held, in a 5-4 decision, that the use of age as a factor for determining benefits in a retirement or benefits plan does not constitute automatic age discrimination under the Age Discrimination in Employment Act.

7. **Chamber of Commerce v. Brown, 128 S. Ct. 2408 (Docket No. 06-939) (Appeal from 9th Circuit) (Decision issued on June 19, 2008).** The Court held, in a 7-2 decision, that a California statute which regulates employer speech about union organization is invalid and preempted by the National Labor Relations Act.

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