

# MAYER BROWN'S PENDING MATTERS IN THE U.S. SUPREME COURT

As of July 8, 2011

FINAL

## GRANTED CASES

No.	Caption and Status	Attorneys	Description
09-893	<i>AT&amp;T Mobility LLC v. Concepcion</i> Reversed and remanded 4/28/11	K. Geller A. Pincus E. Tager D. Falk A. Parasharami K. Ranlett	The Court granted our petition for certiorari to address whether the Federal Arbitration Act (“FAA”) preempts the Ninth Circuit’s holding that a provision in AT&T Mobility’s wireless service agreement that requires disputes to be arbitrated on an individual basis is unconscionable under California law. The Court held that it does, explaining that the California rule applied by the Ninth Circuit is an obstacle to the accomplishment of the objectives if the FAA. Andy Pincus argued the case.
09-152	<i>Bruesewitz v. Wyeth</i> Affirmed 2/22/11	K. Geller D. Gossett B. Wong	The Court granted certiorari to address whether Section 22(b)(1) of the National Childhood Vaccine Injury Act of 1986—which expressly preempts claims against the manufacturers of covered vaccines arising “from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warning”—preempts all vaccine design defect claims, regardless of whether the vaccine’s side effects were unavoidable. We filed an amicus brief on behalf of the Chamber of Commerce, arguing that the presumption against preemption should not apply in express preemption cases and advocating a categorical rule where a covered vaccine was properly manufactured and adequately labeled. The Court agreed with our position and affirmed, finding that the NCVIA preempts all design-defect claims against manufacturers of covered vaccines.
08-1423	<i>Costco Wholesale Corp. v. Omega, S.A.</i>	A. Pincus P. Hughes	The “first sale” doctrine of the Copyright Act, 17 U.S.C. 602(a), permits a buyer to sell copyrighted goods on the secondary market.

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	Affirmed 12/13/2010		The Court granted certiorari to determine whether a sale of a good abroad represents such a sale, triggering a “first sale.” The court below held that a sale abroad did not constitute such a sale, and thus a products manufacturer may restrict imports of copyrighted goods into the U.S., even though it had sold those goods abroad. We filed an amicus brief on behalf of the Business Software Association, arguing that the lower court correctly interpreted this provision. The decision below was affirmed by an equally divided Court.
10-235	<i>CSX Transportation, Inc. v. Robert McBride</i> Affirmed 6/23/11	C. Rothfeld E. Tager D. Himmelfarb	The issue in this case was whether the Federal Employers Liability Act, a negligence statute that governs a railroad’s liability for an employee’s injury in the workplace, incorporates the common-law proximate causation standard. By a 5-4 vote, the Court held that it does not and that the proper causation standard is whether the railroad’s negligence played a part, no matter how small, in bringing about the employee’s injury. We represented CSX. Charles Rothfeld argued the case.
09-1088	<i>Cullen v. Pinholster</i> Reversed 4/4/11	D. Falk N. Soltman R. Martin	The Court granted certiorari to address the interaction between two provisions of the federal habeas statute, 28 U.S.C. § 2254. We filed an amicus brief on behalf of the Disability Rights Foundation, emphasizing the difficulties faced by trial counsel in a capital case when the defendant has organic brain damage or other significant mental or developmental disability. The Supreme Court reversed the Ninth Circuit’s affirmance of habeas relief, holding that federal habeas review under § 2254(d)(1) is limited to the record before the state court and, accordingly, that new evidence admitted by the federal court under § 2254(e)(2) may not be considered in determining whether the state court unreasonably applied clearly established federal law to the record before it. On the merits, the Supreme Court held that the California Supreme Court reasonably could have concluded that the defendant’s trial counsel acted competently.

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09-1533	<i>DePierre v. United States</i> Affirmed 6/9/11	A. Pincus C. Rothfeld P. Hughes M. Kimberly	Resolving a 6-to-5 circuit split, the Supreme Court held that the words “cocaine base” in 21 U.S.C. § 841(b)(1)(A)(iii) apply to all forms of cocaine base, rather than strictly to cocaine in its “crack cocaine” form. In conjunction with the Yale Law School Supreme Court Clinic, we represented the petitioner. Andy Pincus argued the case.
09-1298	<i>General Dynamics Corp. v. United States</i>  <i>The Boeing Company v. United States</i> Vacated and remanded 5/23/11	D. Gossett B. Willen	The Supreme Court unanimously held that when the government successfully invokes the “state secrets” privilege to bar adjudication of an affirmative defense plausibly asserted by the contractor, and when “full litigation of that defense ‘would inevitably lead to the disclosure of’ state secrets,” the proper remedy is to leave the parties in the position they occupied— <i>i.e.</i> , with whatever “funds and property” they possessed—before the breach-of-contract suit was initiated. We filed an amicus brief on behalf of The Constitution Project, arguing that the state-secrets privilege should be understood as an evidentiary doctrine that requires court oversight, not an immunity.
10-6	<i>Global-Tech Appliances Inc. v. SEB S.A.</i> Affirmed 5/31/11	A. Pincus P. Hughes	The Court held that to be held liable under 35 U.S.C. § 271(b) for actively inducing infringement of a patent, the defendant must know that the induced acts constitute patent infringement and that willful blindness, but not mere deliberate indifference, satisfies § 271(b)’s knowledge requirement. We filed an amicus brief on behalf of the Business Software Alliance supporting petitioners, arguing that induced infringement requires proof of actual knowledge and specific intent.
09-350	<i>Los Angeles County v. Humphries</i> Reversed and remanded 11/30/10	A. Pincus C. Rothfeld P. Hughes	The County of Los Angeles challenged a fee award through a petition of certiorari, arguing that (1) no judgment can be had against a county—even for prospective relief—until the plaintiffs prove <i>Monell</i> liability, and (2) that the declaratory relief obtained here is insufficient to trigger a fee award. The Court granted

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			certiorari, limited to the first question. The Court reversed and remanded, ruling that prospective relief does require proving the <i>Monell</i> causation elements. In conjunction with the Yale Law School Supreme Court Clinic, we represented the Humphries. Andy Pincus argued the case.
10-1150	<i>Mayo Collaborative Services (d/b/a Mayo Medical Labs.) v. Prometheus Labs.</i>  Cert. granted 6/20/11	S. Shapiro T. Bishop	After we obtained a GVR in light of <i>Bilski</i> , the Federal Circuit reaffirmed its prior ruling that Prometheus’s patents satisfy Section 101 under the “machine and transformation” test, even though the result is to preempt all uses of naturally occurring correlations. We filed a petition for certiorari, which the Court granted. We now represent petitioner on the merits.
10-290	<i>Microsoft Corp. v. I4I Limited Partnership</i>  Affirmed 6/9/11	A. Pincus P. Hughes	The Court held that a clear-and-convincing standard of proof—and not the preponderance-of-the-evidence standard—applies to patent-invalidity claims, regardless of whether the materials were considered by the Patent Trademark Office in the course of the patent prosecution. We filed an amicus brief on behalf of the Business Software Alliance supporting Microsoft.
10-788	<i>Rehberg v. Paulk</i>  Opening brief filed 6/6/11	A. Pincus C. Rothfeld M. Kimberly P. Hughes	The Court granted our petition for certiorari to address whether a government official who acts as a “complaining witness” by presenting perjured testimony before a grand jury is entitled to absolute immunity from a Section 1983 claim for civil damages. Grand jury witnesses ordinarily are protected by absolute immunity against liability arising from their testimony. Some circuits have provided a carve-out, however, for false testimony given by “complaining witnesses” who themselves bring the charge that is the subject of the proceedings. Other circuits, including the Eleventh, have declined to recognize such an exception. In this case, the victim of a politically motivated investigation and ultimately baseless indictment brought a Section 1983 malicious prosecution suit against the district attorney and chief investigator of Dougherty

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			County, Georgia. In conjunction with the Yale Law School Supreme Court Clinic, we filed a petition for certiorari. We now represent Rehberg on the merits.
08-1448	<i>Schwarzenegger v. Entertainment Merchants Association</i> Affirmed 6/27/11	D. Falk E. Volokh	The Court held in this case that a state statute restricting the sale of violent video games to minors was an unconstitutional abridgement of First Amendment rights. The statute at issue defined “violent video games” as games that are “patently offensive to prevailing standards in the community as to what is suitable for minors,” or that appeal to minors’ “deviant or morbid interests,” and that lack “serious literary, artistic, political, or scientific value for minors.” We filed an amicus brief on behalf of several First Amendment law professors, arguing that the statute’s standard is unduly vague because there is no consistent history of societal disapproval of violent speech.
09-1205	<i>Smith v. Bayer Corp.</i> Reversed 6/16/11	D. Gossett P. Hughes	The Court held in this case that the Anti-Injunction Act forbids a federal district court to enjoin a state court from certifying a class under state procedural rules when the district court had previously denied certification of a similar class under federal procedural rules but neither the parties sought to be estopped nor the issues to be presented in state court are identical to those presented to the district court. We filed an amicus brief on behalf of the Product Liability Advisory Council supporting respondents.
10-277	<i>Wal-Mart Stores, Inc. v. Dukes</i> Reversed 6/20/11	D. Falk D. Himmelfarb A. Parasharami K. Ranlett	This case involves the largest class action ever certified—over 1.5 million female Wal-Mart employees alleging gender discrimination under Title VII. The Court reversed the certification of the class on two independent grounds. First, the Court held that the class did not meet the commonality requirement of Fed. R. Civ. P. 23(a). Second, the Court held that the class could not be maintained under Fed. R. Civ. P. 23(b)(2) because it sought more than merely incidental monetary relief. We filed an amicus brief urging reversal on behalf

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			of the Association of Global Automakers, Inc. Our brief addressed the significance of the Rule 23 issues to non-employment litigation involving the automobile industry.
08-1314	<i>Williamson v. Mazda Motor of America, Inc.</i> Reversed 2/23/11	K. Geller E. Jones C. Rothfeld D. Himmelfarb	The plaintiffs in this case sued Mazda in California state court, alleging that a passenger wearing a lap-only seatbelt in a rear seat of a 1993 minivan was killed in an accident and that Mazda was liable under state negligence law for failing to install a lap/shoulder seatbelt in the passenger's seat. The California Court of Appeal held that the claim was preempted by the then-applicable version of Federal Motor Vehicle Safety Standard 208, which permitted Mazda to install either lap-only or lap/shoulder belts in the rear seating position. The Supreme Court granted the plaintiffs' petition for certiorari and held that the safety standard did not preempt plaintiffs' state-law negligence claim. We served as co-counsel for Mazda.

**CERT. PETITIONS AND APPEALS**

<b>No.</b>	<b>Caption and Status</b>	<b>Attorneys</b>	<b>Description</b>
10-691	<i>Alliance Logistics, Inc. v. New Prime, Inc.</i> Cert. denied 2/22/11	J. Sarles K. Silverman	We successfully opposed certiorari in this case raising the question “whether a federal court of appeals may reverse a jury verdict and direct entry of judgment for the verdict losing party based on a sufficiency of evidence issue not raised in a Federal Rule of Civil Procedure 50(a) motion for judgment as a matter of law.”
10-103	<i>Archstone Multifamily Series I Trust v. Niles Bolton Associates, Inc.</i> Cert. denied 11/1/10	D. Gossett B. Steele M. Kimberly	The Fair Housing Act and the Americans with Disabilities Act contain no provisions addressing the eventual allocation of responsibility for any violations among jointly liable parties. The Fourth Circuit held that these statutes impliedly preempt state law indemnity, breach of contract, and negligence claims brought by the owner of a noncompliant building against the architect who mis-designed the building, exacerbating a circuit split on whether the lack of a federal indemnification remedy preempts existing state-law remedies. We filed a petition for certiorari on behalf of the developer.
10-232	<i>Bank of New York Mellon v. Grede</i> Cert. denied 10/18/10	J. Sarles S. Dargar	This case addresses whether a trustee, who was appointed by a bankruptcy court to administer a liquidation trust pursuant to a confirmed Chapter 11 plan, has standing to file claims assigned to him by a subset of creditors where any recovery will go only to the assignors and not to the bankruptcy estate or trust. The district court agreed with us that the answer is no, but the Seventh Circuit reversed. We filed a petition for certiorari contending that the Seventh Circuit’s ruling deviates from Supreme Court precedent and conflicts with decisions of other Courts of Appeals.
10-237	<i>Buonora v. Coggins</i> Cert. denied 1/18/11	A. Pincus C. Rothfeld P. Hughes	This case involves a Section 1983 plaintiff who was indicted after a police officer perjured himself before the grand jury. The Second Circuit concluded that a conspiracy exception precludes the officer from asserting absolute immunity for his perjured testimony. The

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			officer filed a petition for certiorari, contending that this decision conflicts with the holdings of other circuits. In conjunction with the Yale Law School Supreme Court Clinic, we represented respondent in opposing certiorari.
10-534	<i>Certain Underwriters at Lloyd's, London v. Lagstein</i> Cert. denied 12/13/10	P. Lacovara E. Tager C. Summers	This case arises out of a denied disability claim. Even though the insured had returned to work soon after his surgery and was earning millions of dollars a year in his medical practice, a two-arbitrator majority found that the claim had been denied in bad faith, awarded benefits for the full five-year term of the policy, added \$1.5 million for emotional distress, and set a second hearing after which it awarded \$4 million in punitive damages. After issuance of the awards, the insurer learned that one of the arbitrators in the majority had agreed to leave the state-court bench to avoid prosecution for judicial misconduct and that the other, a former member of the state supreme court, had issued rulings favoring the other arbitrator during proceedings arising out of the investigation of the alleged judicial misconduct. The district court vacated both awards. It held that the arbitrators exceeded their powers by scheduling the second hearing and issuing a second award months after the deadline the parties had set for issuance of the award. It also concluded that both awards issued by the panel majority were irrational, in manifest disregard of the law, and indicative of bias. But it rejected our argument that the arbitrators should have disclosed the non-prosecution agreement and their prior relationship. The Ninth Circuit reversed. We filed a cert. petition asking the Court to review the Ninth Circuit's holdings that (i) the arbitrators did not have an obligation to disclose anything other than prior relationships with the parties and their counsel; (ii) the arbitrators had unreviewable discretion to override the deadline to which they and the parties had expressly agreed; and (iii) the arbitrators did not manifestly disregard the law or act irrationally.
09-1361	<i>City of Reno v. Conn</i>	A. Pincus	This cases involves a woman who hanged herself in her cell one day

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	Granted, vacated, and remanded 4/4/11	C. Rothfeld P. Hughes M. Kimberly	after police officers witnessed a suicide attempt that they failed to report. The district court granted summary judgment for defendants on plaintiffs' deliberate indifference theory, but the Ninth Circuit reversed. The City sought certiorari, and in conjunction with the Yale Supreme Court Clinic, we filed an opposition for respondents. After deciding <i>Connick v. Thompson</i> , No. 09-571, a case regarding municipal liability for deliberate indifference claims, the Supreme Court granted, vacated, and remanded to the Ninth Circuit for reconsideration in light of <i>Connick</i> .
10-294	<i>Comer v. Murphy Oil USA</i> Mandamus denied 1/7/11	H. Zarov T. Bishop C. Clamage C. Kelley R. Bulger	The plaintiffs in this case filed a nuisance suit alleging that oil, coal, and chemical companies that emit greenhouse gases are responsible for their damages from Hurricane Katrina. The district court dismissed the case on political question and standing grounds. A panel of the Fifth Circuit reversed, permitting the case to proceed. After granting en banc review (which vacated the panel decision), the Fifth Circuit lost a quorum before it could decide the merits. The court thus dismissed plaintiffs' appeal, which had the effect of reinstating the district court decision dismissing the suit. The plaintiffs then filed a mandamus petition in the Supreme Court. We opposed mandamus on behalf of Dow Chemical Company.
10-235	<i>CSX Transportation, Inc. v. Robert McBride</i> Cert. granted 11/29/10	E. Tager D. Himmelfarb	The Court granted our petition for certiorari in this case to address whether the Federal Employers Liability Act, a negligence statute that governs a railroad's liability for an employee's injury in the workplace, requires proof of proximate causation.
10-151	<i>Depee v. Mahach-Watkins</i> Cert. denied 1/7/11	A. Pincus C. Rothfeld P. Hughes	The Ninth Circuit affirmed an award of attorneys' fees in this Section 1983 case in which the plaintiff succeeded in proving that an officer wrongfully shot and killed her son but was awarded only nominal damages. The State of California sought certiorari, contending that a Section 1983 party does not "prevail" and thus is not entitled to an award of fees, when that party secures only nominal damages. In

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			conjunction with the Yale Law School Supreme Court Clinic, we represented the respondent in opposing certiorari.
09-1533	<i>DePierre v. United States</i> Cert. granted 10/8/10	A. Pincus C. Rothfeld M. Kimberly	This case implicates a conflict among the circuits concerning a discrete question of statutory interpretation: Do the words “cocaine base” in 21 U.S.C. § 841(b)(1)(A)(iii) refer strictly to “crack cocaine” (as held by the Sixth, Seventh, Eighth, Ninth, Eleventh, and District of Columbia Circuits), or to “all forms of cocaine base, including but not limited to crack cocaine” (as held by First, Second, Third, Fifth, and Tenth Circuits)? Here, evidence in the record indicated that the cocaine base the defendant was charged with possessing was not crack. The First Circuit held the distinction irrelevant, however, concluding that 21 U.S.C. § 841(b)(1)(A)(iii) applies to all forms of cocaine base. In conjunction with the Yale Supreme Court Clinic, we filed a petition for certiorari.
10-196 10-252	<i>Friends of the Everglades v. South Florida Water Management District</i> <i>Miccosukee Tribe of Indians of Florida v. South Florida Water Management District</i> Cert. denied 11/29/10	T. Bishop B. Grewell C. Clamage	These cases presented the question whether the Eleventh Circuit erred in holding that Section 402 of the Clean Water Act does not require a permit for water transfers that pump water from one body of “navigable waters” to another. We filed a brief on behalf of respondents, United States Sugar Corp., urging the Court to grant certiorari on alternative grounds.
10-980	<i>Griffith v. Rednour</i> Cert. denied 6/6/11	J. Holzhauser D. Berger D. Storino	This habeas corpus case arising out of the Seventh Circuit presents questions related to the proper application of the statute of limitations under the Antiterrorism and Effective Death Penalty Act. We filed an amicus brief on behalf of a group of law professors and retired judges in support of the petitioner.
10-344	<i>Herrera v. Oregon</i>	E. Volokh	The Sixth Amendment guarantees a right to trial by jury in criminal cases, and the Supreme Court has interpreted that as requiring a

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	Cert. denied 1/7/11		unanimous jury for a conviction. But in <i>Apodaca v. Oregon</i> , 406 U.S. 404 (1972), the Supreme Court held that the Fourteenth Amendment does not apply this right to the states. Oregon and Louisiana now allow convictions by a 10-2 jury vote. We filed a petition for certiorari on behalf of Herrera arguing that the analysis in <i>McDonald v. City of Chicago</i> , 130 S. Ct. 3020 (2010), requires reconsideration of <i>Apodaca</i> .
10-10392	<i>Krieger v. United States</i> Cert. petition filed 5/6/11 Amicus brief filed 6/9/11 Response due 8/10/11	M. Nemetz	Jennifer Lynn Krieger pleaded guilty to simple distribution of fentanyl and was sentenced to a mandatory minimum sentence of 20 years in prison based on the trial judge's subsequent finding, by a preponderance of the evidence, that "death resulted" from use of the fentanyl. The Stanford Law School Supreme Court Litigation Clinic has filed a petition for certiorari on behalf of Krieger, contending that the "death resulting" factor should have been treated as an element of an aggravated offense that must be proven to a jury beyond a reasonable doubt, instead of as a sentencing factor that need only be proven to a judge by a preponderance of the evidence. We filed an amicus brief on behalf of the National Association of Criminal Defense Lawyers in support of the petitioner.
10-97	<i>Lynch v. City of New York</i> Cert. denied 10/18/10	A. Frey E. Penner	This case involved the constitutionality of a policy requiring all police officers in New York City to submit to a breathalyzer test following any shooting resulting in serious injury, absent a warrant, probable cause, or even any ground for suspicion of intoxication or other wrongdoing. We filed a cert petition on behalf of the Patrolmen's Benefits Association.
10-1150	<i>Mayo Collaborative Services (d/b/a Mayo Medical Labs.) v. Prometheus Labs.</i> Cert. granted 6/20/11	S. Shapiro T. Bishop	After we obtained a GVR in light of <i>Bilski</i> , the Federal Circuit reaffirmed its prior ruling that Prometheus's patents satisfy Section 101 under the "machine and transformation" test, even though the result is to preempt all uses of naturally occurring correlations. We filed a petition for certiorari, which the Court granted.

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10-1534	<i>McReynolds v. Merrill Lynch</i> Cert. petition filed 6/17/11 Response due 7/21/11	S. Shapiro T. Bishop S. Kane	Plaintiffs in this Title VII race-discrimination suit purport to represent a class of 700 African-American financial advisors employed by Merrill Lynch over the last decade in hundreds of offices across the country. Plaintiffs seek review of the Seventh Circuit's denial of their Rule 23(f) petition for leave to appeal from the district court's denial of class certification. We will file a brief in opposition.
09-1378	<i>Mendiola v. Holder</i> Cert. denied 11/1/10	A. Pincus C. Rothfeld	Mendiola, a lawful permanent resident, was ruled removable and subsequently removed from the United States based on two state convictions for possession of steroids. After returning to the United States, he filed a motion to reopen his removal proceedings. The BIA denied his request pursuant to 8 C.F.R. 1003.2(d), which prohibits the consideration of a motion to reopen once an alien has been removed from the country. On appeal, the Tenth Circuit affirmed; however, it acknowledged that its holding is in conflict with a decision of the Fourth Circuit. In conjunction with the Yale Supreme Court clinic, we filed a petition for certiorari, arguing that 8 C.F.R. 1003.2(d) conflicts with the Immigration and Nationality Act and is therefore invalid.
10-778	<i>Mohamed v. Jeppesen Dataplan, Inc.</i> Cert. denied 5/16/11	D. Gossett B. Willen	This case presented the question whether the Ninth Circuit, sitting en banc, erred in affirming a pleading-stage dismissal on the basis of the evidentiary state secrets privilege of a suit seeking compensation for unlawful abduction, arbitrary detention, and torture. We filed an amicus brief on behalf of The Constitution Project urging the Court to grant certiorari. We argued that certiorari is warranted to review the Ninth Circuit's expansion of the state secrets privilege into a non-justiciability rule, and we advocated that the privilege should be understood as an evidentiary doctrine that requires court oversight, not an immunity.

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10-1298	<i>Peirce v. CSX Transp., Inc.</i> Distributed for 9/26/11 conference	E. Tager D. Himmelfarb	CSX sued three lawyers and a doctor under RICO for filing fraudulent asbestos claims against CSX. The district court dismissed the complaint as time-barred, but the Fourth Circuit reversed. The lawyers and the doctor petitioned for certiorari. We filed an opposition on behalf of CSX.
10-778	<i>Ragbir v. Holder</i> Cert. petition filed 4/21/11 Response due 8/7/11	A. Pincus C. Rothfeld P. Hughes M. Kimberly	Ravidath Ragbir, a citizen of Trinidad and Tobago, was ordered deported by the Board of Immigration Appeals as an aggravated felon after his conviction of wire fraud. The BIA rejected Ragbir's contention that the government failed to show that his crime caused losses of more than \$10,000 (the amount required to make the crime an aggravated felony for immigration-law purposes). While the case was on appeal, the Supreme Court set out new standards that the agency may consider in making that determination, but the Second Circuit refused to remand the matter to the BIA for its application of the new standard in the first instance. Instead, the Second Circuit made that determination itself and found deportation permissible. In conjunction with the Yale Supreme Court Clinic, we filed a petition for certiorari on behalf of Ragbir.
10-788	<i>Rehberg v. Paulk</i> Cert. granted 3/21/11	A. Pincus C. Rothfeld M. Kimberly P. Hughes	Grand jury witnesses ordinarily are protected by absolute immunity against liability arising from their testimony. Some circuits have provided a carve-out, however, for false testimony given by "complaining witnesses" who themselves bring the charge that is the subject of the proceedings. Other circuits, including the Eleventh, have declined to recognize such an exception. In this case, the victim of a politically motivated investigation and ultimately baseless indictment, brought a Section 1983 malicious prosecution suit against the district attorney and chief investigator of Dougherty County, Georgia. Applying settled circuit law, the Eleventh Circuit declined to apply the complaining-witness exception and dismissed the suit against the chief investigator. In conjunction with the Yale Law School

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			Supreme Court Clinic, we filed a petition for certiorari.
10-617	<i>Roberts v. Kauffman Racing Equip. LLC</i> Cert. denied 6/28/11	A. Pincus C. Rothfeld M. Kimberly	This case presented the question whether Ohio may exercise personal jurisdiction over a Virginia resident who posts on the Internet an allegedly defamatory comment that will foreseeably cause injury to an Ohio business. The Ohio court's holding that it may exercise personal jurisdiction accords with decisions of the Seventh, Ninth, and Eleventh Circuits, but conflicts with decisions of the Fourth and Fifth Circuits and the Supreme Court of Minnesota. In conjunction with the Yale Law School Supreme Court Clinic, we filed a petition for certiorari. The Court held the petition pending its resolution of <i>J. McIntyre Machinery v. Nicastro</i> , No. 09-1343, and <i>Goodyear v. Brown</i> , No. 10-76, and then denied certiorari.
10-476	<i>Sabhnani v. United States</i> Cert. denied 1/18/11	D. Himmelfarb B. Wong	Following a seven-week trial, the defendant was found guilty of forced labor, document servitude, and other offenses. The media coverage of the case was sensational and vitriolic. Despite this, the Second Circuit refused to apply a presumption of prejudice and rejected the defendant's argument that pervasive pre-trial publicity required a change of venue. We filed a petition for certiorari on behalf of the defendant.
10-33	<i>Suquamish Indian Tribe v. Jamestown S'Klallam Tribe</i> Cert. denied 10/18/10	C. Rothfeld P. Hughes	In 1975, in the midst of lengthy litigation, a district court entered an order defining the usual and accustomed fishing grounds for various Indian tribes in the Puget Sound region. Nearly continuous litigation has followed regarding the interpretation of this order. Although the lower courts concluded that its unambiguous language favored the Suquamish, following Ninth Circuit precedent, the lower courts nonetheless examined the record in an attempt to discover the intent of the district court judge underlying the 1975 order. Concluding that the court's actual intent was at odds with the unambiguous language of the order, the courts found against the Suquamish. We filed a cert. petition for the Suquamish Indian Tribe arguing that the lower courts

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			misinterpreted this judicial order in defining their rights to certain fishing grounds. We contended that the Ninth Circuit's approach varies from other circuits that hold that a court may not consider evidence of a judge's intent when interpreting the unambiguous language of a judicial order.
09-1138	<i>Tam Travel, Inc. v. Delta Air Lines, Inc.</i> Cert. denied 1/7/11	R. Favretto A. Tauber J. Roberti T. Weiman	Plaintiffs brought an antitrust action alleging a conspiracy to fix fees paid by airlines to travel agents in connection with ticketing. The Sixth Circuit affirmed dismissal of the claim, both on the ground that plaintiffs had failed to allege facts sufficient to sustain such a claim and, with respect to United Air Lines, Inc., on the additional ground that plaintiffs' claim had in any event been extinguished in bankruptcy. We collaborated with counsel for the other defendants on a brief in opposition to the petition for certiorari.
10-300	<i>Tiffany (NJ) Inc. v. eBay Inc.</i> Cert. denied 11/29/10	S. Shapiro T. Bishop	This case presents a question regarding the standards governing contributory trademark infringement claims by rights holders against operators of online marketplaces on which infringing goods are allegedly listed. We successfully assisted eBay in opposing certiorari.
10-1171	<i>Thomas v. Louisiana Department of Social Services</i> Cert. denied 6/27/11	A. Pincus C. Rothfeld P. Hughes	Linda Thomas was accused of unlawfully providing food-stamp benefits to family members and was terminated. After she filed employment-discrimination claims, the state pressed criminal charges. Thomas ultimately was convicted at a bench trial and served 14 days imprisonment. Following her release, Thomas brought a civil rights suit. The Fifth Circuit concluded that the "favorable termination" rule of <i>Heck v. Humphrey</i> bars her claim. Seven circuits, however, have fashioned an impossibility exception to the favorable-termination rule, which likely would have applied here. In conjunction with the Yale Supreme Court Clinic, we filed a petition for certiorari on behalf of Thomas.

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10-314	<i>Welch v. United States</i> Cert. denied 6/20/11	J. Schroeder J. Sarles S. Dargar	This case presented two questions regarding the predicate offenses that may be used to increase a defendant’s sentence under the Armed Career Criminal Act and other similar sentence enhancement statutes. The first question was whether a prior nonjury juvenile adjudication falls within the scope of the “prior conviction” exception in <i>Apprendi v. New Jersey</i> . The second issue was whether vehicular flight from a police officer is a “violent felony” as interpreted by the Court’s recent decision in <i>Begay v. United States</i> , which held that a qualifying offense must involve purposeful, violent, and aggressive conduct. We filed a petition for certiorari arguing that the Seventh Circuit’s ruling conflicts with the Supreme Court’s Sixth Amendment and ACCA precedents and with the decisions of other circuits. The Court held the petition pending its resolution of <i>Sykes v. United States</i> , No. 09-11311, and then denied certiorari.
10-1177	<i>Wyeth LLC v. Scofield</i> Cert. denied 6/20/11	K. Geller E. Tager P. Hughes	The plaintiffs in this case alleged that Wyeth’s hormone-replacement medications caused them to contract breast cancer. They were awarded \$35.1 million in compensatory damages and \$99 million in punitive damages. Finding that the verdict had been animated by passion and prejudice, the trial court ordered remittiturs of the compensatory damages to \$22.8 million and the punitive damages to \$35 million. The Nevada Supreme Court affirmed. Wyeth filed a petition for certiorari contending that remittitur is not a constitutionally adequate remedy for passion and prejudice and that the punitive damages are unconstitutionally excessive. On behalf of the Product Liability Advisory Counsel, we filed an amicus brief supporting review of the first question.