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Considering Employment Law, Civil Rights and Employee Benefits: A Status Report on the Supreme Court at Mid-Term (Part I)

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As the 2001-02 Term passes its midpoint, the U.S. Supreme Court's focus remains where it has been for the last several terms, on employment-discrimination law, civil rights, employee benefits and telecommunications law. Here are some of the key cases among the 80 or more the Court has or will consider before its June recess.

- **Employment Law.** In recent years, the Court has turned its attention to the increasingly complex area of employment-discrimination statutes. In particular, the Court has examined the Americans With Disabilities Act. This term will be no different. The Court has already decided *Toyota Motor Manufacturing v. Williams*, No. 00-1089, which required it to define when a physical impairment rises to the level of a "disability" for purposes of the ADA. The Court held that, to find a disability, a court must conclude that the plaintiff is unable to perform "the variety of tasks central to most people's daily lives, not whether the claimant is unable to perform the tasks associated with her specific job."

In *EEOC v. Waffle House*, No. 99-1823, another ADA case, the issue was whether an employee's agreement to arbitrate employment disputes precluded the Equal Employment Opportunity Commission from initiating

an enforcement action in court against the employer. Last month, the Supreme Court, in a 6-3 decision, said that the agency's enforcement ability is not limited.

The Court is weighing the balance between the ADA's "reasonable accommodation" requirement and an employer's *bona fide* seniority system in *U.S. Airways, Inc. v. Barnett*, No. 00-1250. The full Ninth Circuit held that an employer's duty to accommodate an employee with a disability by transferring that employee to a new position takes priority over other employees' seniority rights. The Supreme Court heard argument in December 2001.

In *Ragsdale v. Wolverine Worldwide, Inc.*, No. 00-6029, the Eighth Circuit held that a Department of Labor regulation interpreting the Family and Medical Leave Act was invalid. The FMLA provides that an employer must give a qualifying employee 12 weeks of leave. The regulation at issue mandates that the 12 weeks do not start running until the employer gives the employee notice that it considers the leave to be FMLA leave. In a March 19, 2002 opinion the Supreme Court agreed with the Eighth Circuit that the regulation exceeded the statute's grant of authority.

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NOTA BENE

The First Circuit has forcefully reiterated the point that an appellant cannot expect the court of appeals to meaningfully consider a point addressed in only a skeletal fashion in a brief. In *Ortiz v. Gaston County Dyeing Machine Co.*, 277 F.3d 594 (1st Cir. 2002), the plaintiff/appellant argued that the district court erred in refusing to grant his motion to transfer venue after the court had already granted summary judgment. The First Circuit held that the off-hand reference to the issue in the appellant's brief was insufficient and that the appellant had waived the issue on appeal.

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Under Fed. R. App. P. 4(a)(4)(A)(iv), a motion to amend or alter the judgment tolls the 30-day period in which to appeal until after entry of an order disposing of the motion. In *Talano v. Northwestern Medical Faculty Foundation*, 273 F.3d 757 (7th Cir. 2001), Talano filed such a motion, but the Seventh Circuit ruled that it failed to toll the time to appeal because it lacked sufficient specificity to satisfy the particularity requirement of Fed. R. Civ. P. 7(b)(1). A subsequent brief filed in support was outside of the 10-day period for filing a motion to alter or amend the judgment, and thus did not "save" the motion by making it sufficiently specific. The court dismissed the appeal of the court's original judgment for lack of jurisdiction.

ON THE DOCKET

K&L lawyers recently won an appeal on behalf of Tracey Gavidia, a *pro bono* client who had sought an order under the Pennsylvania Protection from Abuse statute ("PFA"). Gavidia testified to the trial court that her husband had made multiple threats to kill her, which her husband denied. The trial court denied relief. The trial court's opinion assumed that "the victim's state of mind" governed in determining whether there was reasonable fear of imminent serious bodily injury as required by the PFA. K&L argued on appeal that, among other things, the trial court had applied the wrong standard to determine if Gavidia had experienced the requisite level of fear. The Superior Court agreed. It held that the focus should have been not on Gavidia's subjective response to alleged threats, but rather on whether a "reasonable" individual would have been placed in fear under the circumstances. The Superior Court vacated the denial of relief and remanded for further proceedings under an objective standard. K&L lawyers Lucas Paglia and Kenneth Argentieri handled the appeal.

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