

Justices Get Down to Business

High Court to Weigh In
On String of Corporate-Related Cases

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WASHINGTON -- The Supreme Court widened its fall docket yesterday, accepting a bevy of business-related cases that touch on issues varying from antitrust to global warming.

The case list underscores that the court, with two new Bush appointees, is ready to make its mark on economic issues as well as matters such as abortion.



John Roberts

The marquee case accepted involves regulation of so-called greenhouse gases believed by some to contribute to global climate change. Twelve states and several cities and environmental groups say the Bush administration has shirked its duty to regulate auto emissions thought to cause climate change.

Several automotive- and oil-producing states, along with industry groups, argue that the administration wasn't obliged to act on the issue. It should be "for the electorate to decide and not for the judiciary to decide," said Robin Conrad, senior vice president of the U.S. Chamber of Commerce's litigation arm.

In 2003, the Environmental Protection Agency reversed a Clinton administration finding and said the Clean Air Act doesn't grant it authority to regulate greenhouse gases. Even if it did, the agency said, regulation should be postponed until more is known about the health and environmental consequences. The plaintiffs, led by Massachusetts, claimed the agency misread the law and that scientific evidence has made clear that global warming has harmful effects.

The Clean Air Act directs the EPA administrator to set emission standards for pollutants from car engines that "in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." Groups siding with the EPA, including the American Petroleum Institute and the Engine Manufacturers Association, have said carbon dioxide emissions aren't pollutants.

The EPA prevailed at the U.S. Court of Appeals for the District of Columbia, although the judges couldn't agree on the reason why. One found the agency could choose not to use authority granted under federal law, while another said Massachusetts and other plaintiffs lacked standing to sue for actions they deemed harmful to humanity at large.

(Massachusetts v. Environmental Protection Agency)

The court agreed to consider two cases concerning the scope of federal antitrust laws. In the first, the justices will determine how much evidence plaintiffs must present in conspiracy allegations to go forward with litigation. In a suit filed on behalf of customers since 1996, the

plaintiff, represented by the class-action firm Milberg Weiss Bershad & Schulman LLP, alleged that telecom firms BellSouth Corp., Qwest Communications International Inc., SBC (now AT&T Inc.) and Verizon Communications Inc. conspired to avoid competing in each other's territory, driving prices higher for their customers.

The Second U.S. Circuit Court of Appeals, in New York, found the plaintiff had shown enough to proceed to discovery -- an often costly endeavor in which defendants can be compelled to turn over reams of records. Fearing that future plaintiffs could file frivolous claims to induce settlements, a host of corporate interests -- including airline, credit card and wireless communications companies -- asked the court to accept the case.

The other case concerns "predatory bidding," or the practice of buying raw goods at inflated prices to drive out smaller competitors. The plaintiff alleged that Weyerhaeuser Co., a leading hardwood manufacturer, paid a higher price and ordered more of a particular type of logs than necessary to run its business, thereby limiting supply and driving prices higher for competitors. The Ninth Circuit Court, in San Francisco, upheld an \$80 million jury award for the plaintiff.

(Bell Atlantic v. Twombly; Weyerhaeuser v. Ross-Simmons Hardwood Lumber)

The justices also will review a dispute over gas-pedal designs to consider when an invention is too obvious to win protection in the U.S. patent system. The high court's decision to review the "obviousness" doctrine in patent law came in litigation between KSR International Co., a Canadian maker of gas pedals, and Teleflex Inc., an industrial engineering company that claims KSR violated several patents it owns.

The case is being watched by patent experts who are following a decision by the Washington-based Federal Circuit Court of Appeals, a special patent law court. The Federal Circuit in January 2005 made it harder to challenge patented inventions for being too obvious, ruling the challenger must prove existing "teaching, suggestion or motivation would have led a person of ordinary skill in the art" to come up with the invention. The high court hasn't reviewed patent obviousness since 1966 when it ruled in a case involving the John Deere Co., today known as Deere & Co.

(KSR International v. Teleflex)

Last week, the court ruled that employers could face liability for a host of actions that constitute retaliation against workers who file discrimination claims. Yesterday, it agreed to review how much back pay workers may seek when alleging employment discrimination under the 1964 Civil Rights Act.

Specifically, the justices will decide when the statute of limitations starts running on wage discrimination claims -- when the employer made the payment decision or each time the worker receives a substandard paycheck.

(Ledbetter v. Goodyear Tire & Rubber)

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