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Subject: Obama DC Circ. Appointee Won't Sit Out CPP Oral Arguments

PUBLIC POLICY

Friday, September 23, 2016

TOP NEWS

Obama DC Circ. Appointee Won't Sit Out CPP Oral Arguments

A D.C. Circuit judge appointed by President Barack Obama who many assumed would not be participating in next week's oral arguments over the U. S. Environmental Protection Agency's Clean Power Plan will in fact be present, the court clarified Thursday.

Senate GOP Pushes Gov't Funding Band-Aid, As Dems Balk

Republican leadership in the Senate introduced Thursday their proposal to keep the government running after Sept. 30, even as disputes with Democrats over aid for Flint, Michigan, threatens to pull it apart.

House Passes DC Judge Transparency Bill

The District of Columbia's courts could soon see greater transparency, easier ways to pay fees, and more access to magistrate judges if a bill the House passed Thursday becomes law.

Lawmakers Seek EB-5 Group Docs As Renewal Fight Heats Up

Two top GOP lawmakers are seeking documents tied to a 2010 working group that examined fraud issues in the EB-5 visa program, according to a letter released Thursday, with the inquiry emerging on the same day as legislation that would temporarily extend a key part of the program.

Obama Creates National Security Climate Change Task Force

President Barack Obama on Wednesday instructed several federal agencies to come up with a plan to ensure that climate change-related impacts are considered in the development of national security policies as part of a new task force.

Lew Defends Systematically Important Designation Process

Treasury Secretary Jacob J. Lew on Thursday defended the process set up by the Dodd-Frank Act to designate large financial firms for enhanced regulatory oversight from Republican charges that it was unconstitutional and unmanageable.

Ohio Attys Now Safe To Advise On Legal Marijuana Activity

The Ohio Supreme Court has formally amended attorney conduct rules covering the advisement of clients engaged in certain, now-legal medical marijuana activity, making it ethically safe for Ohio lawyers to take on such work.

LAW FIRMS

Adams Stepner
Akin Gump
BakerHostetler
Buchanan Ingersoll
Crowell & Moring
Day Pitney
Dechert
Foley & Lardner
Freund Freeze
Gibbons PC
Heyl Royster
Hogan Lovells
Hooper Lundy
Hughes Hubbard
Hunton & Williams
Kellogg Huber
Kilpatrick Townsend
King & Spalding
Kramer Levin
Mayer Brown
McDermott Will
Milbank Tweed
Morris James
Norton Rose Fulbright
O'Melveny & Myers
Paul Hastings
Podhurst Orseck
Post & Schell
Proskauer Rose
Redgrave LLP
Riley Safer
Schiff Hardin
Shook Hardy
Sidley Austin

Full 6th Circ. Urged To Weigh Ky. Judges' Speech Limits

The Kentucky Judicial Conduct Commission on Thursday asked for a rehearing en banc of a decision by the Sixth Circuit finding its restrictions on judges' political speech unconstitutional, saying the decision ran contrary to Supreme Court precedent.

Sudan Loses \$315M USS Cole Bombing Rehearing Bid

A Second Circuit panel declined Thursday to rehear Sudan's appeal of a \$315 million judgment in favor of victims of the 2000 USS Cole bombing, saying service on the country's foreign minister at its embassy in the U.S. did not violate the Vienna Convention.

ANALYSIS

IRS Estate-Transfer Proposal Meets Rare Repeal Bill

A new bill to nullify estate-transfer rules proposed by the Internal Revenue Service may not be unprecedented, but experts say it is an unusual move that could shed more light on the controversial way in which the revenue agency is trying to prevent the undervaluation of transferred interests.

Small Bird Leads To Big Trouble For Final NDAA

While the Senate will likely stay in session next week to tie up loose ends before breaking until the election, one issue the chamber isn't expected to resolve is the final outcome of the 2017 National Defense Authorization Act, with one small bird proving to be a very large obstacle.

BANKING & SECURITIES

Wells Fargo CEO Steps Down From SF Fed Advisory Council

Wells Fargo CEO John G. Stumpf on Thursday resigned his position as advisory council member for the Federal Reserve Bank of San Francisco, Wells Fargo confirmed, just days after lawmakers roasted him for his bank's aggressive sales tactics that resulted in the opening of millions of unauthorized accounts.

Canadian Regulator Seeks Input On Commodity Pool Rules

The watchdog Canadian Securities Administrators called for comments Thursday on amendments intended to update how publicly offered investment funds are regulated.

FASB Chairman Grilled Over R&D Write-Off Requirement

A member of the U.S. House Financial Service Committee grilled the chairman of the Financial Accounting Standards Board on Thursday over the organization's inaction over current standards that require companies to write off research expenses, saying the regulations "violate all accounting theory."

CFPB 'Missed Opportunity' In Debt Outline, Groups Say

Consumer advocates said Thursday that a Consumer Financial Protection Bureau outline of potential new rules for the debt collection industry was a "missed opportunity" that did not provide sufficient protections against abusive collection practices.

ENERGY & ENVIRONMENTAL

EPA Assesses Strategies To Reduce Air Pollution At US Ports

Squire Patton Boggs

Stites & Harbison

Stoel Rives

Taft Stettinius

The Gober Group PLLC

White & Case

WilmerHale

Wilson Sonsini

COMPANIES

3M Company

7-Eleven Inc.

AT&T Inc.

America Fujikura Ltd.

American Arbitration Association

American Enterprise Institute

American Federation of Labor & Congress of Industrial Organizations

American Federation of State, County and Municipal Employees

American Gaming Association

American International Group Inc.

Apple Inc.

Aramark Corp.

Berkshire Hathaway Inc.

Broadcast Music Inc.

Center for Strategic and International Studies

Charter Communications Inc.

Comcast Corporation

Community Financial Corp.

Consumer Federation of America

Dow Chemical Co.

Exelon Corporation

Financial Industry Regulatory Authority Inc.

Florida Bar Association

General Electric Capital Corp.

General Electric Company

Google Inc.

HSBC Holdings PLC

Harris Interactive Inc.

Internet Corporation for Assigned Names and Numbers

LG Electronics Inc.

Las Vegas Sands Corp.

U.S. ports are making progress toward reducing greenhouse gas and other emissions from diesel-powered ships, trucks and port equipment, but additional initiatives can be implemented to further reduce pollutants as port infrastructure and international trade grows, the U.S. Environmental Protection Agency said in a report on Thursday.

5th Circ. Won't Make EPA Cough Up Docs In Effluent Rule Row

The Fifth Circuit on Wednesday denied a bid by industry groups challenging the U.S. Environmental Protection Agency's power plant effluent rule to force the agency to turn over documents for the litigation's administrative record.

100 Countries Urge Quick Start To HFC Phaseout

More than 100 countries have called for a new agreement that would quickly begin the phaseout of hydrofluorocarbons as part of the lead-up to an international conference next month addressing the protection of the Earth's ozone layer, the White House said Thursday.

House Dems Push Drinking Water Act Updates, Citing Flint

Two Democratic lawmakers from New York and New Jersey, citing the Flint drinking water crisis as a call to action, have introduced a law in the House of Representatives that would be the first major update to Safe Drinking Water Act in decades, they announced Thursday.

9th Circ. Says Alaska Fishery Needs Federal Management Plan

A Ninth Circuit panel on Wednesday ruled that the National Marine Fisheries Service can't cede oversight of a part of an Alaskan salmon fishery that allows net-fishing to the state unless the agency first produces a fish management plan for the fishery, handing a win to commercial fishing groups in their suit against the federal government.

HEALTH & LIFE SCIENCES

Hospitals, CMS Clash Over \$220M Pay-Cut Fix

Hospitals are at odds with the Centers for Medicare & Medicaid Services over how much they're owed after the agency reversed a \$220 million pay cut related to its "two-midnight rule" on inpatient admissions, according to a joint filing Thursday in D.C. federal court.

5th Circ. Doomed Miss. Abortion Law: Planned Parenthood

A Planned Parenthood affiliate suing Mississippi over a law that ends Medicaid funding for abortion providers has told a Mississippi federal court that a recent Fifth Circuit decision in another Planned Parenthood case requires a quick win for the nonprofit here.

IP & TECHNOLOGY

Calif. Gov. Signs Bill Banning State Park Trademarks

California Gov. Jerry Brown on Wednesday signed legislation that will prohibit private business operators in California's state parks from staking a trademark claim to historic park names for the mere fact of having a concession contract in light of an ongoing dispute affecting Yosemite National Park.

MEDIA & ENTERTAINMENT

[Lyft Inc.](#)

[Major League Baseball Inc.](#)

[MetLife Inc.](#)

[Microsoft Corporation](#)

[NBC Sports Group](#)

[NBCUniversal Inc.](#)

[NFL Enterprises LLC](#)

[National Collegiate Athletic Association](#)

[National Consumer Law Center](#)

[National Instruments Corporation](#)

[National Railroad Passenger Corporation](#)

[Newegg Inc.](#)

[News Corporation](#)

[Nike Inc.](#)

[Oakland Raiders](#)

[Oracle Corporation](#)

[Planned Parenthood Federation](#)

[Prudential Financial Inc.](#)

[Public Company Accounting Oversight Board](#)

[Ross Stores Inc.](#)

[San Francisco Bar Association](#)

[Service Employees International Union](#)

[Sierra Club](#)

[Southeastern Pennsylvania Transportation Authority](#)

[State Farm](#)

[Tesla Motors Inc.](#)

[Time Warner Cable](#)

[Twitter Inc.](#)

[Unilever Plc](#)

[United States Olympic Committee](#)

[Wells Fargo & Co.](#)

[Williams-Sonoma Inc.](#)

GOVERNMENT AGENCIES

[Army Corps of Engineers](#)

[Bureau of Citizenship and Immigration Services](#)

[Bureau of Land Management](#)

[Centers for Medicare & Medicaid Services](#)

[Consumer Financial Protection Bureau](#)

[Executive Office of the President](#)

'Failed' Fed. Sports Betting Ban Should Go: Gaming Group

The American Gaming Association issued a report Wednesday saying the U. S. approach to sports betting has "failed," creating a black market worth hundreds of billions of dollars that could be taxed and regulated if the federal sports betting ban were repealed.

Nev. Gov. Backs Public Financing For Las Vegas NFL Stadium

Republican Gov. Brian Sandoval of Nevada said Wednesday he strongly supports a financial plan to construct a National Football League stadium in Las Vegas for the Raiders and is ready to call a special legislative session in October to get the job done.

TRANSPORTATION & INFRASTRUCTURE

Bill Seeks To Expand TSA Surface Transpo Security Screening

U.S. senators introduced a bill Thursday requiring the Transportation Security Administration to assess security risks in rail, transit, highway, maritime passenger and freight transportation, significantly expanding the scope of the beleaguered agency's security screening responsibilities beyond just airports.

Tesla Sues To Strike Michigan's Direct Auto Sales Ban

Tesla Motors Inc. hit Michigan officials with a federal suit Thursday claiming the state's ban on direct-to-consumer car sales is unconstitutional and that its recent refusal to allow the electric carmaker to open a dealership in the state is a "protectionist" attempt to retain local monopoly power over auto sales.

GWB Defendant Said Not To Call Town Officials, Witness Says

A Port Authority of New York and New Jersey executive said Thursday at the George Washington Bridge lane-closing trial that one of the defendants indirectly told her not to call back concerned local officials during the week of the closures and claimed he later falsely testified before a legislative committee that there had been communication breakdowns.

FMCSA Expands Safety Tech Use For Commercial Vehicles

A final rule set to be published in the Federal Register on Friday will allow commercial motor vehicles to increase the use of interior windshield-located devices designed to mitigate safety risks, the U.S. Department of Transportation's Federal Motor Carrier Safety Administration announced Thursday.

REAL ESTATE

NJ Mega-Mall Bond Deal Faces Renewed Court Challenge

A New Jersey nonprofit Wednesday filed an amended notice of appeal to block the New Jersey Sports and Exposition Authority from issuing \$1.15 billion in bonds to pay for construction of the unfinished American Dream mall in the Meadowlands, arguing the agency is still failing to follow proper legal procedure.

Christine O'Donnell Misused Campaign Funds, Judge Finds

A Delaware federal judge ruled late Wednesday that unsuccessful 2010 U.S. Senate candidate Christine O'Donnell violated election law by using campaign contributions to pay the rent and expenses for a townhouse in a Wilmington suburb that doubled as her campaign headquarters and residence at the time.

EMPLOYMENT

Federal Communications Commission

Federal Deposit Insurance Corp

Federal Election Commission

Federal Motor Carrier Safety Administration

Federal Reserve Bank of NY

Federal Reserve System

Federal Trade Commission

Financial Stability Oversight Council

Internal Revenue Service

International Chamber of Commerce

Mississippi Attorney General's Office

Municipal Securities Rulemaking Board

National Aeronautics and Space Administration

National Marine Fisheries Service

National Oceanic and Atmospheric Administration

National Park Service

New Jersey Meadowlands Commission

Office of the Comptroller of the Currency

Permanent Court of Arbitration

Port Authority of New York & New Jersey

Securities and Exchange Commission

Transportation Security Administration

U.S. Army

U.S. Attorney's Office

U.S. Department of Defense

U.S. Department of Health and Human Services

U.S. Department of Homeland Security

U.S. Department of Justice

U.S. Department of Transportation

U.S. Department of the Interior

U.S. Department of the Treasury

U.S. Environmental Protection Agency

U.S. General Services

Pa. Court Axes Gov.'s Home-Care Worker Organization Order

A Pennsylvania state court on Thursday effectively gutted an executive order from Gov. Tom Wolf that critics said improperly allowed home care workers paid through government funds to unionize.

COMPETITION

Pa. Judge Told To Nix 'Unequal' Rules For Taxis, Ride-Sharing

A Pennsylvania state judge was urged Tuesday to put an end to the purportedly less burdensome and "unequal" regulatory scheme applied to ride-sharing services like Uber and Lyft, which is purportedly wreaking havoc on Philadelphia's traditional taxi and limousine industries.

PRIVACY & CONSUMER PROTECTION

House Backs TCPA Revamp To Clear Way For Legit Robocalls

Members of a House subcommittee on Thursday threw their support behind updating the Telephone Consumer Protection Act to make it easier for businesses to place legitimate telemarketing calls without getting sued, leading witnesses from the telecom, health care and energy sectors to offer their suggestions on how to clarify the decades-old statute.

Survey Reveals Connected Devices' Privacy Shortcomings

A global snapshot of the privacy communications of internet-connected devices showed users generally don't know what personal information is being collected or how it will be used once they hand it over, the Global Privacy Enforcement Network said on Thursday.

GOVERNMENT CONTRACTS

House Passes Bill To Modernize Federal IT Systems

The U.S. House of Representatives on Thursday unanimously passed a bill to establish several funds to help federal agencies upgrade their aging information technology systems, alongside legislation to broadly allow federal employees to use emerging transportation options like Uber for official travel.

INTERNATIONAL TRADE

Protesters Shout Down TPP-Stumping Gov't Officials

Protesters interrupted U.S. Trade Representative Michael Froman and Sen. Jeff Flake, R-Ariz., as the pair stumped for the controversial Trans-Pacific Partnership at a beltway-insider event Thursday in D.C., shouting out that the trade deal favors corporate interests over labor and environmental protections.

Conservative Groups Look To Head Off Anti-Trade Rhetoric

A fleet of free-market conservative groups on Thursday attempted to stem the tide of protectionism that has emerged from both sides of the aisle in this year's presidential campaign cycle, issuing a call for lawmakers to be strong advocates for trade liberalization initiatives.

Reps. Spar On US Response To South China Sea Ruling

Members of the House Foreign Affairs Committee and a panel of policy experts engaged in an occasionally heated debate Thursday over the best

Administration

U.S. House of Representatives

U.S. Office of Personnel
Management

U.S. Patent and Trademark Off

U.S. Senate

U.S. Supreme Court

United Nations

response to an international tribunal's ruling that rejected China's claims of control over the South China Sea, with some pushing for a display of resolve and others arguing U.S. interests aren't at stake.

TAX

Dem. PAC Asks Fla. AG With Trump Ties To Investigate Trump

A Democratic political action committee on Wednesday filed a complaint against The Trump Foundation with Florida Attorney General Pam Bondi, who has been accused of shady dealings with the foundation herself, in a move the group says aims to expose Donald Trump's regular bribery of officials.

House Passes Startup Stock Option Tax Deferral Bill

Employees looking to cash in on their stock options could get a tax break if a bill that the House passed Thursday in the face of a White House veto threat becomes law.

House Passes Bill Exempting Olympic Winnings From Tax

Many returning Olympians and Paralympians could avoid paying taxes on their medals and winnings if a bill the House passed Thursday becomes law.

Israeli Diamond Dealers Arrested In HSBC Tax Evasion Case

The Israel Tax Authority has arrested four brothers who sold diamonds and allegedly had unreported accounts holding millions of dollars in the Swiss arm of HSBC Holdings PLC, the agency announced Wednesday.

More Oversight Urged In \$2.8B NYC Development Tax Breaks

A report issued by members of the New York City Council on Thursday found that tax breaks intended to spur economic development in the city cost \$2.8 billion last year, and recommended more oversight to ensure the incentives are achieving their goals.

NATIVE AMERICAN

House Panel OKs Utah Lands Bill Over Tribal Objections

The U.S. House Natural Resources Committee pushed through a bill reforming management of federal land in Utah Thursday despite Democrats' objections the measure would trample tribal rights and allow mineral exploration in protected wilderness.

TELECOMMUNICATIONS

Trump Backs Ted Cruz's Fight Against Internet Transition

An effort led by Texas Sen. Ted Cruz to use this month's funding bill to block the transfer of the internet domain system's sole American stewardship earned the support Wednesday of GOP presidential nominee Donald Trump, whose campaign said congressional Republicans were "admirably leading a fight" against the transfer.

Let Consumers Trade Away Privacy, FCC Republican Says

Republican Federal Communications Commissioner Michael O'Rielly said Wednesday that the agency should not get in the way of consumers willing to trade their own data for lower prices, better service or more features, and not block broadband providers from providing incentives for information sharing.

Set-Top Box Plan Would Mandate Modem Fee, Charter Warns

Charter Communications stepped up its opposition Wednesday to what it says is a piece of the Federal Communications Commission's proposal to unlock set-top boxes and mandate cable television content be made available on third-party devices, warning a modem rentals provision will actually force the company to charge its customers.

EXPERT ANALYSIS

OPINION: Trump Wrong But Stop-And-Frisk Still Constitutional

Republican presidential candidate Donald Trump said he would reduce crime in black communities by implementing stop-and-frisk practices nationwide, claiming that they worked "incredibly well" in New York. It's almost too easy to point out why he is wrong, but criticism that stop-and-frisk is unconstitutional misses its mark. The practice was legitimized 50 years ago by the U.S. Supreme Court, says Katherine Macfarlane, a professor at the University of Idaho College of Law.

OPINION: CFPB Payday Loan Rule Ignores Existing Research

In its new regulations covering payday loans the Consumer Financial Protection Bureau asserts that compelled reborrowings associated with these types of loans are harmful to consumers. However, a careful review of the economic literature shows that this concept is manufactured in order to support what appear to be the CFPB's prejudices about how this market should operate, says Dennis Shaul, CEO of the Community Financial Services Association of America.

LEGAL INDUSTRY

GCs Fall Short On Law Firm Budgeting, Metrics And Feedback

Legal budgets may be tight and expenditures growing, but a survey of Fortune 1000 general counsels shows they aren't exactly flocking to cost-cutting and productivity-boosting measures like e-billing, matter budgeting and formal outside counsel evaluations.

Brief Rip-Off Suit Could Inspire Copycat Claims Against Attys

The tale of Newegg Inc.'s copyright suit against a lawyer who allegedly copied a brief it filed in a patent lawsuit may seem like an anomaly, but experts say that hurling accusations of copied briefs and plagiarism at fellow lawyers may be a new weapon for vexatious attorneys.

DOJ Atty Performed 'Sex Acts' On Train, Kicked Officer: OIG

The U.S. Department of Justice's Office of the Inspector General issued an executive summary on Thursday substantiating reports that an unidentified DOJ trial attorney engaged in "sex acts" on a train, refused to disembark when ordered and kicked an officer while being forced off the train.

Law360's Weekly Verdict: Legal Lions & Lambs

Wilson Sonsini Goodrich & Rosati PC topped this week's list of legal lions after the Second Circuit toppled a \$147 million price-fixing judgment against two of its clients while a Kellogg Huber partner landed on the lambs list when a judge lambasted his fee request in a \$244 million class action against News Corp.

Pro Bono Firm Of 2016: Dechert

As state laws purporting to combat “voter fraud” pop up across the nation, Dechert LLP has been there to help smack them back down for improperly restricting voting rights, racking up a number of pro bono victories that also include freeing a Louisiana prisoner from 35 years in solitary confinement and landing the firm a spot among Law360's Pro Bono Firms of 2016.

Rainmaker Q&A: Kilpatrick Townsend's James Gilliland

One potential client said he was looking for the meanest SOB in town. I said he should not hire me, because that is not how I handle cases. He didn't. On occasion, you have to tell clients you're not the right person for a job, says James Gilliland, partner at Kilpatrick Townsend & Stockton LLP.

Rainmaker Q&A: Podhurst Orseck's Steven Marks

Trial work is largely a referral business, so relationships are key. You have to distinguish yourself by your skills and expertise, but you also need to garner the right level of trust with other attorneys that you will serve their clients well, says Steven Marks, managing partner at Podhurst Orseck PA.

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