

The Supreme Court - September 27, 2018

Today, the Supreme Court of the United States granted certiorari in five cases:

Home Depot U.S.A., Inc. v. Jackson, No. 17-1471: (1) Whether an original defendant to a class-action claim can remove the class action if it otherwise satisfies the jurisdictional requirements of the Class Action Fairness Act when the class action was originally asserted as a counterclaim against a co-defendant. (2) Should this court's holding in *Shamrock Oil & Gas Co. v. Sheets*, 313 U.S. 100 (1941) – that an original plaintiff may not remove a counterclaim against it – extend to third-party counterclaim defendants?

Azar, Sec. of H&HS v. Allina Health Services, No. 17-1484: Whether 42 U.S.C. §1395hh(a)(2) or §1395hh(a)(4) required the Department of Health and Human Services to conduct notice-and-comment rulemaking before providing the challenged instructions to a Medicare Administrator Contractor making initial determinations of payments due under Medicare.

Rimini Street, Inc. v. Oracle USA, Inc., No. 17-1625: Whether the Copyright Act's allowance of "full costs" (17 U.S.C. §505) to a prevailing party is limited to taxable costs under 28 U.S.C. §§1920 and 1821, as the Eighth and Eleventh Circuits have held, or also authorizes non-taxable costs, as the Ninth Circuit holds.

TN Wine and Spirits Ass'n v. Byrd, No. 18-96: Whether the Twenty-first Amendment empowers States, consistent with the dormant Commerce Clause, to regulate liquor sales by granting retail or wholesale licenses only to individuals or entities that have resided in-state for a specified time.

Thacker v. Tennessee Valley Authority, No. 17-1201: (1) Did the Eleventh Circuit err by using a Federal Tort Claims Act-derived "discretionary-function exception," rather than *Fed. Housing Admin. v. Burr*, 309 U.S. 242 (1940), which tests the immunity of governmental "sue and be sued" entities, to immunize the Tennessee Valley Authority from the plaintiff's claims? (2) Did the Eleventh Circuit, in any case, correctly apply the discretionary function test? Did that court correctly hold that safely raising a downed

Related Capabilities

- Appellate
- Class Action Litigation
- Healthcare Litigation
- Intellectual Property Litigation
- Food, Beverage & Agribusiness

power line from the Tennessee River constitutes the sort of “policy”-laden discretionary work that this exception was designed to immunize from suit?