

Update: DRI Amicus Committee

By Lawrence S. Ebner

The DRI Amicus Committee's primary mission is to ensure that the U.S. Supreme Court continues to recognize DRI as the "voice of the defense bar." To accomplish that objective, the Amicus Committee carefully selects certiorari-stage and merits-stage Supreme Court cases (and occasionally federal court of appeals cases) for DRI amicus participation. The questions presented need to be exceptionally important to DRI, its members, their clients, and the civil justice system. And DRI, which almost always files amicus briefs in its name alone, must be in a position to submit a high-quality amicus brief that presents the civil defense bar's own perspective on the issues. Since September 2016, the Amicus Committee has reviewed 9 amicus support requests and decided to file amicus briefs in 2 of those cases. Links to DRI amicus briefs filed this year and in previous years are available on the Amicus Committee's web page (<http://www.dri.org/advocacy/advocacy-detail/amicus>).

During the current Supreme Court term, there are four pending appeals (as of late March 2017) in which DRI has filed, or will be filing, a merits-stage amicus brief. In addition, there are two current-term appeals where DRI filed merits-stage amicus briefs and the Court already has issued its opinions:

- *Manuel v. City of Joliet*, No. 14-9496 – The Court's 6–2 opinion, issued on March 21, 2017, holds that the Fourth Amendment governs a claim for unlawful pretrial detention even beyond the start of legal process. According to the dissent, the majority did not address the question presented: whether the Fourth Amendment allows a malicious prosecution

claim based on an alleged unreasonable search and seizure.

- *State Farm v. United States ex rel. Rigsby*, No. 15-513 – The Court issued a unanimous opinion on January 9, 2017, holding that a deliberate violation of the False Claims Act provision requiring *qui tam* suits to be maintained under seal while the U.S. Department of Justice investigates the relator's claims does not necessarily require dismissal of the suit.
- *Bank of America v. City of Miami*, No. 15-1111 – Whether proximate cause requires more than just the possibility that a defendant could have foreseen that a remote plaintiff might ultimately lose money through some theoretical chain of contingencies. Argument was held on November 8, 2016.
- *Microsoft v. Baker*, No. 15-457 – Whether a federal court of appeals has jurisdiction to review a class-certification denial after the named plaintiffs voluntarily dismiss their claims with prejudice. Argument was held on March 21, 2017.
- *Bristol-Myers Squibb v. Superior Court*, No. 16-466 – Whether a state court can exercise specific jurisdiction over an out-of-state corporate defendant where there is no causal link between the defendant's state-specific activities and the out-of-state plaintiffs' product liability claims. Argument was set for April 25, 2017.
- *Epic Systems v. Lewis*, No. 16-285 (consolidated with *Ernst & Young v. Morris*, No. 16-300 & *NLRB v. Murphy Oil*, No. 16-307) – Whether the National Labor Relations Act precludes Federal Arbitration Act enforcement of class-action waiver clauses in individual employment agreements that contain arbitration clauses. Argument will be held during fall 2017.
- The absence of a ninth Justice during the 2016 Term has not deterred the Court from agreeing to hear cases presenting issues that are important to the civil defense bar. For example, in mid-January 2017, the Court granted certiorari in several cases, including the *Bristol-Myers* and *Epic Systems* cases mentioned above. Among other cases, the Court will be considering the following:
 - *BNSF Railway v. Tyrrell*, No. 16-405 – Whether a state court can decline to follow the Supreme Court's holding in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), concerning the scope of general jurisdiction where a tort defendant is an American corporation that is not "at home" in the forum state. Argument was set for April 25, 2017, the same day as the *Bristol-Myers* case on specific jurisdiction.
 - *Town of Chester v. Laroe Estates*, No. 16-605 – Whether a proposed intervenor as-of-right under Federal Rule of Civil Procedure 24(a) must demonstrate that it has Article III standing. Argument was set for April 17, 2017.
 - *Kokesh v. SEC*, No. 16-529 – Whether the general, five-year federal statute of limitations governing commencement of proceedings for enforcement of civil fines and penalties applies to Securities and Exchange Commission actions for disgorgement of funds. Argument was set for April 18, 2017.

Although the Amicus Committee, which operates under a budget, has not chosen these latter three cases for DRI amicus participation, the committee will continue to monitor them.

Almost all cases that come before the Amicus Committee for consideration are called to DRI's attention through timely submission of an Amicus Curiae Request Form, which must be submitted at least 45 days before DRI's amicus brief would be due. The request form is available through amicus@dri.org or Jay Ludlam, DRI Director of Publications. Requests are usually **Amicus**, continued on page 80



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Amicus, from page 8 submitted by counsel for the party seeking amicus support. The Amicus Committee encourages DRI members, however, to take a proactive approach. If you become aware of a U.S. Supreme Court case, especially at the certiorari-stage, which you believe may warrant DRI amicus participation, please obtain and submit an Amicus Curiae Request Form, even if you are not counsel for one of the parties. As indicated above, the Amicus Committee rarely files amicus briefs in federal court of appeals cases. Requests for amicus support in state appellate cases are referred to the appropriate SLDO(s).

Please contact John Kouris, Jay Ludlam, or any member of the Amicus Committee (<http://www.dri.org/advocacy/advocacy-detail/amicus>) if you would like further information about DRI's amicus program. 