

Opinions for the week of March 21 - March 25, 2016

USA v. Mario B. Taylor No. 15-3657

Submitted March 18, 2016 — Decided March 21, 2016

Case Type: Criminal

Southern District of Illinois. No. 15-CR-30105-MJR — **Michael J. Reagan**, *Chief Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Following a domestic disturbance, Mario Taylor was charged with one count of possessing a firearm as a felon. See 18 U.S.C. § 922(g). He pleaded guilty, and the district court sentenced him to 117 months' imprisonment followed by 3 years' supervised release. Taylor filed a notice of appeal, but the lawyer appointed to represent him has concluded that the appeal is frivolous and seeks to withdraw. See *Anders v. California*, 386 U.S. 738, 744 (1967). Taylor has not responded to our invitation to comment on counsel's motion and brief. See CIR. R. 51(b). Counsel's brief explains the nature of the case and addresses the issues that a case of this kind might be expected to involve. Because the analysis in the brief appears to be thorough, we limit our review to the subjects discussed by counsel. See *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014); *United States v. Wagner*, 103 F.3d 551, 553 (7th Cir. 1996)... Counsel's motion to withdraw is **GRANTED**, and the appeal is **DISMISSED**.

Veerasikku Bommasamy v. Rakesh Parikh No. 15-2184

Argued January 26, 2016 — Decided March 21, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12 C 7314 — **Rebecca R. Pallmeyer**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; RICHARD A. POSNER, *Circuit Judge*.

ORDER

This appeal concerns a district court's decision to deny sanctions under 28 U.S.C. § 1927, the statute that authorizes fees to be imposed on lawyers who "unreasonably and vexatiously" multiply proceedings. The underlying dispute arises out of the efforts of Dr. Veerasikku Bommasamy (and his medical practice V. Bommasamy, M.D., S.C.) to enforce a promissory note and stock sale allegedly executed by Dr. Rakesh Parikh. More than a year after Bommasamy filed suit, the district court discovered a jurisdictional problem: Parikh had permanently relocated from Indiana to Illinois, the state of Bommasamy's citizenship, before the suit was filed, and thus diversity of citizenship was lacking. The district court accordingly dismissed the action for lack of subject-matter jurisdiction. At that point Bommasamy sought sanctions based on the failure of Parikh's counsel to notify the court promptly of his client's non-diverse citizenship. The court concluded that defense counsel's oversight was disappointing, but not sanctionable. We conclude that it did not abuse its discretion in so ruling... Accordingly, we AFFIRM the denial of sanctions.

Elissa Fody v. Carolyn Colvin No. 15-2141

Argued March 2, 2016 — Decided March 21, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division No. 14 C 3478 — **Elaine E. Bucklo**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*.

ORDER

Elissa Fody was denied supplemental security income and disability insurance benefits after claiming that her history of knee-replacement surgeries, peripheral artery disease, obesity, and other ailments left her incapable of working. An administrative law judge found that, despite these conditions, she had the residual functional capacity to perform her past work as a receptionist or a mortgage loan clerk. Fody argues that the ALJ erred by improperly weighing the medical opinion evidence and not making a proper credibility finding. Because substantial evidence supports the ALJ's decision, we affirm.

USA v. John Smith No. 15-1901

Argued March 2, 2016 — March 21, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 13 CR 863-1 — **Edmond E. Chang**, *Judge*.

Before WOOD, *Chief Judge*, and BAUER and KANNE, *Circuit Judges*.

BAUER, *Circuit Judge*. John Smith was found guilty by a jury of distributing heroin, see 21 U.S.C. § 841(a)(1), and sentenced to 216 months' imprisonment. During deliberations the jury sent four notes to the judge who conferred with the parties before responding. In the fourth note, a juror asked to be removed from the case, but the judge responded that all the jurors should continue deliberating. Smith argues that this response was unduly coercive and asks that his conviction be vacated. The government argues that Smith waived any challenge to the court's response. We agree that Smith waived his challenge and affirm the judgment.

Bridgeview Health Care Center, v. Jerry Clark Nos. 14-3728 & 15-1793

Argued November 5, 2015 — Decided March 21, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division No. 09-cv-05601 — **Maria G. Valdez**, *Magistrate Judge*.

Before FLAUM, MANION, and ROVNER, *Circuit Judges*.

MANION, *Circuit Judge*. This appeal arises out of unsolicited fax ads that were blasted across multiple states in violation of the Telephone Consumer Protection Act (TCPA). While the parties agree that the TCPA was violated, they dispute who was responsible for sending the fax ads: Jerry Clark, whose Affordable Digital Hearing company was advertised in the faxes, or the Business to Business Solutions (B2B) marketing company that actually sent the faxes. After Bridgeview Health Care Center received an Affordable Hearing ad in the Chicago area, Bridgeview brought this class-action lawsuit against Clark. When the district court granted partial summary judgment in the plaintiffs' favor, Clark was held liable for violating the TCPA by authorizing fax ads to plaintiffs within 20 miles of Affordable Hearing. The district court also conducted a bench trial on Clark's liability to plaintiffs more than 20 miles from Affordable Hearing, however, and concluded that Clark was not liable to them. These cross-appeals ask how far his liability extends. We affirm.

USA v. Oscar Beckford No. 15-1389

Submitted March 18, 2016 — Decided March 21, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 14 CR 141-1 **Gary Feinerman**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Oscar Beckford, a citizen of Guatemala, was removed from the United States in 2005 after serving a prison sentence in Illinois for drug possession. He soon reentered the country and in 2014 was charged with being in the United States without permission after removal. See 8 U.S.C. § 1326(a). The district court denied Beckford's motion to dismiss the charge, and Beckford entered a conditional guilty plea allowing him to challenge that ruling. See FED. R. CRIM. P. 11(a)(2). He was sentenced to 60 months' imprisonment followed by 3 years' supervised release. Beckford filed a notice of appeal, but his appointed

attorney asserts that the appeal is frivolous and seeks to withdraw under *Anders v. California*, 386 U.S. 738 (1967). Beckford opposes this motion. See CIR. R. 51(b). Counsel's brief in support of the motion explains the nature of the case and addresses potential issues likely to be seen in an appeal of this kind. The analysis appears to be thorough, so we limit our review to the points counsel discusses along with Beckford's additional contentions. See *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014)... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

Edward T. Joyce & Associates v. Professionals Direct Insurance No. 14-3341

Argued April 16, 2015 — Decided March 21, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 CV 2475 — **Charles R. Norgle**, *Judge*.
Before BAUER, EASTERBROOK, and SYKES, *Circuit Judges*.

SYKES, *Circuit Judge*. The Illinois law firm of Edward T. Joyce & Associates, P.C., purchased professional-liability insurance from Professionals Direct Insurance Company, a Michigan-based insurer. In 2007 the Joyce firm won a large damages award for a class of securities-fraud plaintiffs and hired another law firm to sue to collect the money from the defendant's insurers. Some of the class members thought the Joyce firm should have handled this aspect of the litigation itself under the terms of its contingency-fee agreement. The class members took the firm to arbitration over the extra fees incurred in the satellite collection litigation. Professionals Direct paid for the Joyce firm's defense in the arbitration. But when the arbitrator found for the clients and ordered the firm to reimburse some of the fees they had paid, the insurer refused the firm's demand for indemnification. The Joyce firm initiated coverage litigation in state court, which the insurer promptly removed to federal court. Ruling on cross-motions for summary judgment, the district judge sided with the insurer, concluding that the arbitration award was a "sanction" under the insurance policy's exclusion (o), which excludes coverage for "fines, sanctions, penalties, punitive damages or any damages resulting from the multiplication of compensatory damages." We affirm, though on a different rationale. The arbitration award was not functionally a sanction, so exclusion (o) does not apply. But another provision in the policy excludes "claim[s] for legal fees, costs or disbursements paid or owed to you." Because the arbitration award adjusted the attorney's fees owed to the firm in the underlying securities-fraud class action, the "legal fees" exclusion applies.

USA v. Wayne Hill No. 14-2019

Argued September 25, 2015 — Decided March 21, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 11 CR 850-1 — **Sharon Johnson Coleman**, *Judge*.
Before WOOD, *Chief Judge*, and BAUER and EASTERBROOK, *Circuit Judges*.

WOOD, *Chief Judge*. They say the house always wins. Wayne Hill found out the hard way that if you have robbed a bank, that adage applies even if your trip to the casino was just to get change. Hill was caught attempting to launder a large amount of dye-stained currency, still in bank bands, by stuffing the bills into a slot machine at the Horseshoe Casino in Hammond, Indiana. He was ultimately convicted of bank robbery, money laundering, and transportation of stolen funds. Hill filed pretrial motions to suppress his arrest, the contents of his bags, and his statements at the time he was caught. He also filed a motion in limine seeking to exclude expert testimony under Federal Rule of Evidence 702 about historical analysis of cellular telephone sites. Hill appeals the district court's denials of all four motions. Because the district court properly resolved each one, we affirm its judgment.

Santonio House v. Charles A. Daniels No. 15-3232

Submitted March 18, 2016 — Decided March 22, 2016

Case Type: Prisoner

Southern District of Indiana, Terre Haute Division. No. 2:15-cv-00143-WTL-DKL — **William T. Lawrence**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

During a search of a cell that Santonio House had shared for more than a month with six other federal inmates, a guard found more than three gallons of wine hidden in a light fixture and a seven-inch shiv behind the sink. House and, it appears, all of his cellmates were charged with possession of a weapon and possession of intoxicants. At a disciplinary hearing the evidence consisted of the guard's incident report; a memorandum written by another staff member attributing direct responsibility for the contraband to two of House's cellmates; photographs of the wine, the shiv, and the light fixture; chemical tests of the wine; House's statement denying knowledge of the contraband; the statements of his cellmates, all denying ownership of the contraband; and the statement of one cellmate that "everybody knew there was wine in the room." House was found guilty and lost 82 days of good time. After exhausting his administrative appeals, House petitioned for a writ of habeas corpus, 28 U.S.C. § 2241, arguing that the evidence is too thin to satisfy due process. The district court denied the petition, and House now appeals. We affirm the judgment.

USA v. Jason Guidry No. 15-1345

Argued February 17, 2016 — Decided March 22, 2016

Case Type: Criminal

Eastern District of Wisconsin. No. 13-CR-16 — **Rudolph T. Randa**, *Judge*.

Before BAUER, FLAUM, and WILLIAMS, *Circuit Judges*.

FLAUM, *Circuit Judge*. Jason Guidry was sentenced to twenty-five years in prison after he pled guilty to possessing and distributing illegal drugs and prostituting women. On appeal, he challenges the district court's denial of his motions to suppress evidence found during searches of his car and his two residences; the imposition of two sentence enhancements; and the imposition of vague, ambiguous, and conflicting conditions of supervised release. For the reasons that follow, we vacate and remand the disputed conditions of supervised release, and affirm Guidry's conviction, prison term, and all other supervised release terms.

Continental Casualty Company v. Alan Symons Nos. 14-2665, 14-2671 & 15-1061

Argued February 9, 2015 — Decided March 22, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:01-cv-00799-RLY-MJD — **Richard L. Young**, *Chief Judge*.

Before ROVNER and SYKES, *Circuit Judges*, and ANDREA WOOD, *District Judge*.

SYKES, *Circuit Judge*. IGF Insurance Company owed Continental Casualty Company more than \$25 million for a crop-insurance business it bought in 1998. In 2002 IGF resold the business to Acceptance Insurance Company for about \$40 million. Continental alleges that IGF's controlling family—Gordon, Alan, and Doug Symons—structured the sale so that most of the purchase price was siphoned into the coffers of other Symons-controlled companies, rendering IGF insolvent. More specifically, Continental claims that \$24 million of the \$40 million purchase price went to three Symons-controlled companies—Goran Capital, Inc.; Symons International Group, Inc.; and Granite Reinsurance Co.—for sham noncompetition agreements and a superfluous and over-priced reinsurance treaty. Continental, still unpaid, sued for breach of contract and fraudulent transfer. After lengthy motions litigation and a bench trial, the district court found for Continental and pierced the corporate veil to impose liability on the controlling companies and individuals. Continental's damages totaled \$34.2 million, so the court entered judgment in that amount jointly and severally against IGF, Symons International, IGF Holdings, Inc., Goran, Granite Re, and Gordon and Alan Symons. (Gordon has since died; his estate was substituted for him. Doug Symons is in bankruptcy.) Clearing away the factual complexity, this appeal presents three discrete questions for our review: (1) Is Symons International liable to Continental for breach of the 1998 sale agreement? (2) Are Symons International, Goran, Granite Re, Alan Symons, and the Estate of

Gordon Symons liable as transferees under the Indiana Uniform False Transfer Act (“IUFTA”)? and (3) Are Alan Symons and the Estate of Gordon Symons liable under an alter-ego theory? For the most part, we answer these questions “yes” and affirm the judgment in its entirety.

Eric D. Holmes v. Ron Neal Nos. 14-3359, 04-3549, 06-2905

Argued March 1, 2016 — Decided March 22, 2016

Case Type: Prisoner

Southern District of Indiana, Indianapolis Division.

Nos. 1:00-cv-01477-SEB-DML — **Sarah Evans Barker**, *Judge* and 1:05-cv-01763-LJM-WTL — **Larry J. McKinney**, *Judge*.

Before WOOD, *Chief Judge*, and POSNER and FLAUM, *Circuit Judges*.

POSNER, *Circuit Judge*. In 1992 the petitioner, Eric Holmes, was convicted of a pair of murders committed three years earlier, and the following year he was sentenced to death. On the day of the murders he'd gotten into an argument with a co-worker at the Shoney's restaurant where he worked. He and a man named Michael Vance approached the co-worker and two of the restaurant's managers, one of whom was carrying the till (containing money) out of the restaurant. They trapped the three in the foyer of the restaurant, stabbed them multiple times, and took the till. Two of the victims died. Holmes's conviction and sentence were affirmed and post-conviction relief was denied. *Holmes v. State*, 671 N.E.2d 841 (Ind. 1996); *State v. Holmes*, 728 N.E.2d 164 (Ind. 2000). After exhausting state remedies he sought federal habeas corpus, challenging his conviction and sentence on eighteen different grounds and also claiming that he wasn't mentally competent to assist his lawyers in the habeas corpus proceeding. The district judge ruled that he was competent and having done so denied his claims on the merits. He appealed, and we held that doubts of his competence remained of sufficient gravity to warrant further consideration by the district court, and so we remanded the case. *Holmes v. Buss*, 506 F.3d 576 (7th Cir. 2007). On remand the district court again found Holmes competent and reinstated the denial of his claims, and again we reversed, this time instructing the district court to suspend the habeas corpus proceeding “unless and until the state provides substantial new evidence that Holmes's psychiatric illness has abated, or its symptoms are sufficiently controlled, to justify the resumption of the proceeding.” *Holmes v. Levenhagen*, 600 F.3d 756, 763 (7th Cir. 2010). In so ruling we relied in part on *Rohan ex rel. Gates v. Woodford*, 334 F.3d 803, 812–13 (9th Cir. 2003), a decision that “impl[ie]d a right to competence from a right to counsel.” On remand from our decision in *Holmes v. Levenhagen* the district court granted the stay, thereby placing the habeas corpus proceeding in legal limbo... Considering that he was convicted of the murders almost a quarter of a century ago and that if he fails to obtain relief in a hearing in the Indiana court system on his mental competency to be executed and having thus exhausted his state remedies files a further petition for habeas corpus in the federal district court and loses and appeals once again to us it will be the fourth time that we are called on to render a decision in this protracted litigation, we are dismayed at the prospect that looms before us of further and perhaps endless protraction of federal judicial review of Holmes's conviction and sentence. But we are obliged by section 2254(b)(1)(A) to proceed as just indicated. In conclusion, the rulings of the district court appealed from in appeals No. 14-3359 and No. 04-3549 are affirmed, and the appeal in No. 06-2905 is dismissed.

Patricia Jepson v. Bank of New York Mellon No. 14-2459

Argued October 30, 2015 — Decided March 22, 2016

Case Type: Bankruptcy from District Court

Northern District of Illinois, Eastern Division. No. 1:14-cv-00423 — **James F. Holderman**, *Judge*.

Before POSNER, RIPPLE, and HAMILTON, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Patricia Jepson filed a Chapter 7 voluntary petition in the United States Bankruptcy Court for the Northern District of Illinois. That petition resulted in an automatic stay against the enforcement of any security interest. Bank of New York Mellon (“BNYM”) then requested a modification of the automatic stay so that it could resume in Illinois state court an ongoing foreclosure action against Ms. Jepson. In response, Ms. Jepson filed both an opposition to the motion for modification of the stay and an adversary complaint. In both documents, she sought a declaration that BNYM had no interest in her mortgage. The bankruptcy court granted the motion to modify the automatic stay and dismissed Ms. Jepson’s adversary complaint. The district court affirmed the bankruptcy court’s orders. For the reasons set forth in this opinion, we affirm in part and remand the case for further proceedings.

Michael Hughes v. Gregg Scott No. 15-3482

Submitted March 10, 2016 — Decided March 23, 2016

Case Type: Civil

Central District of Illinois. 3:15-cv-03151-SEM-TSH — **Sue E. Myerscough**, *Judge*.
Before WOOD, *Chief Judge*, and POSNER and ROVNER, *Circuit Judges*.

POSNER, *Circuit Judge*. Rushville Treatment and Detention Facility is an Illinois state facility for the diagnosis, treatment, and (pending successful treatment) incarceration of persons believed prone to sexual violence. Usually these are persons who have served prison sentences for sex crimes and are considered too dangerous to be allowed to go free after they complete their sentences. The plaintiff, Michael Hughes, is confined at Rushville because he was found to be a sexually violent person within the meaning of the state’s Sexually Violent Persons Commitment Act, 725 ILCS 207. He will remain there unless and until he is found no longer to be such a person—more precisely if it is no longer “substantially probable that [he] will engage in acts of sexual violence.” *Id.* at 207/5(f). This case, brought under 42 U.S.C. § 1983, grows out of several written grievances that Hughes submitted at Rushville complaining of the dental care that he was receiving there. He alleges that a program director named Scott, a grievance examiner named Simpson, and a security therapy aide named Hougas—the defendants in this case— infringed his First and Fourteenth Amendment rights by disregarding his grievances and insulting him into the bargain. See *Babcock v. White*, 102 F.3d 267, 275 (7th Cir. 1996). The district judge dismissed Hughes’ complaint for failure to state a claim... But perhaps the most remarkable feature of this case is the defendants’ insistence in defiance of the Illinois Administrative Code that Hughes has no need to invoke grievance procedures because he can always sue, as he has done. What makes this contention remarkable is the fact that the interests of Rushville, of the Illinois Department of Human Services, and of the taxpayers of this almost bankrupt state, obviously are best served if grievances are handled at the facility level rather than by the court system, which is far more costly. Does Rushville have an unlimited budget, so that it can pay lawyers to defend against lawsuits brought only because the institution refuses to obey the Administrative Code and respond to Hughes’ grievances, preferring instead to ridicule him and drive him to sue Rushville staff? We don’t get it. But we have said enough to require that the judgment of dismissal be vacated and the case returned to the district court to try to make sense of the conduct of the defendants and their institution, and to determine whether they are in fact improperly impeding the plaintiff’s constitutional right to petition government for redress of grievances. REVERSED AND REMANDED

USA v. Juan Frias No. 15-1568

Argued March 2, 2016 — Decided March 23, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 11 CR 881-1 — **Rebecca R. Pallmeyer**, *Judge*.
Before DIANE P. WOOD, *Chief Judge*, WILLIAM J. BAUER, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*.

ORDER

Juan Frias appeals his 120-month sentence for possessing with intent to distribute over 100 grams of heroin, 21 U.S.C. § 841(a)(1). The district court determined that his relevant conduct included distributing much higher quantities—several kilograms of heroin and cocaine—than the 382 grams of heroin specified in the indictment, U.S.S.G. § 1B1.3(a)(2). The court also refused an adjustment for acceptance of responsibility because Frias denied distributing the additional quantities of heroin and cocaine, U.S.S.G. § 3E1.1(a). Frias challenges the district court's relevant-conduct and acceptance-of-responsibility determinations. We affirm.

Stephen Hummel v. St. Joseph County Board of Commissioners No. 14-3284

Argued April 20, 2015 — Decided March 23, 2016

Case Type: Civil

Northern District of Indiana, South Bend Division. No. 3:10-CV-003 JD — **Jon E. DeGuilio**, *Judge*.
Before WOOD, *Chief Judge*, HAMILTON, *Circuit Judge*, and DARRAH, *District Judge*.

HAMILTON, *Circuit Judge*. This appeal arises from a broad challenge to the accessibility of state court facilities in St. Joseph County, Indiana, for individuals with disabilities. Over the years of this lawsuit, some plaintiffs who were formerly litigating cases in the state court facilities have stopped doing so. Some plaintiffs have died. Others have dropped their claims. The lawsuit also seems to have prompted physical changes to the main courthouse and to the state court's policies. In 2014, the district court granted summary judgment for the defendants on all then-remaining claims. Plaintiffs have appealed. We affirm, not for any single, central reason, but for different reasons for the numerous claims. Plaintiffs lack standing to sue for some of their claims. They failed to present evidence sufficient to raise genuine disputes of material fact on other claims. Plaintiffs' strongest claim was that courthouse restrooms were inaccessible. The courthouse has since been remodeled to become more accessible, so that claim is moot. We do not hold that the St. Joseph County courts are fully compliant with the Americans with Disabilities Act ("ADA") and the Rehabilitation Act. Rather, we hold only that these plaintiffs have failed to present evidence sufficient to survive defendants' motion for summary judgment on the specific claims before the district court. We express no opinion regarding any possible future claims involving courthouse accessibility. If, in the future, individuals with disabilities experience problems with access to the St. Joseph County courts, their claims will need to be decided on a fresh record.

Arthur Mitchell v. Donald Enloe No. 14-2946

Argued February 17, 2016 — Decided March 24, 2016

Case Type: Prisoner

Northern District of Illinois, Eastern Division. No. 1:10-cv-03034 — **Robert M. Dow**, *Judge*.
Before BAUER, FLAUM, and WILLIAMS, *Circuit Judges*.

FLAUM, *Circuit Judge*. Petitioner Arthur Mitchell admitted to killing Ricky Neal on February 5, 1995 by striking him with a brick. The killing arose out of a dispute when Neal was working on Mitchell's car in the backyard of Neal's home. Mitchell asserted that he acted in self-defense after Neal attacked him with a wrench. The prosecution presented forensic evidence that refuted Mitchell's claim of self-defense. Following a trial in the Illinois Circuit Court, the jury convicted Mitchell of first degree murder. The circuit court sentenced him to fifty-seven years in prison. Mitchell now seeks habeas relief alleging ineffective assistance of counsel and a due process violation. We affirm the district court's denial of Mitchell's request for habeas relief.

American Commercial Lines, LL v. The Lubrizol Corporation No. 15-3242

Argued February 26, 2016 — Decided March 25, 2016

Case Type: Civil

Southern District of Indiana, New Albany Division. No. 12 C 135 — **Sarah Evans Barker**, *Judge*.
Before POSNER, FLAUM, and EASTERBROOK, *Circuit Judges*.

POSNER, *Circuit Judge*. The plaintiff and appellant in this commercial suit, American Commercial Lines (ACL), manufactures and operates tow boats and barges that ply the nation's inland waterways. The defendant, Lubrizol, manufactures industrial lubricants and additives, including a diesel-fuel additive that it calls LZ8411A. A company named VCS Chemical Corp. distributed the additive, and Lubrizol and VCS jointly persuaded ACL to buy it from VCS. Before delivery began, however, Lubrizol terminated VCS as a distributor because of suspicion that it was engaging in unethical conduct—one of Lubrizol's employees had failed to disclose to his employer that he was also a principal of VCS. But Lubrizol did not inform ACL that VCS was no longer its distributor. No longer able to supply ACL with LZ8411A, VCS substituted an additive that ACL contends is inferior to LZ8411A. At least some of this other additive (which both Lubrizol and ACL call the "Counterfeit Additive") was produced by Afton Chemical Corp. VCS didn't inform ACL of the substitution. According to ACL's complaint, Lubrizol learned of the substitution too but also didn't inform ACL, which when it discovered the substitution brought the present suit—a diversity suit alleging a variety of violations of Indiana common law—against VCS, VCS's principal owner (who is also its CEO), and Lubrizol. ACL settled with VCS and its owner, leaving Lubrizol as the only defendant. The district judge dismissed part of the remaining suit on Lubrizol's motion to dismiss and the rest on its motion for summary judgment... AFFIRMED

USA v. Willie Gonzalez No. 15-1706

Argued January 27, 2016 — Decided March 25, 2016

Case Type: Criminal

Southern District of Illinois. No. 3:13-cr-30201-DRH-1 — **David R. Herndon**, *Judge*.
Before POSNER, KANNE, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. A jury found appellant Willie Gonzalez guilty of conspiracy to distribute methamphetamine, 21 U.S.C. §§ 846, 841(a)(1), possession with intent to distribute methamphetamine, § 841(a)(1), and possession of a firearm in furtherance of a drug-trafficking crime, 18 U.S.C. § 924(c)(1)(A). He was sentenced to concurrent terms of 360 months in prison for the drug crimes plus a consecutive 60 months for the firearm offense. On appeal he challenges only the sufficiency of evidence on his conviction on the drug possession count, arguing that the government failed to prove beyond a reasonable doubt that he possessed the four pounds of methamphetamine found in the lining of a cooler in a co-defendant's home in a search on September 15, 2013, where both the co-defendant and Gonzalez were present. The issue on appeal is whether a rational jury could have found beyond a reasonable doubt that Gonzalez possessed the drugs. See *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979); *United States v. Salinas*, 763 F.3d 869, 877 (7th Cir. 2014). We affirm.

Sidney Reid v. Unilever United States, Inc. No. 14-3009

Argued September 29, 2015 — Decided March 25, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12 C 6058 — **Rubén Castillo**, *Chief Judge*.
Before WOOD, *Chief Judge*, and EASTERBROOK and RIPPLE, *Circuit Judges*.

WOOD, *Chief Judge*. This case arises out of several class actions that were brought against Unilever United States, Inc. (Unilever USA) to recover damages from a hair-smoothing product that allegedly destroyed users' hair and burned their scalps. The lead case, *Reid v. Unilever USA*, was brought in the Northern District of Illinois under the court's diversity jurisdiction, see 28 U.S.C. § 1332, related actions in Kentucky and California were later transferred to Illinois and

consolidated with *Reid*. The cases were eventually settled, but not to everyone's satisfaction. Tina Martin, a class member, objected to the settlement on numerous grounds, which we detail below. We have examined all of them and conclude that the district court acted well within its discretion when it approved the settlement. We therefore affirm its judgment.

Gary Sgouros v. TransUnion Corporation No. 15-1371

Argued September 29, 2015 — Decided March 25, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 1850 — **James B. Zagel**, *Judge*.

Before WOOD, *Chief Judge*, and EASTERBROOK and RIPPLE, *Circuit Judges*.

WOOD, *Chief Judge*. Hoping to learn about his creditworthiness, Gary Sgouros purchased a “credit score” package from the defendant, TransUnion. Armed with the number TransUnion gave him, he went to a car dealership and tried to use it to negotiate a favorable loan. It turned out, however, that the score he had bought was useless: it was 100 points higher than the score pulled by the dealership. Believing that he had been duped into paying money for a worthless number, Sgouros filed this lawsuit against TransUnion. In it, he asserts that the defendant violated various state and federal consumer protection laws. Rather than responding on the merits, however, TransUnion countered with a motion to compel arbitration. It asserted that the website through which Sgouros purchased his product included (if one searched long enough) an agreement to arbitrate all disputes relating to the deal. The district court concluded that no such contract had been formed and denied TransUnion's motion. TransUnion has appealed from that decision, but we agree with the district court and affirm its order.

Robert Ciarpaglini v. Felicia Norwood No. 14-1588

March 25, 2016

Case Type: Civil

Northern District of Illinois, Western Division. No. 13 C 50213 — **Philip G. Reinhard**, *Judge*.

Before WOOD, *Chief Judge*, and MANION and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Plaintiff Robert B. Ciarpaglini, an Illinois Medicaid participant, challenges Illinois legislation that caps at four the number of prescriptions a Medicaid recipient can receive without prior approval within a thirty-day period. See 305 Ill. Comp. Stat. 5/5-5.12(j). At the time he filed suit, he was subject to that legislation and alleged he was struggling to obtain his medications because of it. While his suit was pending, though, he was moved to a managed care program. As a result he is no longer subject to that cap. The main dispute before us, though not the only one, is whether the transfer to managed care rendered moot Ciarpaglini's claims for declaratory and injunctive relief. The district court held that it did. *Ciarpaglini v. Quinn*, No. 13 C 50213, 2014 WL 1018146 (N.D. Ill. Mar. 17, 2014). Although Ciarpaglini offered evidence that the switch might not be permanent, the court held his arguments were “simply speculation,” “no more than a guess,” and insufficient to create a “reasonable expectation” that the four-prescription limit would apply to him in the future. *Id.* at *3. We hold that there is insufficient evidence in the record to determine whether Ciarpaglini's claims for injunctive relief are moot, a conclusion we explain further below. We remand this matter to the district court for limited fact-finding proceedings aimed at permitting both sides to develop a record on the question of mootness. We retain jurisdiction of this matter pending completion of those proceedings.

Only the text of the opinions is used. No editorial comment is added. For back issues or to send a comment, please contact [Sonja Simpson](#).