

Opinions for the week of August 3 – August 7, 2020

Ryze Claims Solutions, LLC v. Jane Magnus-Stinson No. 19-2930

Argued April 8, 2020 — Decided August 3, 2020

Case Type: Original Proceeding

Southern District of Indiana, Indianapolis Division. No. 1:18-cv-01767-JMS-MJD — **Jane Magnus-Stinson**, *Chief Judge*.

Before RIPPLE, BRENNAN, and SCUDDER, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Leslie Billings is a party to an employment agreement with his former employer, RYZE Claim Solutions, LLC (“RYZE”). The employment agreement contains a forum-selection clause providing that Mr. Billings must bring claims against RYZE in an Indiana court, either in Marion County or Hamilton County, or in a federal court in the Southern District of Indiana. Mr. Billings nevertheless filed this action in a California state court. RYZE removed the action to the United States District Court for the Eastern District of California. Relying on *Atlantic Marine Construction Co., Inc. v. United States District Court for the Western District of Texas*, 571 U.S. 49, 62–63 (2013), the Eastern District of California concluded that Mr. Billings had failed to show why the forum-selection clause should not control and granted RYZE’s motion to transfer venue under 28 U.S.C. § 1404(a) to the Southern District of Indiana. In due course, the district court in Indiana granted RYZE’s motion for summary judgment on Mr. Billings’s federal claims. The district court then transferred, sua sponte, the case back to the Eastern District of California. It explained that its own docket was congested and that the Eastern District of California had a greater familiarity with California labor law. When the case was docketed once again in the Eastern District of California, RYZE petitioned this court for a writ of mandamus directing the Southern District of Indiana to request that the Eastern District of California transfer the action back to the Southern District of Indiana. We must give forum-selection clauses “controlling weight in all but the most exceptional cases.” *Atl. Marine*, 571 U.S. at 63 (quoting *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 33 (1988) (Kennedy, J., concurring)). Because no such exceptional circumstances exist here, the district court departed from the settled approach for applying the federal transfer statute in cases governed by a forum-selection clause. Accordingly, we grant the petition and issue the writ of mandamus.

[Full text](#)

Denean Adams v. Board of Education Harvey School District 152 Nos. 19-2534 & 19-3269

Argued June 4, 2020 — Decided August 3, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 15 CV 8144 — **Sharon Johnson Coleman**, *Judge*.

Before SYKES, *Chief Judge*, and EASTERBROOK and BARRETT, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Denean Adams was superintendent of the Harvey, Illinois, public schools from July 2013 through June 2016. Her tenure ended unhappily: in July 2015 the Board of Education revoked an offer to extend her three-year contract; later that educational year it blocked her email account and tried to pretend that she did not exist. Indeed, the Board told state education officials in spring 2016 that she was no longer superintendent. These and related events put her under a lot of stress. She took medical leave in March 2016 and never returned to work. But she did file this suit under 42 U.S.C. §1983. A jury awarded \$400,000 in damages after concluding that the Board and its members had violated the First Amendment (applied to the states through the Fourteenth). The district court declined to set aside that award, see 2019 U.S. Dist. LEXIS 117428 (N.D. Ill. July 15, 2019), and added about \$190,000 in attorneys’ fees. 2019 U.S. Dist. LEXIS 122282 (N.D. Ill. July 23, 2019). Both sides have appealed... the judge did not abuse her discretion or commit a legal error in declining to award more. Nor did the judge abuse her discretion or make a clearly erroneous finding in counting the number of hours reasonably devoted to pursuing the claims on which Adams prevailed. AFFIRMED

[Full text](#)

USA v. Matthew Howard No. 19-1005

Argued November 14, 2019 — Decided August 3, 2020

Case Type: Criminal

Western District of Wisconsin. No. 17-cr-81-wmc — **William M. Conley**, *Judge*.

Before SYKES, *Chief Judge*, and MANION and KANNE, *Circuit Judges*.

SYKES, *Chief Judge*. Matthew Howard was charged with seven crimes relating to possession, receipt, distribution, and production of child pornography. See 18 U.S.C. § 2252(a)(2), (a)(4); *id.* § 2251(a). He pleaded guilty to five; the remaining counts—accusing him of producing child pornography in violation of § 2251(a)—proceeded to trial... The government’s theory is that Howard violated the statute by “using” the clothed and sleeping child as an object of sexual interest to produce a visual depiction of *himself* engaged in solo sexually explicit conduct. Over Howard’s objection, the district judge submitted the case to the jury with instructions that permitted conviction on the government’s theory. The jury found him guilty. Howard appeals, challenging only his convictions on these two counts. The government’s interpretation of § 2251(a) stretches the statute beyond the natural reading of its terms considered in context. Accordingly, the two convictions cannot stand. We vacate the judgment on these counts and remand for resentencing.

[Full text](#)

John Myers v. Ron Neal No. 19-3158

Argued May 26, 2020 — Decided August 4, 2020

Case Type: Prisoner

Southern District of Indiana, Indianapolis Division. No. 1:16-cv-2023 — **James R. Sweeney, II**, *Judge*.

Before FLAUM, SCUDDER, and ST. EVE, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Indiana University student Jill Behrman went for a bike ride one morning but never re- turned. The police later found her bicycle less than a mile from the home of John Myers II, on the north side of Bloomington. Two years later a woman named Wendy Owings came forward confessing to the murder, but the case was reopened when a hunter came upon Behrman’s remains far from the location Owings described. A renewed investigation led the authorities to Myers, who was eventually charged with the murder. Six years after Behrman’s disappearance, a jury convicted him. Multiple Indiana courts affirmed. Myers then sought relief in federal court, and the district court granted his application for a writ of habeas corpus, concluding that Myers’s counsel performed so deficiently at trial as to undermine confidence in the jury’s guilty verdict. We reverse.

[Full text](#)

Thomas Souran, Carmen Wallace v. Grubhub Holdings, Inc. Nos. 19-1564 & 19-2156

Argued February 12, 2020 — Decided August 4, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18-cv-4538 — **Edmond E. Chang**, *Judge*.

No. 16-cv-6720 — **Charles R. Norgle**, *Judge*.

Before BAUER, KANNE, and BARRETT, *Circuit Judges*.

BARRETT, *Circuit Judge*. Section 1 of the Federal Arbitration Act exempts from the Act’s coverage “contracts of employment” of two enumerated categories of workers—“seamen” and “railroad employees.” But it also exempts the contracts of a residual category—“any other class of workers engaged in foreign or interstate commerce.” This appeal requires us to decide whether food delivery drivers for Grubhub are exempt from the Act under § 1’s residual category... Section 1 of the FAA carves out a narrow exception to the obligation of federal courts to enforce arbitration agreements. To show that they fall within this exception, the plaintiffs had to demonstrate that the interstate movement of goods is a central part of the job description of the class of workers to which they belong. They did not even try do that, so both district courts were right to conclude that the plaintiffs’ contracts with Grubhub do not fall within § 1 of the FAA. Accordingly, the judgments are AFFIRMED.

[Full text](#)

Carlton Gunn v. Continental Casualty Company No. 19-2898

Argued April 15, 2020 — Decided August 5, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:18-cv-03314 — **Charles P. Kocoras**, *Judge*.

Before MANION, HAMILTON, and BARRETT, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Most appellate opinions try to answer questions of law. This opinion is an exception. We ask many more questions than we can answer here. They concern choice-of-law principles as applied to the unique challenges of interstate regulation of insurance in the United States, and more specifically as applied to a group insurance policy issued in one jurisdiction to an employer with employees in every state. We realize we are leaving a good deal of work for the capable district judge on remand. We hope he will receive help on choice-of-law issues from counsel for the parties and interested amici curiae. Plaintiff Carlton Gunn brought this case as a putative class action against defendant Continental Casualty Company, which issued a group long-term care insurance policy to Gunn's employer, the federal judiciary, in Washington D.C. Gunn alleged that Continental breached its contract, committed torts, and violated consumer protection laws by raising his premiums dramatically. Continental persuaded the district court to dismiss the case on the pleadings based on its assertion of a filed-rate defense, relying on the Washington state Insurance Commissioner's approval of the new, higher premiums for individual insureds in Washington. The parties' briefs in the district court and on appeal raised the issue of choice of law but offered little help in resolving it... We acknowledge the questions we have posed are more easily asked than answered. And we have not framed or discussed those questions with any intention to prejudge the correct outcome(s) in this case. The district court may find that a motion under Rule 12(c), a motion for summary judgment on a more complete record, or perhaps a motion for class certification could bring the issues into sharper relief. See *In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012, 1015 (7th Cir. 2002). Those are case management issues best left to the district court's discretion. The judgment of the district court is REVERSED and the case is REMANDED for further proceedings consistent with this opinion.

[Full text](#)

Taysheedra Allen-Noll v. Madison Area Technical College No. 19-2639

Argued May 19, 2020 — Decided August 5, 2020

Case Type: Civil

Western District of Wisconsin. No. 3:18-cv-00216-slc — **Stephen L. Crocker**, *Magistrate Judge*.

Before EASTERBROOK, BRENNAN, and ST. EVE, *Circuit Judges*.

BRENNAN, *Circuit Judge*. When her teaching contract with Madison Area Technical College was not renewed, Taysheedra Allen-Noll sued her former employer alleging racial discrimination and harassment. After discovery the college moved for summary judgment, but Allen-Noll failed to follow the district court's procedures. The record was largely established by the defendants' submissions, and the college prevailed. Allen-Noll appeals, challenging the grant of summary judgment and arguing the district court abused its discretion by accepting the college's findings of fact and denying her motion to compel further discovery. We affirm the district court's rulings. This appeal is also frivolous, so we grant the college's request to sanction Allen-Noll and her lawyer.

[Full text](#)

Alexandre Solomakha v. Safety International, LLC Nos. 19-2414 & 19-2395

Argued May 19, 2020 — Decided August 5, 2020

Case Type: Civil

Southern District of Illinois. No. 3:14-cv-1063 — **J. Phil Gilbert**, *Judge*.

Before EASTERBROOK, BRENNAN, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. At a road construction site in Madison County, Illinois, a flagger abruptly turned his sign from "SLOW" to "STOP." Thomas Roberts slammed on his brakes, and Alexandre Solomakha

rear-ended him, causing Roberts serious injury and prompting a lawsuit against Solomakha and transportation companies Alexandria Transportation, Inc. and Alex Express, LLC. The Alex Parties filed a third-party complaint for contribution against the general contractor for the construction site, Edwards-Kamalduski (“E-K”), and a subcontractor, Safety International, LLC (“Safety”). E-K settled with the plaintiffs, and the district court dismissed it from the Alex Parties’ contribution action with prejudice. The Alex Parties later settled with the plaintiffs, as well. With E-K out of the picture, though, the Alex Parties’ case becomes more complicated. The Alex Parties contend that the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100 (the “Contribution Act”), allows for the court to redistribute E-K’s share of liability as determined by a jury between the Alex Parties and Safety, but Safety disagrees. The controversy surrounds the meaning of a particular phrase in the statute— “unless the obligation of one or more of the joint tortfeasors is uncollectable.” We can find no decision of an Illinois court that has addressed whether the “obligation” of a settling party is “uncollectable” pursuant to 740 ILCS 100/3. Rather than decide this issue in the first instance, we respectfully request that the Illinois Supreme Court do so... We invite the Justices of the Illinois Supreme Court to reformulate our question if they feel that course is appropriate. We do not intend anything in this certification to limit the scope of their inquiry. The Clerk of this Court will transmit the briefs and appendices in this case, together with this opinion, to the Illinois Supreme Court. On the request of that Court, the Clerk will transmit all or any part of the record as that Court so desires. QUESTION CERTIFIED.

[Full text](#)

Karen Vaughn v. Jennifer Walthall No. 19-1244

Argued May 22, 2020 — Decided AUGUST 5, 2020

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 16 C 3257 — **Jane Magnus-Stinson**, *Chief Judge*. Before BAUER, EASTERBROOK, and WOOD, *Circuit Judges*.

WOOD, *Circuit Judge*. Federal law prohibits discrimination against persons with disabilities, and in furtherance of that goal, it requires states to administer public programs “in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” That duty is bounded by the standard of reasonableness; states are not obligated fundamentally to alter their programs to comply. At issue here is whether the anti-discrimination mandate compels a state to structure and fund its Medicaid programs in a manner that ensures that all Medicaid recipients who desire to receive health care in a home setting may do so regardless of cost to the state. In addition, we must decide how, if at all, the state’s adoption after oral argument of a pilot program that provides greater flexibility to those who want home health care affects this case. We conclude that we still face a live controversy but that further proceedings are necessary. We also conclude that the permanent injunction issued by the district court swept too broadly. If any injunction is still warranted—a question on which we take no position—it must be narrowly tailored to any violations that are proven... For these reasons, we VACATE the order of summary judgment in favor of Vaughn. In addition, we VACATE the permanent injunction and REMAND for further proceedings consistent with this opinion.

[Full text](#)

Frank Pierri v. Medline Industries, Inc. No. 19-3356

Argued May 18, 2020 — Decided August 6, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 17 C 9037 — **Robert W. Gettleman**, *Judge*. Before WOOD, BARRETT, and SCUDDER, *Circuit Judges*.

WOOD, *Circuit Judge*. Frank Pierri was a chemist for Medline Industries. Initially, he did well at the company, but problems arose after he asked for accommodations to enable him to take care of his ailing grandfather. Medline was receptive, and it ultimately gave him limited time off for this purpose under the Family and Medical Leave Act (FMLA). Pierri asserts that his supervisor then became so hostile to him that he needed personal time off because of the stress. He left on FMLA leave and never returned.

Medline eventually terminated his employment, causing Pierri to sue the company. The district court granted summary judgment for Medline, and we affirm.

[Full text](#)

Theodore Frank v. Target Corporation No. 19-3095

Argued June 4, 2020 — Decided August 6, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:11-cv-07972 — **John Robert Blakey**, *Judge*.

Before ROVNER, WOOD, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. We address here a recurring problem in class-action litigation known colloquially as “objector blackmail.” The scenario is familiar to class-action litigators on both offense and defense. A plaintiff class and a defendant submit a proposed settlement for approval by the district court. A few class members object to the settlement but the court approves it as fair, reasonable, and adequate under Federal Rule of Civil Procedure 23(e)(2). The objectors then file appeals. As it turns out, though, they are willing to abandon their appeals in return for sizable side payments that do not benefit the plaintiff class: a figurative “blackmail” by selfish holdouts threatening to disrupt collective action unless they are paid off. See Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 Vand. L. Rev. 1623, 1624 (2009). That’s what happened here. Three objectors appealed the denial of their objections to a class action settlement and then dismissed their appeals in exchange for side payments. The last time this case was here, we called such “selfish” objector settlements “a serious problem.” *Pearson v. Target Corp.*, 893 F.3d 980, 986 (7th Cir. 2018) (*Pearson II*). The question before us now is whether, on motion of another class member, the district court had the equitable power to remedy the problem by ordering the settling objectors to disgorge for the benefit of the class the proceeds of their private settlements. The district court held that it did not, finding that the objectors had not intended or committed an illegal act nor taken money out of the common fund. We reverse.

[Full text](#)

VHC, Inc. v. CIR Nos. 18-3717 & 18-3718

Argued June 10, 2020 — Decided August 6, 2020

Case Type: Tax

United States Tax Court. Nos. 4756-15 & 21583-15 — **Kathleen Kerrigan**, *Judge*.

Before FLAUM, BARRETT, and ST. EVE, *Circuit Judges*.

BARRETT, *Circuit Judge*. For more than a decade, Ron Van Den Heuvel received cash payments from VHC, a company founded by his father and owned by his family. These payments primarily supported Ron’s business ventures but also helped him pay personal taxes and cover other personal expenses. Ron didn’t pay VHC back, and the company wrote down these payments as “bad debts” for which it received tax deductions. After a years-long audit, the IRS concluded that VHC never intended to be paid back and that these payments were not bona fide debts qualifying for the deduction. The Tax Court upheld this determination and rejected VHC’s alternative theories as to why the payments qualified for a de- duction. We see no error in this decision and affirm the Tax Court’s judgment.

[Full text](#)

USA v. Harry Miller No. 18-311

Argued August 4, 2020 — Decided August 6, 2020

Case Type: Criminal

Western District of Wisconsin. No. 3:17CR00082-001 — **William M. Conley**, *Judge*.

Before DANIEL A. MANION, *Circuit Judge* DIANE P. WOOD, *Circuit Judge* AMY C. BARRETT, *Circuit Judge*

ORDER

Harry Miller was convicted of sex trafficking and maintaining a drug house. After the trial, his attorney obtained law-enforcement records showing that a local undercover investigation of Miller had not spotted evidence of these crimes. Miller moved for a new trial, arguing that the government violated his rights under the Due Process Clause and *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to turn this information over to him before trial. The district court denied the motion, explaining that the evidence about the local undercover investigation was neither favorable to Miller nor material to his defense. We affirm the judgment.

[Full text](#)

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