

Opinions for the week of November 11 – November 15, 2019

Medical Mutual of Ohio v. AbbVie Inc. No. 19-1500

Argued November 6, 2019 — Decided November 12, 2019

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 8857 — **Matthew F. Kennelly**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; AMY C.
BARRETT, *Circuit Judge*.

Order

Medical Mutual of Ohio contends in this suit under the civil-liability section of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1964, that several pharmaceutical companies promoted testosterone creams for uses other than those approved by the Food and Drug Administration. Physicians are free to prescribe drugs for off-label uses, but manufacturers are forbidden to promote those uses. 21 U.S.C. §§ 321(p), 355(a), 396. Manufacturers also are forbidden to make false and misleading statements about their products. Medical Mutual asserts that the defendants made false or misleading statements to promote off-label uses, causing it to pay more for these drugs than it would have done had the defendants lived up to their legal obligations. The district court granted the defendants' motion for summary judgment... AFFIRMED

Victor Villa Serrano v. William Barr No. 19-1492

Argued September 23, 2019 — Decided November 12, 2019

Case Type: Agency

Petition for Review of an Order of the Board of Immigration Appeals. No. A073-360-777
Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; AMY J. ST.
EVE, *Circuit Judge*.

ORDER

Petitioner Victor Martin Villa Serrano seeks review of the Board of Immigration Appeals decision not to reopen or reconsider a final removal order entered and later reinstated against him. We have jurisdiction under 8 U.S.C. § 1252(a)(1) and deny the petition.

Noemi Valdivia v. Township High School District No. 19-1410

Argued September 4, 2019 — Decided November 12, 2019

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 16 C 10333 — **Sidney I. Schenkier**, *Magistrate Judge*.
Before WOOD, *Chief Judge*, and BAUER and HAMILTON, *Circuit Judges*.

WOOD, *Chief Judge*. Noemi Valdivia worked successfully as an administrative assistant for Township High School District 214, which is headquartered in Arlington Heights, Illinois, until she began experiencing severe psychological problems that ultimately led to the end of her employment there. She sued the District under the Family and Medical Leave Act ("FMLA"), 29 U.S.C. §§ 2601–2654, claiming that it interfered with her rights under the Act by failing to provide her with notice or information about her right to take job-protected leave. After a trial over which a magistrate judge presided by consent, see 28 U.S.C. § 636(c), a jury returned a verdict in Valdivia's favor and awarded her \$12,000 in damages. The District then moved for judgment as a matter of law under Federal Rule of Civil Procedure 50(b). The district court denied that motion, and the District has now appealed. It takes a lot to set aside a jury verdict, and we conclude that the District has not met that high bar. We thus affirm the judgment.

Paul Pytlewski v. Andrew M. Saul No. 18-3673

Argued October 3, 2019 — Decided November 12, 2019

Case Type: Civil

Western District of Wisconsin. No. 17-cv-0810-slc — **Stephen L. Crocker**, *Magistrate Judge*.
Before DIANE P. WOOD, *Chief Judge*; AMY C. BARRETT, *Circuit Judge*; MICHAEL Y. SCUDDER,
Circuit Judge.

ORDER

Paul Pytlewski, now 42, who suffers from mental impairments (anxiety, depression, and anger issues) and physical impairments (chronic back pain and pain in his neck and arms), challenged the denial of his application for Social Security disability benefits and supplemental social security income. An administrative law judge denied Pytlewski's application after finding that he lacked sufficient medical evidence that he was disabled. The district court upheld the ALJ's decision. On appeal, Pytlewski principally contends that the ALJ afforded too little weight to his treating physician's opinion about his mental impairments. Because the ALJ's decision was supported by substantial evidence, we affirm.

Steven Menzies v. Seyfarth Shaw LLP No. 18-3232

Argued May 22, 2019 — Decided November 12, 2019

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:15-cv-3403 — **John Robert Blakey**, *Judge*.
Before HAMILTON, SCUDDER, and ST. EVE, *Circuit Judges*.
HAMILTON, *Circuit Judge*, dissenting in part.

SCUDDER, *Circuit Judge*. Insurance executive Steven Menzies sold over \$64 million in his company's stock but did not report any capital gains on his 2006 federal income tax return. He alleges that his underpayment of capital gains taxes (and the related penalties and interest subsequently imposed by the Internal Revenue Service) was because of a fraudulent tax shelter peddled to him and others by a lawyer, law firm, and two financial services firms. Menzies advanced this contention in claims he brought under the Racketeer Influenced and Corrupt Organizations Act or RICO and Illinois law. The district court dismissed all claims. Menzies's RICO claim falls short on the statute's pattern-of-racketeering element. Courts have labored mightily to articulate what the pattern element requires, and Menzies's claim presents a close question. In the end, we believe Menzies failed to plead not only the particulars of how the defendants marketed the same or a similar tax shelter to other tax-payers, but also facts to support a finding that the alleged racketeering activity would continue. To conclude otherwise would allow an ordinary (albeit grave) claim of fraud to advance in the name of RICO—an outcome we have time and again cautioned should not occur. In so holding, we in no way question whether a fraudulent tax shelter scheme can violate RICO. The shortcoming here is one of pleading alone, and it occurred after the district court authorized discovery to allow Menzies to develop his claims. As for Menzies's state law claims, we hold that an Illinois statute bars as untimely the claims advanced against the lawyer and law firm defendants. The claims against the two remaining financial services defendants can proceed, however. So we affirm in part, reverse in part, and remand.

City of Chicago v. Marilyn O. Marshall No. 17-3630

Submitted May 7, 2019 — Decided November 12, 2019

Case Type: Bankruptcy from District Court

Northern District of Illinois, Eastern Division. Nos. 17 C 2308 *et al.* — **Elaine E. Bucklo**, *Judge*.
Before EASTERBROOK, ROVNER, and HAMILTON, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. *In re Steenes*, 918 F.3d 554 (7th Cir. 2019) (*Steenes I*), holds that the confirmation of a payment plan under Chapter 13 of the Bankruptcy Code causes the debtor's assets, including automobiles, to revert to the debtor's personal ownership unless the judge has made a debtor-

specific finding under 11 U.S.C. §1327(b). We thought that this conclusion resolved the appeals. Although counsel briefed an additional question—whether automotive fines incurred by estates during confirmed Chapter 13 payment plans should be treated as administrative expenses—the City of Chicago said that this question need not be answered if we decided the §1327(b) issue in its favor, as we did... We hold that vehicular fines incurred during the course of a Chapter 13 bankruptcy are administrative expenses that must be paid promptly and in full. REVERSED

Brigid Ford v. Marion County Sheriff's Office No. 18-3217

Argued September 5, 2019 — Decided November 15, 2019

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:15-cv-1989-WTL-DML — **William T. Lawrence, Judge.**

Before SYKES, HAMILTON, and SCUDDER, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Plaintiff Brigid Ford worked as a deputy in the Marion County Sheriff's Office until her hand was seriously injured in a car accident while on duty. After assigning Ford to light duty for about a year, the Sheriff's Office told Ford that she must either transfer to a permanent position with a cut in pay or be terminated. After some back and forth, Ford accepted a civilian job as a jail visitation clerk. In the following years, Ford alleges, she suffered disability-based harassment by co-workers, refusals to accommodate her scheduling needs, and several discriminatory promotion denials. Ford sued the Sheriff's Office for discriminatory employment practices in violation of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 *et seq.* The district court granted summary judgment on most of Ford's claims. Two claims were tried to a jury, which rendered a verdict for the defense. Ford has appealed and raised a host of issues. We affirm. The district court correctly granted summary judgment on numerous claims and committed no reversible error in the trial.

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](#).