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EPA, Arbitration Appeals Top Busy Supreme Court Docket

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WASHINGTON -(Dow Jones)- One of the biggest environmental battles in years tops a Supreme Court docket that also finds the justices taking a close look at the growing use of arbitration to settle employment and consumer disputes.

So far, 37 cases have been accepted for the high court's 2000-2001 term, which formally begins Oct. 2. More are likely to be added when the justices meet behind closed doors Monday to contemplate roughly 1,600 appeals filed during the summer recess.

Among those is a federal judge's order that Microsoft Corp. (MSFT) be broken in two after violating U.S. antitrust laws. The Supreme Court could announce as early as Tuesday whether it wants to tackle the software maker's appeal directly, or have it first parsed by a federal appeals court.

The term opens just weeks before the nation's voters head to the polls to select a president who could have a big say in the court's future course. While none of the justices have hinted at plans to leave the bench, court-watchers figure the White House could be called on to tap two or more new jurists in the next four to eight years.

And if last term was one of the sexier in recent memory - the justices weighed in on hot-button issues like abortion, tobacco, school prayer and gay rights - the coming calender sees the high court returning to a more workmanlike docket.

"This term will be much more tame and traditional for the Supreme Court," says Washington attorney Theodore B. Olson, a former assistant attorney general in the Reagan administration.

A High-Stakes Pollution Fight

Tame and traditional doesn't mean trivial. Just ask the attorneys who filed the more than 50 briefs in a high-stakes case that pits electricity producers, truckers and several other industries against the Environmental Protection Agency and public health advocates.

The dust-up involves the EPA's efforts to set tough new pollution standards for smog and soot. But the case could have an even bigger impact as the justices ponder whether Congress sometimes gives regulatory agencies too much authority to make important decisions.

The EPA rules were rejected last year by a divided panel of the U.S. Court of Appeals for the District of Columbia Circuit. The court said the EPA construed provisions of the Clean Air Act "so loosely as to render them unconstitutional delegations of legislative power."

The so-called "non-delegation" doctrine hasn't been used by the Supreme Court to scuttle a statute since the 1930s, when two major New Deal laws were deemed to have handed too much authority to President Franklin D. Roosevelt and his executive agencies.

Also in the mix: A 1980 D.C. Circuit ruling that said the EPA could consider only the health effects of national air-quality standards, not how much it would cost to implement the standards.

Industry groups want the Supreme Court to overturn that ruling, which they call a "precedential leper - diseased but untouchable." If the EPA can weigh the various pros and cons - such as the cost - of a proposed rule, the agency might not be accused of overreaching, they argue.

The Clinton administration urged the high court to back the EPA's action, saying the Clean Air Act's directives "amply ensure that Congress has not abdicated its power to make the laws."

The appeals, Browner vs. American Trucking Associations, 99-1257 and American Trucking Associations vs. Browner, 99-1426, will be argued Nov. 7.

Army Jurisdiction Over Every Backyard?

Questions of regulatory authority also arise in a case from the Seventh U.S. Circuit Court of Appeals in Chicago, which last year ruled that the U.S. Army Corps of Engineers has the authority to regulate isolated wetlands and ponds that serve as habitats for migratory birds.

The justices on Oct. 31 will hear arguments by a group of Illinois cities that want to build a regional landfill on an abandoned strip mine in Cook County. The Corps blocked the $20 million project because about 17 acres of ponds and small lakes used by migratory birds would be filled.

Congress gave the Corps the authority to regulate the discharge of fill material into "waters of the United States" in 1972 when it enacted the Clean Water Act. Its jurisdiction has evolved to include isolated waters that could affect interstate commerce.

In 1986, the Corps rewrote its regulatory provisions, clarifying that "waters of the United States" included lakes and ponds used by migratory birds. The so-called "migratory bird rule" is at the heart of the case.

Critics like the National Association of Home Builders and the American Farm Bureau Federation say the Corps is overstepping its authority by regulating waters that are the jurisdiction of state and local authorities.

"The migratory bird interpretation threatens to impose Army jurisdiction over every backyard in the United States," the U.S. Chamber of Commerce said in a brief.

The case is Solid Waste Agency of Northern Cook County vs. U.S. Army Corps of Engineers, 99-1178.

A Wave Of Arbitration Cases

A trio of separate appeals will give the court an opportunity to weigh in on the growing use of mandatory arbitration. Businesses favor arbitration as a way to avoid costly legal expenses and fickle juries. But aggrieved consumers and employees increasingly say they deserve their day in court.

"This is one of the broader policy issues facing our legal system over the next decade or so," says Christopher Landau, a Washington appellate attorney. The disputes before the court this term, he adds, "are probably just the beginning of a new wave of arbitration cases."

In Circuit City vs. Adams, 99-1379, the justices will decide whether companies can require their workers to use arbitration - rather than lawsuits - to settle employment disputes.

At issue is a provision of the Federal Arbitration Act that exempts "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." Most appellate courts have interpreted that to apply only to transportation workers.

But the Ninth U.S. Circuit Court of Appeals ruled that the exemption applies to all employment contracts, and allowed a harassment suit filed by a former Circuit City Stores Inc. (CC) salesman to proceed to trial.

In Green Tree Financial vs. Randolph, 99-1235, the justices will use an Alabama case to clarify when a judge's decision to send a dispute to arbitration can be appealed.

The case also begs a broader question: Do arbitration clauses interfere with consumers' rights to resolve disputes through class-action suits? The appeal will be argued Oct. 3.

The third arbitration case before the court comes from a West Virginia coal company that twice fired a truck driver who tested positive for marijuana use. The driver was reinstated by an arbitrator both times.

Eastern Associated Coal Corp. argued that public policy dictates the worker be fired -- even if the law doesn't explicitly say so. The Fourth U.S. Circuit Court of Appeals disagreed. The high court will hear arguments in Eastern Associated Coal vs. United Mine Workers, 99-1038, Oct. 2.

Telecom Act Returns To The Court

Congress's 1996 effort to deregulate the telecommunication industry makes a return visit to the high court this term. The justices will hear an appeal by GTE Corp., which said phone subsidies retooled by the Federal Communications Commission shortchange some local phone companies. GTE vs. FCC, 99-1244, will be argued on Dec. 6. Earlier this year, GTE and Bell Atlantic were merged to form Verizon Communications (VZ).

In Egelhoff vs. Egelhoff, 99-1529, the justices will review a Washington state statute that revokes a spouse's claims to employee life insurance and retirement benefits after divorce. The Supreme Court was asked to decide whether the law is superseded by the federal Employee Retirement Income Security Act, or Erisa, which governs employee benefit plans. Arguments are scheduled for Nov. 8.

Also on Nov. 8, the justices will hear arguments in a case that asks them to decide whether courts must defer to Customs Service rulings on import duties. The appeal, U.S. vs. Mead, 99-1434, involves the agency's 1983 decision to classify daily planners imported by Mead Corp. (MEA) as "bound dairies" subject to a 3.2% import duty.
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