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the most IMPORTANT OPINIONS

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Employment

to 15 minutes they were required to be at work before and after each shift — must be dismissed because the Wage Act claim is arbitrable under a collective bargaining agreement, a U.S. District Court judge holds.
Clee v. MVM, Inc. (Lawyers Weekly No. 02-117-15) (24 pages).

Waiver - Whistleblower

A plaintiff attorney discharged from employment at the Office of Senate Counsel could not sue the Massachusetts Senate or the commonwealth for harassment and retaliation, as her pursuit of remedies under the Massachusetts Whistleblower Act (G.L.c. 149, §185) triggered a waiver of those claims, a Superior Court judge rules.
Fitzgerald v. Commonwealth, et al. (Lawyers Weekly No. 12-049-15) (10 pages).

Evidence

Cellphone - Privilege

A grand jury subpoena duces tecum, requiring a law firm to produce a cellphone brought to it by a suspect, must be reversed, as (1) the attorney-client privilege protects the suspect against compelled production of the phone by the law firm and (2) the protection afforded by the attorney-client privilege may not be set aside based on a showing of probable cause, the Supreme Judicial Court holds.
In the Matter of a Grand Jury Investigation (Lawyers Weekly No. 10-004-15) (39 pages).

Confrontation - Hearsay

The constitutional rights of two defendants — charged with mail fraud, wire fraud, conspiracy and misuse of a government seal — were not violated by the introduction into evidence of customer complaints and cease-and-desist letters from regulators, the 1st U.S. Circuit Court of Appeals finds.
United States v. Godfrey, et al. (Lawyers Weekly No. 01-130-15) (19 pages).

Confrontation - Methamphetamine

A defendant's constitutional right to confrontation was not violated by a state chemist's testimony about a "known standard" methamphetamine sample received from a private manufacturer, the 1st U.S. Circuit Court of Appeals holds.
United States v. Razo (Lawyers Weekly No. 01-030-15) (24 pages).

Work product - Public records

Opinion work product that was prepared in anticipation of litigation or for trial by or for a party or party representative is protected from discovery even if the opinion work product has been made or received by a state or local government employee, the Supreme Judicial Court says.

DaRosa, et al. v. City of New Bedford v. Monsanto Company, et al. (Lawyers Weekly No. 10-081-15) (32 pages).

Fraud

False Claims Act - Medicaid

A judge erred in dismissing a False Claims Act complaint filed by relators whose daughter died after receiving treatment that was out of compliance with over a dozen regulations, the 1st U.S. Circuit Court of Appeals concludes.
United States, et al. ex rel. Escobar, et al. v. Universal Health Services, Inc. (Lawyers Weekly No. 01-065-15) (26 pages).

False Claims Act - UMass

The University of Massachusetts Medical School is not subject to liability under the False Claims Act, a U.S. District Court judge says.
United States ex rel. Willette v. University of Massachusetts, Worcester, et al. (Lawyers Weekly No. 02-029-15) (11 pages).

Habeas corpus

Plea offer

A petitioner should be granted habeas corpus relief because of his counsel's failure to inform him about a plea offer from the prosecution, a U.S. District Court judge decides.
United States v. Merlino (Lawyers Weekly No. 02-248-15) (19 pages).

Retroactivity - Drug quantity

The rule announced in *Alleyne v. United States*, 133 S. Ct. 2151, 2155 (2013) — that any fact leading to the imposition of a mandatory minimum sentence must be found by a jury beyond a reasonable doubt — is not retroactively applicable to sentences on collateral review on an initial habeas petition, the 1st U.S. Circuit Court of Appeals states.
Buttenworth v. United States (Lawyers Weekly No. 01-002-15) (22 pages).

Sentencing - Vacated state convictions

A defendant whose predicate state convictions have been vacated based on the misconduct of state chemist Annie Dookhan may, 28 U.S.C. §2255(a), seek to reopen a federal sentence that was influenced by those convictions, the 1st U.S. Circuit Court of Appeals says.
Cuevas v. United States (Lawyers Weekly No. 01-030-15) (20 pages).

State crime lab - Sentencing

A habeas corpus petitioner who pleaded guilty must be resentenced because the mandatory minimum sentence imposed on him was based on a quantity of drugs tested and weighed by Annie Dookhan, a U.S. District Court judge holds.
United States v. Hampton (Lawyers Weekly No. 02-259-15) (21 pages).

Insurance

Discrimination - Sober living

A defendant insurance company that issued a policy to the plaintiff operator of two sober homes did not violate the Fair Housing Amendments Act or the Americans with Disabilities Act by charging premiums applicable to halfway houses instead of three-family homes, a U.S. District Court judge finds.
PSI, LLC v. Nautilus Insurance Company (Lawyers Weekly No. 02-633-14) (18 pages).

Duty to defend - Counterclaim

An insurance company's duty to defend an insured charged by a former employee with age discrimination did not extend to a counterclaim the insured asserted against the employee for misappropriation of corporate funds, a U.S. District Court judge determines.
Mount Vernon Fire Insurance Company v. VisionAid, Inc. (Lawyers Weekly No. 02-115-15) (17 pages).

Maritime law - Uberimae fidei doctrine

A maritime policy covering a floating drydock was voidable because the policyholder failed to disclose material information about the drydock's actual value and preexisting deteriorated condition, the 1st U.S. Circuit Court of Appeals rules.
Catlin (Syndicate 2003) at Lloyd's v. San Juan Towing and Marine Services, Inc. (Lawyers Weekly No. 01-028-15) (3 pages).

PIP - EUO

An insurance company is not authorized by statute to conduct examinations under oath of employees of a health provider that has requested payment of personal injury protection benefits, a District Court/BMC Trial Division judge says.
VIP Physical Therapy, Inc. v. Government Employees Insurance Company (Lawyers Weekly No. 16-001-15) (3 pages).

Jurisdiction

Personal - Facebook - Defamation

Personal jurisdiction should not be exercised over eight out-of-state individuals charged with defaming an animal welfare and rescue group by means of comments posted on social media, a Superior Court judge concludes.
Let's Adopt! Global, Inc. v. Macey, et al. (Lawyers Weekly No. 12-023-15) (29 pages).

Removal - Service

A defendant may file a notice to remove a state court action to federal court even before being formally served, the 1st U.S. Circuit Court of Appeals states.
Novak v. The Bank of New York Mellon Trust Co., et al. (Lawyers Weekly No. 01-103-15) (9 pages).

Jury and jurors

Extraneous information - Settlement offer

Following a jury verdict for the defendants in a products liability case, the trial judge should have granted the plaintiffs' request for a hearing once they were told that the jurors had improper knowledge of a confidential settlement offer, the 1st U.S. Circuit Court of Appeals concludes.
Bouret-Echevarria, et al. v. Caribbean Aviation Maintenance Corp., et al. (Lawyers Weekly No. 01-108-15) (29 pages).

Jury list - Press access

A list identifying the names of jurors who have been empanelled and rendered a verdict in a criminal case must be retained in the court file of the case and be made available to the public in the same manner as other court records, the Supreme Judicial Court rules.
Commonwealth v. Fujita (Lawyers Weekly No. 10-009-15) (22 pages).

Juvenile

Drug distribution

A juvenile indicted for possession of heroin with intent to distribute may not be prosecuted as an adult, as the generalized potential for harm from the distribution and use of heroin does not meet the probable cause standard for infliction or threat of serious bodily harm, the Supreme Judicial Court decides.
Felix F., a juvenile v. Commonwealth (Lawyers Weekly No. 10-086-15) (13 pages).

Labor

CBA - Waiver - Preemption

A defendant employer's motion to dismiss a complaint alleging discrimination and retaliation on the basis of gender or sexual orientation must be denied because (1) a collective bargaining agreement governing the terms of the plaintiff's employment did not waive her right to a judicial remedy and (2) the plaintiff's claims are not preempted by the Labor Management Relations Act, a U.S. District Court judge concludes.
Rivera v. U.S. Tsubaki, Inc. (Lawyers Weekly No. 02-060-15) (11 pages).

Health insurance - Retirees

The city of Somerville and its school committee did not violate G.L.c. 150E by unilaterally reducing the percentage contribution to retired employees' health insurance premiums without engaging in collective bargaining over the matter with current employees, the Supreme Judicial Court determines.
City of Somerville, et al. v. Commonwealth Employment Relations Board, et al. (Lawyers Weekly No. 10-016-15) (19 pages).

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