
Supreme Court Update

Supreme Court Update – State and Local Taxes

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This column covers revised recommendations of the Special Master in the MoneyGram Unclaimed Property cases, Missouri's constitutional challenge to offset the restriction provision of the American Rescue Plan Act, a due process/personal jurisdiction challenge involving a foreign national, and oral arguments in an attorney-client privilege matter.

As discussed in the prior column, on October 3, 2022, the Supreme Court heard oral arguments in the MoneyGram cases: *Delaware v. Pennsylvania,* 220145 and *Arkansas et al. v. Delaware,* 220146. The dispute is over which state is entitled to escheat, or take custody of, the proceedings of certain unclaimed monetary instruments issued by MoneyGram Payment Systems, Inc. (“MoneyGram”).

Approximately two months after oral arguments, on December 13, 2022, Pierre N. Leval, the Special Master appointed by the Court, filed a Second Interim Report, wherein upon apology to the Court, he advised that he “can no longer stand by the recommendations that [he] made to the

Court in [his] First Interim Special Master's Report." This column provides a comprehensive review of the changes in his recommendations to the Court.

In *State of Missouri v. Yellen* (Docket No. 22-352), the State of Missouri ("Missouri") filed a petition for writ of certiorari to review the Secretary of Treasury's ("Treasury") interpretation of the American Rescue Plan Act of 2021 ("ARPA"), Pub. L. No. 117-2, 135 Stat. 4, which appropriated over $200 billion to states, territories, and tribal governments to mitigate the fiscal effects of the COVID-19 pandemic. The ARPA provides that a state or territory cannot use ARPA funds "to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation or administrative interpretation." §9901, 135 Stat. at 227 (codified at 42 U.S.C. §802(c)(2)(A) 42 U.S.C. §802(c)(2)(A)).

As set forth in the petition for writ of certiorari, "Missouri interprets the law as prohibiting only the deliberate use of ARPA funds to pay for a tax cut;" whereas, Missouri alleges that the "Treasury – consistent with public comments by Secretary Yellen – reads the law as prohibiting revenue-reducing tax policies." The Eighth Circuit affirmed the Eastern District Court of Missouri's decision that Missouri lacked standing to challenge the Treasury's interpretation of ARPA. Missouri argued that the "Secretary's 'erroneously broad interpretation' of a provision in ARPA – the "Offset Restriction" – is unconstitutional [under the Spending Clause and the Tenth Amendment because it is an unclear condition on congressional appropriation]. " (As we go to press, the Supreme Court denied Missouri's petition for writ of certiorari, on January 17, 2023.)

Another new petition, *Gunn v. Wild* (Docket No. 22-477), asks the Court to consider a Fourteenth Amendment Due Process Clause challenge involving a foreign national defendant. The Petitioner asks the Court whether the Sixth Circuit failed to abide by the United States Supreme Court's ruling regarding personal jurisdiction (*Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 141 S.Ct. 1017 (2021). While this case is not a state tax case, the Court's ruling could impact state tax matters, which often involve Due Process Challenges regarding the nature and level of contacts necessary to establish jurisdiction to tax.

We still await the Court's decision in *National Pork Producers Council, et al. v. Ross,* (Docket No. 21-468), where the National Pork Producers Council and the American Farm Federation argue that Proposition 12 violates the dormant Commerce Clause to the U.S. Constitution, an argument advanced in many state tax cases. Also, on January 13, 2023, the Court granted certiorari in *Tyler v. Hennepin County* (Docket No. 22-166), a case which asks the Court two questions: whether taking and selling a home to satisfy a debt to the government, and keeping the surplus value as a windfall, violates the Takings Clause?; and, whether the forfeiture of property worth far more than needed to satisfy a debt plus interest, penalties, and costs, is a fine within the meaning of the Eighth Amendment? The Court has not yet determined whether it will grant certiorari in *Fair v.*

Continental Resources (Docket No. 22-160) and *Nieveen v. Tax 106* (Docket No. 22-237), two other cases discussed in the prior column, that address similar questions.

Finally, as we go to press, the Court heard oral arguments in a case that considers "whether a communication involving both legal and non-legal advice is protected by attorney-client privilege where obtaining or providing legal advice was one of the significant purposes behind the communication." We will cover the oral arguments in *In Re Grand Jury* (Docket No. 21-1397) in the next column.

Revised Recommendations of Special Master in MoneyGram Unclaimed Property Cases

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Special Master Pierre N. Leval changed his recommendation to the Supreme Court in the MoneyGram cases, regarding whether certain abandoned MoneyGram financial instruments are within the scope of the Federal Disposition Act ("FDA" or "the Act") and, thus, which states are entitled to the funds of such abandoned instruments. He released his Second Interim Report on December 13, 2022, on this matter, and the following is a discussion of his change in recommendation.

The FDA states that sums payable on a money order, traveler's check, or other similar written instrument, other than a third-party bank check, if a banking or financial institution is directly liable, escheat to the state where the instrument is purchased, if the financial instrument is abandoned and the purchaser and payee's addresses are unknown to the obligor. The Special Master originally took the position, in his First Interim Report filed on July 23, 2021, that MoneyGram's Agent Checks and Teller's Checks, referred to herein as "Official Checks," are included as "money order[s]," or, alternatively, as "other similar written instrument[s]" in the Act and are not excluded from the Act as third-party bank checks. Thus, he concluded that the state where the instrument was purchased would be entitled to the corresponding abandoned funds, under the FDA. Conversely, if the Official Checks are not within the Act's scope, as a "money order" or "similar written instrument," or are considered to be a "third-party bank check," the issuer's state of incorporation, here Delaware, would be entitled to take custody of the funds, per the common law.

The Special Master now concludes that "the Official Checks fall within the scope of the FDA as an 'other similar written instrument' *and not as* a 'money order,' and, most importantly, that 'to the extent that the [Official Checks] are drawn by a bank as drawer (or otherwise in a capacity that renders the bank liable), they do fall within the Act's exclusion of 'third party bank checks.' " These changes were prompted by his review of the oral arguments before the Supreme Court in this matter on October 3, 2022, and, particularly, Delaware's contention there that "the banks that sell

the [Official Checks] do so in the role of *drawer* of the checks, so that the selling banks are liable on them."

Regarding whether the Official Checks are within the scope of the FDA as a "money order" or a "similar written instrument," he stated "I now recognize that there are sufficient adjectival, customary differences in the intended purpose and usual manner of treatment as between money orders and the [Official Checks], so that [they] would not be referred to as 'money orders.' " He further explained that the instruments are designed for different uses, stating that "[m]oney orders are designed to serve persons who do not have bank accounts" and are used in lieu of a personal checking account. The Official Checks, however, "are sold primarily to the selling bank's customers, *i.e.*, persons who have bank accounts, who draw the funds from their checking accounts to pay for the instruments." *See* Del. App. 260, 274–75. Furthermore, money orders are used for small payments, and sometimes issuers impose a limit on the maximum dollar value of the instrument, while the Official Checks can be used for larger purchases, as MoneyGram does not impose a limit on them.

In reaching his final recommendation to the Supreme Court, the Special Master next assessed whether the Official Checks were excluded from the FDA as "third party bank check[s]," even though they are an "other similar written instrument." Critical to this analysis was determining the definition of "third party bank check." To do so, the Special Master considered the parties' proposed definitions of "bank check" and "third party" under the statute.

The Special Master quickly disregarded the Defendant States' first proposed definition of "third party bank check," "a check drawn by a bank on a bank that has been indorsed over to a new (or 'third party') payee." Defs.' Br. Supp. Mot. Summ. J. at 41 (Dkt. 89). He concluded that this definition was "impractical" and "useless in operation," reasoning that because the FDA concerns abandoned checks, "the institution (here MoneyGram) that is responsible for paying the proceeds of the abandoned instrument to the correct State, would rarely know whether the instrument had been indorsed to a third party."

The Defendant States additionally suggested the term "bank check" to mean "an ordinary personal or business check drawn on a checking account at a bank." *Id.* at 42–43; Defs.' S. Ct. Br. at 45–47. The Special Master also found this proposed definition of "bank check" to be uncompelling, based on a review of the "linguistic usage within the industry, as well as in terms of the likely motivation of Treasury and Congress to amend the bill in [the fashion that they did], and the consequences of the competing interpretations for the functioning of the Act." (See the Special Master's Second Interim Report for further analysis).

The Special Master was much more accepting of Delaware's contention that the term "bank check" means a check signed by a bank so as to make that bank liable on the check. He stated that both Delaware and the Defendant States' experts agreed that a bank check "is commonly understood to

mean a check drawn by a bank in the capacity of drawer, so that the bank is liable on the check." *See* Defs. App. at 135 (Mann Expert Report).

Additionally, the Special Master considered the reasoning for why the exclusion was included in the FDA. Cashier's checks, teller's checks, and certified checks, instruments commonly referred to as bank checks, are very similar to money orders and traveler's checks in that they render banks liable and are prepaid, although they are not enumerated in the FDA. As the third party bank check exclusion effects "similar instrument[s]" to "money order[s]" and "traveler's check[s]," the exclusion is likely referring to checks such as these, other checks which render the bank liable. Without such an exclusion, these instruments could be swept into the scope of the FDA as an "other similar instrument;" however, it would be odd for Congress to intend to include these very well-known, but unenumerated, instruments in the FDA without specifically referencing them. In fact, the Special Master stated that "[t]hese categories of bank checks were so well known

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that it can be assumed with confidence that if Congress had intended to include them within the scope of the bill, it would have mentioned them by name." Moreover, a review of the Act's legislative history establishes that there was a concern that without the exclusion, "[t]he open-ended 'similar . . . instrument[s]' clause posed a risk that the Act would be interpreted as including 'bank checks' — that is to say cashier's checks, teller's checks, and certified checks — which Congress had no intention to include." This further supports the Special Master's conclusion that the "bank check[s]" exclusion refers to instruments that render banks liable.

Regarding the definition of "third party," the Special Master considered multiple potential definitions as well. He found Delaware's proposed definition of the term, "a bank check paid *through a third party*," and another possible definition, "a check drawn by a bank *at the instance of a third party*," to be faulty, based on review of congressional intent and the practical implications of the meaning of the phrase. (See the Special Master's Second Interim Report for further analysis).

The Special Master found the Defendant States' reading of the phrase to most likely be Congress's intended definition. They defined "third party," in the Act, to mean "an instrument that is designed to be used for making payments to a third party." Thus, the Special Master found the phrase "third party bank check" to mean a check that is designed for making payments to third parties on which a bank has assumed liability. This interpretation is supported by the Hunt Commission's final report (published in December 1972), precedent cited by the Defendant States, which "referred to 'third party payment services' to describe 'any mechanism whereby a deposit intermediary transfers a depositor's funds to a third party or to the account of a third party upon the negotiable or non-negotiable order of the depositor'" and included "'[c]hecking accounts' as 'one type of third party payment service.' " *The Report of the President's Commission on Financial Structure and Regulation* at 23 n.1 (Dec. 1972). Thus, the Special Master explained that "[s]ince

the identity of the payee on an abandoned instrument is not something that the issuer is likely to know, the term is best read as referring to bank-issued checks, being instruments designed to make payments to third parties, rather than to the subset of bank checks actually made payable to a third-party payee."

Lastly, "[t]his interpretation of 'third party' . . . highlights" that money orders and the instruments excluded by the third party bank exception are similar in that they are designed to transfer money to a third party. The Special Master reiterated that the "apparent purpose [of the exclusion] was to exclude certain bank-issued instruments similar to money orders (and traveler's checks) that risk (contrary to Congress's intention) to be swept into the Act's coverage under the 'similar . . . instrument[s]' clause by virtue of similarity to money orders." Thus, he found the Defendant State's interpretation, that the Act's reference to "third party" refers to "an instrument designed to make payments to third parties," to best serve Congress's intentions.

Therefore, the Special Master concluded that any of the Official Checks, which are designed to transfer money to third parties, that are "issued by banks as drawers (on which banks are thus liable) are 'third party bank checks,' which are excluded from the scope of the 'other similar written instrument' clause and from the dispositions of the Act," and that the Official Checks "on which the selling banks have not assumed liability are 'other similar . . . instrument[s]' that are not excluded by the 'third party bank check' clause, so that they escheat pursuant to the Act."

Regarding the MoneyGram Teller's Checks, the Special Master recommended to the Supreme Court that "because [they] are indeed teller's checks drawn by the selling banks (which are instruments designed for making payments to a third party), they are excluded by the 'other than a third party bank check' clause and do not escheat pursuant to the Act."

MoneyGram Agent Checks, however, can be separated into two distinct categories, one referred to as "So-Labeled Agent Checks" and the other referred to as "Unlabeled Agent Checks." The "So-Labeled Agent Checks" identify MoneyGram as the drawer, do not list the bank as a drawer, and have typed on them the print "Agent for MoneyGram" and "Agent Check." Thus, the Special Master concluded that the bank is not liable on the instrument, the instruments are "other similar written instrument[s]," and are not covered by the "third party bank check" exception. The Special Master therefore recommended to the Supreme Court that the "So-Labeled Agent Checks" should escheat pursuant to the FDA.

The Unlabeled Agent Checks, however, are significantly different than the "So-Labeled Agent Checks." These checks do not list the selling bank as an agent for MoneyGram, are not identified as an "Agent Check," and have an appearance that "favor a finding that the selling bank is a drawer of the check and is therefore liable on it." Conversely, these checks identify MoneyGram, alone, as drawer, and some of MoneyGram's records characterize the selling bank as an agent for MoneyGram and suggest "that MoneyGram does not view [these checks] as being bank checks

that carry bank liability." *See* Defs. App. 24, 484; Del. App. 302. As there is evidence "that favors treating the selling banks as drawers, and there is evidence that favors treating the selling banks as having sold the checks in the capacity of agent for MoneyGram and not as a drawer," the Special Master did "not find that either side has persuasively established entitlement to judgment as a matter of law as to whether the selling bank is liable on this second type of Agent Check." Thus, here, the Special Master recommended to the Supreme Court to "deny both sides' motions for summary judgment as to these instruments and remand to the Special Master for either trial or renewed motions for summary judgment."

Missouri's Constitutional Challenge to Offset Restriction Provision of American Rescue Plan Act

On October 12, 2022, the State of Missouri ("Missouri") filed a petition for writ of certiorari to review the Secretary of the Treasury's ("Treasury") interpretation of the American Rescue Plan Act of 2021 ("ARPA"), Pub. L. No. 117-2, 135 Stat. 4, in *The State of Missouri v. Janet L. Yellen, Secretary of the Treasury, et al.*, (Docket No. 22-352). The Eighth Circuit affirmed the Eastern District of Missouri's decision in *State of Missouri v.*

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Janet L. Yellen, 538 F. Supp. 3d 906 (E.D. Mo. 021), that Missouri failed to establish that it had standing to bring its claims.

History of the ARPA

Congress passed the American Rescue Plan Act of 2021 ("ARPA") in March 2021 providing nearly $200 billion in new federal grants to "help states mitigate the fiscal effects of the COVID-19 pandemic."[1] Before a state can receive funds, it must certify to Treasury that it will comply with the ARPA's provisions. ARPA must be used:

> ((A)) to respond to the public health emergency with respect to [COVID-19] or its negative economic impacts [...];
>
> ((B)) to respond to workers performing essential work during the COVID-19 public health emergency [...];
>
> ((C)) for the provision of government services to the extent of the reduction in revenue of such State, territory, or Tribal government due to the COVID-19 pandemic [...]; or
>
> ((D)) to make necessary investments in water, sewer, or broadband infrastructure.[2]

The ARPA also identifies two specific restrictions on the use of allocated funds. At issue in this case, the ARPA's "Offset Restriction" provides that, "[a] State or territory shall not use the funds

provided under this section [...] *to either directly or indirectly offset* a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax [...] or delays the imposition of any tax or tax increases."[3] If a state violates the Offset Restriction, it "shall be required to repay [Treasury]" an amount equal to the lesser of: (i) "the amount of the applicable reduction to net tax revenue attributable to such violation," or (ii) the amount of ARPA funds received by the state.[4]

Congress authorized Treasury "to issue such regulations as may be necessary or appropriate to carry out [the ARPA]. " On May 17, 2021, Treasury issued an Interim Rule implementing the Offset Restriction. On January 27, 2022, Treasury issued a Final Rule, which states, per the Eighth Circuit Court of Appeals, that Treasury will consider a recipient to have impermissibly used ARPA funds to offset a reduction in net revenue "if it fails to offset that reduction through means unrelated to the ARPA funds." More specifically, as explained by the Eighth Circuit Court of Appeals, the Offset Restriction is violated if: "(1) the recipient implements a change in law or regulation that the recipient either assesses has had or predicts will have the effect of reducing tax revenue," (2) the reduction caused by the change is more than de minimis, meaning it exceeds one percent (1%) of the recipient's baseline tax revenue for 2019, adjusted for inflation, (3) the recipient reports a reduction in net tax revenue relative to its inflation-adjusted 2019 net tax revenue, and (4) the aggregate reduction is greater than the sum of other changes to the recipient's net tax revenue."

Procedural history

On March 29, 2021, Missouri brought suit against Janet L. Yellen in her official capacity as Secretary of the Treasury in the Eastern District of Missouri ("District Court"). The State filed suit after Congress enacted the ARPA but before Treasury had issued its Interim Rule implementing the Offset Restriction provision. As explained by the Court of Appeals of the Eighth Circuit, Missouri's complaint "describes two potential interpretations of the Offset Restriction. Under one, which it deems the 'narrow' and 'correct' interpretation, the Offset Restriction 'merely prohibits the States from taking COVID-19 relief funds and deliberately applying them to offset a specific tax reduction of a similar amount.' Under a second, 'broad' interpretation, the Offset Restriction 'would prohibit a State from enacting *any* tax-reduction policy that would result in a net reduction of revenue through 2024 or risk forfeiting its COVID-19 relief funds.' " Missouri moved for a preliminary injunction asking the District Court to enjoin Treasury from enforcement of the second, broader interpretation.

The District Court dismissed the case, holding that Missouri lacked Article III standing and that the suit was unripe.

Eighth circuit decision

In affirming the decision of the District Court, the Eighth Circuit explained that Missouri's complaint and appeal make clear that the State “is not challenging the Offset Restriction provision as written, but rather a specific potential interpretation of the provision – the broad interpretation.” The appellate court observed that “Missouri has not alleged any intent to engage in conduct that is proscribed by the Offset Restriction on its face or the Secretary's interpretation of it. While Missouri's complaint alleges that its legislature was considering tax-reduction policies, such policies alone do not violate the ARPA or any interpretation of ARPA embraced by the Secretary.” As such, the Court of Appeals determined that “Missouri has only alleged a 'conjectural or hypothetical' injury, not one that is actual or imminent.” The Court of Appeals also found that Missouri “has also not alleged a future injury that is 'certainly impending' or even likely to occur.” In this regard, the Court of Appeals explains, “[instead], Missouri asks us to declare, in the abstract, what a statute does not mean. It asks us to enjoin a hypothetical interpretation of the Offset Restriction that the Secretary has explicitly disclaimed, without alleging any concrete, imminent injury from the Secretary's actual interpretation. That would be a quintessential advisory opinion. *See Golden v. Zwickler*, 394 U.S. 103, 108 (1969) (explaining that federal courts 'do not render advisory opinions.' For adjudication of constitutional issues[,] concrete legal issues, presented in actual cases, not abstractions are requisite . . .” On this basis, the Eighth Circuit concluded that Missouri failed to establish that it has standing to bring its claims.

Questions presented

(1) “Does the State of Missouri have standing to challenge Treasury's interpretation of the Tax Mandate as inconsistent with the law?”

(2) “Does the Tax Mandate prohibit only the deliberate use of ARPA funds to pay for a tax cut?”

(3) “If the Tax Mandate does more than prevent the deliberate use of ARPA funds to pay for a tax cut, is it constitutional under Article I, § 8 and [the] Tenth Amendment?”

Due Process Challenge Against Finding of Lack of Jurisdiction Over Foreign National

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In *Gunn v. Wild* (Docket No. 22-477), Leslie J. Gunn appeals a decision by the United States Court of Appeals for the Sixth Circuit, which dismissed her diversity action for lack of personal jurisdiction. Ms. Gunn alleges that Mr. Wild's business and personal contacts with the State of Kentucky give rise to the federal court's jurisdiction over him in a breach of contract lawsuit. Mr. Wild alleges that he is a citizen and resident of Switzerland, and therefore, the court must dismiss Ms. Gunn's complaint for lack of personal jurisdiction.

Background

In 1994, Mr. Wild purchased the stock of a company located in Kentucky, which he renamed Wild Flavors, Inc. (“Wild Flavors”). In 2014, Mr. Wild sold Wild Flavors to a third party, which sale was completed in Zurich, Switzerland. Ms. Gunn alleged that Mr. Wild “orally promised her a 'lifetime of unlimited spending' as compensation for her assistance to Wild” in connection with the sale of Wild Flavors. As explained by the court, Mr. Wild's and Ms. Gunn's relationship deteriorated after the sale of Wild Flavors and they entered into a written release and settlement agreement (“RSA”) to memorialize the compensation owed to Ms. Gunn.

Negotiations over the RSA took place in Switzerland and the RSA was signed by Ms. Gunn and Mr. Wild on December 21, 2015 in Switzerland. In 2020, Ms. Gunn sued Mr. Wild in the Eastern District of Kentucky (among other jurisdictions), alleging breach of contract on the RSA.

Procedural history

Ms. Gunn sued Mr. Wild in the Eastern District of Kentucky (the “District Court”), alleging breach of contract. Mr. Wild moved to dismiss Ms. Gunn's complaint for lack of personal jurisdiction and forum non conveniens. The District Court held a hearing, denied the motion without prejudice, and ordered Ms. Gunn to file an amended complaint. Ms. Gunn amended her complaint and Mr. Wild again moved to dismiss. The District Court granted that motion and the Eighth Circuit Court of Appeals reviewed de novo the district court's dismissal of the case for lack of personal jurisdiction.

Personal jurisdiction

As explained by the Sixth Circuit, “[p]ersonal jurisdiction may be either 'general' – that is, it extends to all of the defendant's activities in the state because the defendant resides or has its principal place of business there or is otherwise 'at home' there – or 'specific,' which requires that the lawsuit arise out of the defendant's contacts with the state. *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.,* 141 S. Ct. 1017, 1024 – 25 (2021) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown,* 571 U.S. 117, 127 (2014). ” The Sixth Circuit found that it did not have general jurisdiction over Mr. Wild because he is not currently domiciled or otherwise at home in the State of Kentucky. In this regard, the court specifically observed that “[n]otwithstanding Wild's previous contacts with Kentucky, he is not currently domiciled or otherwise at home there, and therefore the district court correctly concluded that it did not have general personal jurisdiction over [Wild]. ” (Ms. Gunn asserted in her complaint that Mr. Wild's prior activities, business and personal, including maintaining an office at the Kentucky Wild Flavor facility, numerous trips to Kentucky and use of a residence there between 1998 and 2014, were sufficient to establish jurisdiction.)

Accordingly, the Sixth Circuit Court of Appeals determined that Ms. Gunn must establish specific jurisdiction. The Sixth Circuit explains “[w]hen a federal court sits in diversity, it may exercise personal jurisdiction over an out-of-state defendant only if a court of the forum state could do so. *Blessing*, 988 F.3d at 901. Determining whether a Kentucky court would have personal jurisdiction over a nonresident defendant consists of a two-step process. First, the court must determine whether the cause of action arises from the type of conduct or activity enumerated in Kentucky's longarm statute . . . If not, the defendant is not subject to personal jurisdiction in Kentucky. If so, 'the court must determine whether exercising personal jurisdiction over the nonresident defendant comports with [his] federal due process rights.'”

Although the Sixth Circuit Court of Appeals observes that Mr. Wild conducted business in Kentucky for approximately 20 years between 1994 and 2014, it concludes that “Gunn's claims against him do not 'arise[] from' that activity,” which is required under Kentucky law. The court of appeals focuses on the terms of the RSA, in particular the fact that the RSA releases Wild from liability arising from any verbal agreements prior to the execution of the RSA and contained a merger provision that satisfied any prior agreements between Wild and Gunn upon execution of the contract. Per the court, these provisions of the RSA “foreclose Gunn's attempt to link her claims to Wild's oral promises rather than to his alleged breaches of the RSA, which appear to have occurred in the first half of 2016.” Thus, the court concludes “in light of the RSA's liability release and merger clauses and Gunn's own allegations, Wild's oral promises in 2014 are 'too attenuated' from Gunn's claim to 'fit the definition of arising from' under Kentucky law.” The court also finds that “[b]ecause Wild is not subject to personal jurisdiction under Kentucky's longarm statute, we need not determine whether exercising jurisdiction over him would comport with federal due process. *See Blessing,* 988 F.3d at 901; *Caesars,* 336 S.W. 3d at 59.”

Questions presented

(1) “Should the requirement that a plaintiff's cause of action arise from or relate to the defendant's minimum contacts with a state apply to foreign national defendants who have extensive contacts within the state?”

(2) “Did the Sixth Circuit fail to abide by the United States Supreme Court's newest ruling regarding personal jurisdiction (*Ford Motor Co. v. Mont. Eighth Judicial Dist. Court,* 141 S.Ct. 1017 (2021) by basing its ruling solely on the grounds my claim did not 'arise from' Wild's business transactions, and by failing to even consider whether my claim is 'related to' Wild's business transactions?”

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1 42 U.S.C. § 802(a) 42 U.S.C. § 802(a).

2 42 U.S.C. § 802(c)(1) 42 U.S.C. § 802(c)(1).

3 42 U.S.C. § 802(c)(2)(A) 42 U.S.C. § 802(c)(2)(A) (emphasis added).

4 42 U.S.C. § 802(e) 42 U.S.C. § 802(e).

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