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The FIRM LINE

JONES SWANSON HUDDELL & GARRISON LLC

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Changes to the Federal Rules of Civil Procedure

Late last year, significant changes to the Federal Rules of Civil Procedure inserted a new consideration for courts when deciding the proper scope of discovery. Gone is the familiar test of "reasonably calculated to lead to the discovery of admissible evidence." In its place is a requirement of proportionality "to the needs of the case" -- a determination that is based upon the following factors:

(1) the importance of the issues at stake in the action,
(2) the amount in controversy,
(3) the parties' relative access to relevant information,
(4) the parties' resources,
(5) the importance of the discovery in resolving the issues, and
(6) whether the burden or expense of the proposed discovery outweighs its likely benefit.

While these factors are not new to the rules (with the exception of the parties' relative access to relevant information), they were moved front and center in the new rule in order to address a perceived problem of overbroad and overly expensive discovery. It will be interesting to track how these rule changes play out in practice. Already the new rules have played a prominent role in the following matters, wherein they are discussed by the courts:

Benson v. Rosenthal, No. CV 15-782, 2016 WL 1046126 (E.D. La. Mar. 16, 2016)(Wilkinson, M.J.);

Henry v. Morgan's Hotel Grp., Inc., No. 15-CV-1789, 2016 WL 303114 (S.D.N.Y. Jan. 25, 2016); and

State Farm Mut. Auto. Ins. Co. v. Fayda, No. 14-CIV-9792-WHP-JCF, 2015 WL 7871037 (S.D.N.Y. Dec. 3, 2015).

Click here to read an article about these rule changes in *The Wall Street Journal*

SCOTUS on *Tyson Foods*: A sea change in class action litigation, or much ado about nothing?

By Kerry Murphy
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Case: *Tyson Foods, Inc. v. Bouaphakeo*, No. 14-1146, 2016 WL 1092414 (U.S. Mar. 22, 2016)

The U.S. Supreme Court has declined to place further limits on representative evidence admissible in class action cases or to address the issue of whether class action plaintiffs must demonstrate that uninjured class members will not receive damages. On March 22, 2016, the Court decided the second of three class action cases before the Court this term, *Tyson Foods, Inc. v. Bouaphakeo et. al.*, a class action brought by employees of a pork processing plant in Iowa, seeking to be paid for time spent "donning and doffing" protective gear needed for their work. In this case, the Court declined to adopt the "categorical exclusion" of all representative evidence in class actions. The Court held that the admissibility of representative or statistical evidence turns not on whether the case is an individual suit or a class action but rather simply on its reliability and relevance under the Federal Rules of Evidence.

The class of employees had sought to admit a statistical analysis by an industrial relations expert based on hundreds of videotaped observations because Tyson had failed to keep records of the time its employees spent donning and doffing. The Court focused on this lack of record-keeping and relied upon a 1946 Supreme Court decision, *Anderson v. Mt. Clemens*, which allowed representative evidence in a Fair Labor Standards Act collective action when the defendants failed to keep records of their employees' time. The Court found that in *Tyson Foods*, as in *Mt. Clemens*, the employees "sought to introduce a representative sample to fill an evidentiary gap created by the employer's failure to keep adequate records," and that just as that evidence would likely have been admissible in the employees' individual actions, it was in *Tyson Foods* a permissible means of proving the injury to the class. As such, the district court did not err in certifying the class based in part on the representative evidence.

Click here to read the full article

From The New Orleans Advocate:

Stephanie Grace: Breakthrough with Big Oil on coast more possible now

"We're going to have a discussion. If they don't want litigation, then they ought to voluntarily step up and do some meaningful restoration, and if they are amenable to that, we can do some wonderful things."

- *Governor John Bel Edwards*

Click here to read the full article

From Gambit:

Suing Big Oil no longer 'frivolous'

"Nobody -- not even Big Oil or [Louisiana Attorney General Jeff] Landry -- is calling environmental lawsuits 'frivolous' any more."

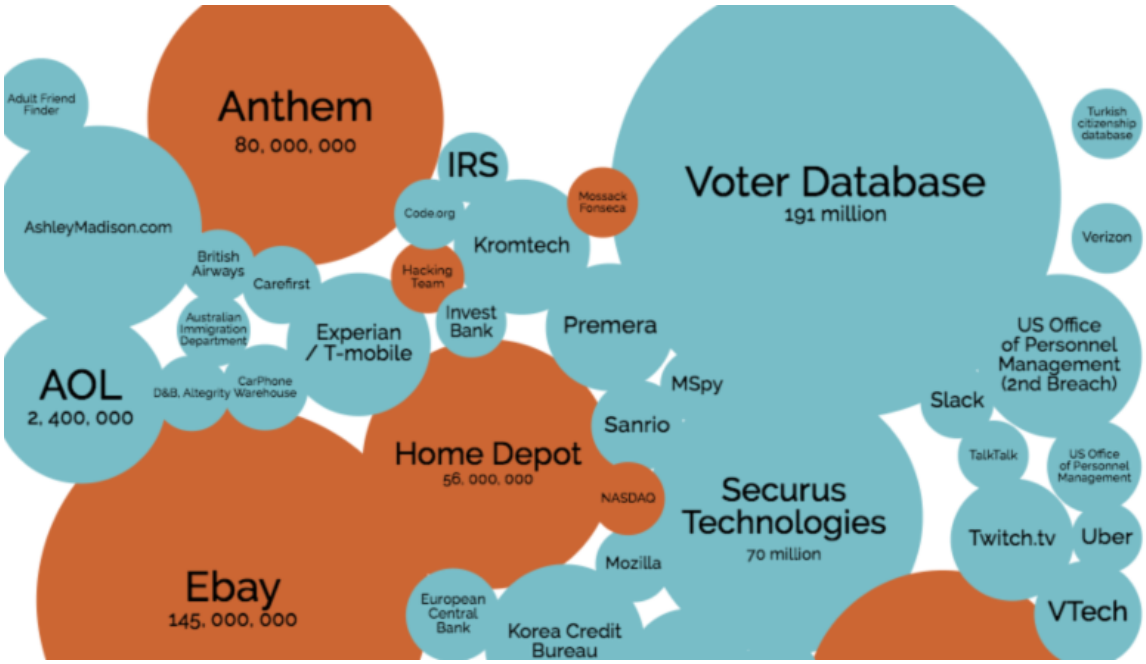
Click here to read the full article

From The Wall Street Journal:

Hackers breach law firms, including Cravath and Weil Gotshal

"The potential vulnerability of law firms is raising concerns among their clients, who are conducting their own assessments of the firms they hire, according to senior lawyers at a number of firms."

Click here to read the full article



Click on the image above to link to an interactive site showing the world's biggest data breaches according to organization (including law firms), year, method of leak, data sensitivity, and number of records stolen

From The Washington Post:

Investigation broadens into whether ExxonMobil misled public, investors on climate change

"New York Attorney General Eric Schneiderman and his counterparts from around the country vowed to 'collectively, collaboratively and aggressively' investigate whether fossil fuel companies such as ExxonMobil have misled shareholders and the public about what they knew -- and when -- about the risks of climate change."

Click here to read the full article

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ABOUT THE FIRM

Jones, Swanson, Huddell & Garrison, LLC, is a boutique litigation law firm based in New Orleans, with a second office in Baton Rouge, Louisiana. The firm primarily handles complex commercial and environmental/property disputes. In those litigation arenas, the firm has a strong nationwide presence, continues to represent many of Louisiana's and the Southeast's largest and most active business entrepreneurs and landholders, and retains a sharp focus on the customized representation of smaller businesses and individuals. Jones Swanson has served as lead counsel in New York, Connecticut, Massachusetts, California, and Texas, as well as in Mississippi, Alabama, Florida, and Louisiana.

The Firm Line is a newsletter designed to inform our clients and friends about legal issues that may impact their lives and businesses, developments at the firm, and other items of interest. Our intention is to keep the information we provide in this newsletter concise. We welcome further discussion on the topics addressed herein, as well as ideas and suggestions as to topics of interest that we could cover in future issues, and thoughts as to how we can deliver better, more insightful information to our readership. Above all, we hope that The Firm Line proves interesting and noteworthy.

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