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### **U.S. 1st Circuit Case Summaries**

#### **Lemelson v. Bloomberg L.P.**

August 30, 2018

Injury & Tort Law, Securities Law, Media Law

(United States First Circuit) - Affirmed the dismissal of a defamation suit brought by a hedge fund manager who claimed Bloomberg News falsely reported that he was being investigated by the Securities and Exchange Commission. The plaintiff brought suit against Bloomberg, as well as the reporter and editor of the story, alleging that they had defamed him and committed other common-law torts. Agreeing with the district court, the First Circuit held that the plaintiff was required to plausibly allege actual malice because he was at least a limited-purpose public figure and that he had failed to allege such facts.

#### **Narragansett Indian Tribe v. Rhode Island Department of Transportation**

August 30, 2018

Construction, Government Law, Indian Law

(United States First Circuit) - Affirmed the dismissal of an Indian tribe's complaint against federal and Rhode Island agencies concerning a highway bridge reconstruction. The tribe argued, at base, that the state of Rhode Island broke a promise to give the tribe three parcels of land as mitigation for the expected negative impact on historic tribal land of an I-95 bridge replacement project. Agreeing with the district court, the First Circuit held that the tribe's claims were barred by federal sovereign immunity and lack of subject matter jurisdiction.

#### **Campbell v. Ackerman**

August 29, 2018

Civil Rights, Constitutional Law

(United States First Circuit) - Affirmed a take-nothing judgment in an action alleging mainly that a law enforcement officer unconstitutionally used excessive force while executing a search warrant. The plaintiff challenged the exclusion of certain evidence. The First Circuit rejected her arguments because her grounds for attacking the challenged evidentiary rulings were not advanced below.

#### **Gustavsen v. Alcon Laboratories, Inc.**

August 27, 2018

Consumer Protection Law, Health Law, Drugs & Biotech

(United States First Circuit) - Affirmed the dismissal of a consumer complaint alleging that manufacturers of prescription eye drops deliberately designed their bottles to emit unnecessarily

large drops in a ploy to force patients to waste the expensive medication and thus buy more of it. Moving to dismiss on preemption grounds, the manufacturers contended that the Food and Drug Administration would have to approve any modification of the medication's bottle. Agreeing, the First Circuit held that FDA regulations preempted the plaintiffs' state law claims seeking to force a change in the bottle design.

**Aguilar-de Guillen v. Sessions**

August 27, 2018

Immigration Law

(United States First Circuit) - Denied an undocumented immigrant's petition for review of a decision ordering her removed from the United States. The El Salvador national sought asylum relief and protection under the Convention Against Torture Act, citing gang death threats she had received in her home country that had prompted her to leave. However, the First Circuit found no basis to overturn the Board of Immigration Appeals' conclusion that she did not have a well-founded fear of future persecution or satisfy other requirements for the relief she sought.

**US v. Rivera-Berrios**

August 24, 2018

Sentencing, Criminal Law & Procedure

(United States First Circuit) - Affirmed a district court's decision regarding sentencing in a case where the defendant plead guilty to illegal possession of a firearm and was sentenced to probation. In 2016, defendant's home was searched and a massive cache of weapons was found. Defendant pleaded guilty to the 2016 charges, but before he could be sentenced his probation from the 2013 charges was revoked and he was sentenced to prison for those charges. This action slotted defendant into a criminal history category that generated increased prison time under the sentencing guidelines. Defendant argued that the 2013 sentence should not be considered for the 2016 sentence. The court held that the district court properly considered the factors for sentencing.