KATE TODD ON BUSINESS INTERESTS

Highlights:

- Kate Todd was a former senior vice president and chief counsel for the U.S. Chamber of Commerce, where she argued in favor of businesses' interests.
  - Todd represented amicus curiae business interests in a Washington Supreme Court case that ruled against manufacturers of safety decides.
  - Todd represented the Chamber of Commerce in an amicus defending a corporation that refused to bargain with a union.
  - Todd represented the Chamber of Commerce as an amicus curia in a case claiming the NLRB violated the NLRA by certifying a maintenance-only unit at the employer's plant.
  - Todd represented the Chamber of Commerce and others in a case challenging whether Marriott legally followed the Employee Retirement Income Security Act (ERISA).
  - Todd was an attorney on behalf of amicus curiae in a consolidated case opposing the EPA's Clean Air Act.
  - Todd submitted an amicus brief challenging the constitutionality of a board created by Congress to regulate the auditing of public companies following corporate accounting scandals.

Todd Was A Former Senior Vice President And Chief Counsel For The U.S. Chamber Of Commerce, Where She Argued In Favor Of Businesses' Interests

TODD SERVED AS SENIOR VICE PRESIDENT AND CHIEF COUNSEL FOR THE U.S. CHAMBER OF COMMERCE

Todd Was A Former Senior Vice President And Chief Counsel For The U.S. Chamber Of Commerce. According to the Federalist Society, "Kate is former senior vice president and chief counsel for the U.S. Chamber Litigation Center, the litigation arm of the U.S. Chamber of Commerce. In this role, she spearheaded and expanded the Chamber's aggressive litigation docket and developed and managed multi-forum strategies throughout the state and federal courts and through extensive practice at the Supreme Court of the United States." [Federalist Society, accessed 6/21/24]

AP: Todd's Work On Behalf Of The U.S. Chamber Litigation Center Reflected A "Pro-Business" Lean

Associated Press: Todd's Work On Behalf Of The U.S. Chamber Litigation Center Reflected A "Pro-Business" Lean. According to the Associated Press, "Her [Todd's] position in that brief, and her work on behalf of the U.S. Chamber Litigation Center, reflects a decidedly pro-business bent, though lawyers familiar with her career say that, like any attorney, she was tasked with advocating the interests of her clients." [Associated Press, 9/22/20]

TODD REPRESENTED AMICUS CURIAE BUSINESS INTERESTS IN A WASHINGTON SUPREME COURT CASE THAT RULED AGAINST MANUFACTURERS OF SAFETY DEVICES

Todd Represented A Lawyer On Behalf Of Amicus Curiae The American Chemistry Council, American Insurance Association, Chambers Of Commerce Of The US Of America, Coalition For Litigation Justice, National Association Of Manufacturers, And The Property Casualty Insurers Association, In Support Of The Defendants In Macias v. Saberhagen. According to Macias v. Saberhagen, Todd was a lawyer on behalf of amicus curiae The American Chemistry Council, American Insurance Association, Chambers Of Commerce Of The US Of America, Coalition For Litigation Justice, National Association Of Manufacturers, and The Property Casualty Insurers Association, in support of the defendants in Macias v. Saberhagen [Washington Supreme Court, Case Number: 855358, Filed 1/18/11]

The Amicus Brief Filed By The Chamber Of Commerce And Others Argued That The Plaintiffs Were Trying To Incorrectly Impose A Duty On Manufacturers Of Personal Protective Equipment To Warn About Hazards In Products Made Or Sold By Others. According to an Amicus Brief from the Chamber Of Commerce Of The United States Of America and others, "Plaintiffs essentially seek to impose a duty on manufacturers of personal protective equipment, here, respirators, [*4] to warn about hazards in products made or sold by others. See James Henderson, Jr., Sellers of Safe Products Should Not Be Required to Rescue Users from Risks Presented by Other, More Dangerous Products, 37 Sw. U. L. Rev. 595 (2008) (authored by co-reporter for the Restatement Third, Torts: Products Liability). It is easy to see what is suddenly driving this novel theory: most major manufacturers of asbestos-containing products have filed bankruptcy. As a substitute, Plaintiffs seek to impose liability on solvent manufacturers like Defendants for harms caused by products they never made, sold, installed, or profited from. This Court should reject Plaintiffs' invitation to limit or abandon its well-reasoned rulings in Simonetta and Braaten by creating a broad new duty rule requiring manufacturers of protective equipment to warn about risks of the products of others from which their own products provide protection." [Brief Of The Coalition For Litigation Justice, Inc., National Association Of Manufacturers, Chamber Of Commerce Of The United States Of America, Property Casualty Insurers Association Of America, American Insurance Association, And American Chemistry Council As Amici Curiae In Support Of Defendants-Respondents, Macis v. Saberhagen Holdings, Inc., Case Number: 855358, Filed 9/29/11]

The Washington Supreme Court Ruled In The Case That A Worker Could Sue A Respirator Manufacturer For Failing To Warn Him About Asbestos Exposures From Cleaning Respirators. According to the Pacific Legal Foundation, "In a split decision that bodes ill for manufacturers of safety devices, the Washington Supreme Court ruled today that a cancer-stricken shipyard worker whose job was to clean respirators contaminated with asbestos could sue the respirator manufacturers for failing to warn him about the dangers of such exposure. The case, Macias v. Saberhagen Holdings, was decided 5-4, and marks a sharp departure from previous decisions limiting the liability of manufacturers of products that do not actually contain asbestos." [Pacific Legal Foundation, 8/9/12]

TODD REPRESENTED THE CHAMBER OF COMMERCE AS AN AMICUS DEFENDING A CORPORATION THAT REFUSED TO BARGAIN WITH A UNION

Todd Represented An Amicus Supporting Petitioner On Behalf Of The Chamber Of Commerce In Huntington Ingalls Inc. v. NLRB. According to Huntington Ingalls Inc. v. NLRB, Todd was an amicus supporting petitioner on behalf of the Chamber Of Commerce Of The United States Of America in Huntington Ingalls Inc. v. NLRB. [US Circuit Court Of Appeals, Fourth Circuit, Case Number 14-2051, filed 10/6/14]

Huntington Refused To Bargain Following NLRB-Conducted Union Elections. According to Huntington Ingalls Inc. v. NLRB, "Huntington Challenged orders of the NLRB requiring each company to bargain with the union following NLRB-conducted union elections. Court found Huntington violated the NLRA by refusing to bargain with the unions. The appeals court granted enforcement of the NLRB's orders." [US Circuit Court Of Appeals, Fourth Circuit, Case Number 14-2051, filed 10/6/14]

<u>In The Brief, Todd And The Chamber Of Commerce Argued The NLRB Did Not Have Jurisdiction</u>

The Amicus Brief From The Chamber Of Commerce Argued That The National Labor Relations Board Did Not Have Jurisdiction Over The Proceeding. According to a brief of amicus curiae Chamber of Commerce of the United States of America in support of petitioner/cross-respondent and urging reversal, "The finality of judgments is a cornerstone of our legal system. It is the reason the Federal Rules of Civil Procedure forbid reopening final judgments after one year, Fed. R. Civ. P. 60(c)(1), it is the 'predicate' of bedrock doctrines like res judicata, Liberto v. D.F. Stauffer Biscuit Co., 441 F.3d 318, 328 n.31 (5th Cir. 2006), and it is the reason why just last month the Supreme Court held that Federal Rule of Evidence 606(b) generally precludes reopening a judgment based on jurors' testimony about their deliberations, even if the testimony reveals that a juror lied during voir dire, see Warger v. Shauers, 135 S. Ct. 521, 524 (2014). Against all this, the Board comes to this Court asking it to create a new exception to the finality of its decisions that enables the Board to unilaterally recapture jurisdiction over matters that this Court has definitively resolved whenever the Board concludes that the Court's resolution was not on the 'merits.' The Board cites no legal basis for this requested exception and the Court should reject it. The NLRA makes clear that this Court obtains exclusive jurisdiction over Board proceedings the moment that a petition for review or a petition for enforcement is filed. Just as a district court cannot revise its decisions once the losing litigant has appealed, the

Board cannot rethink or reconsider its orders once review proceedings in an appellate court have commenced. That is what the NLRA means when it specifies that this Court's jurisdiction 'shall be exclusive.' 29 U.S.C. § 160(e). Consistent with that straightforward directive, this Court has already held, in a decision that is controlling here, that the Board does not regain jurisdiction over a proceeding unless and until the Court remands back to the Board. As this Court explained, when it denies 'the Board's request to enforce its bargaining order,' it 'terminat[es] all administrative proceedings relating to the case.' NLRB v. Lundy Packing Co., 81 F.3d 25, 26 (4th Cir. 1996). That makes sense, because otherwise litigants would face 'endless rounds of piecemeal litigation' and the Supreme Court would have difficulty 'review[ing] final decisions of this court." [Brief Of Amicus Curiae Chamber Of Commerce Of The United States Of America In Support Of Petitioner/Cross-Respondent And Urging Reversal, Case Number: No. 14-2051, filed 1/12/15]

The Court Found That Huntington Violated The NLRA By Refusing To Bargain With The Union

The Court Found Huntington Violated The National Labor Relations Act (NLRA) By Refusing To Bargain With A Union. According to Huntington Ingalls Inc. v. NLRB, "Huntington Challenged orders of the NLRB requiring each company to bargain with the union following NLRB-conducted union elections. Court found Huntington violated the NLRA by refusing to bargain with the unions. The appeals court granted enforcement of the NLRB's orders." [US Circuit Court Of Appeals, Fourth Circuit, Case Number 14-2051, filed 10/6/14]

TODD REPRESENTED THE CHAMBER OF COMMERCE AS AN AMICUS CURIAE IN A CASE CLAIMING THE NLRB VIOLATED NLRA BY CERTIFYING A MAINTENANCE-ONLY UNIT AT THE EMPLOYER'S PLANT

Todd Was An Attorney On Behalf Of Amicus Curiae The Chamber Of Commerce of the United States Of America And Others In Nestle Dreyer's Ice Cream Co. v. NLRB. According to Nestle Dreyer's Ice Cream Co. v. NLRB, Todd was an attorney on behalf of Amicus Curiae The Chamber Of Commerce of the United States Of America, The Coalition For A Democratic Workplace, The International Foodservice Distributors Association, The National Association OF Wholesaler-Distributors, The National Council Of Chain Restaurants, The National Council Of Chain Restaurants, The National Federation Of Independent Businesses, The National Retail Federation, and The Society For Human Resources Management in Nestle Dreyer's Ice Cream Co. v. NLRB [U.S. Circuit Court Of Appeals, Fourth Circuit, Case Number 14-2222, filed 11/7/14]

The Case Concerned A Decision From The NLRB That A Unit Composed Solely Of Maintenance Workers At A Manufacturing Plant Constituted An Appropriate Bargaining Unit

NLRB Upheld That A Unit Comprised Solely Of Maintenance Employees At The Employer's Manufacturing Plant Constituted An Appropriate Bargaining Unit. According to the U.S. Chamber of Commerce, "In this case, the National Labor Relations Board ('NLRB') upheld a regional director's determination that a unit comprised solely of maintenance employees at the employer's manufacturing plant constituted an appropriate bargaining unit based on the micro union standard established in the Specialty Healthcare decision. Following the U.S. Supreme Court's decision in NLRB v. Noel Canning, this case was re-decided by the Fourth Circuit with a new panel and reached the same result. The U.S. Chamber asked the Fourth Circuit to grant Nestle-Dreyer's petition and deny the NLRB's cross-petition." [U.S. Chamber Of Commerce, 4/26/16]

In The Amicus Brief, Todd And The Chamber Of Commerce Argued That The Court Should Review The NLRB's Decision And Pause Enforcement

The Amicus Brief Argued The Court Should Grant Dreyer's Petition For Review And Deny The NLRB's Cross-Petition For Enforcement. According to a brief amicus curiae of the Chamber of Commerce of the United States of America and others, "This Court held the initial case in abeyance pending the outcome of NLRB v. Noel Canning, 134 S. Ct. 2550 (2014). Following that decision, this Court vacated the Board's initial decision and remanded to the Board without reaching the merits. Joint App. at A-431 – A-436. The Board re-decided the case with a new three-member panel and reached the same result. Nestle-Dreyer's Grand Ice Cream, Inc., 361 NLRB No. 95 (Nov. 5, 2014). Dreyer's filed the instant petition for review on November 7, 2014, and on December 5, 2014, the Board again filed a cross-petition for enforcement. The Court

should grant Dreyer's petition and deny the Board's cross-petition for two reasons." [Brief Amici Curiae Of The Chamber Of Commerce Of The United States Of America, Coalition For A Democratic Workplace, International Foodservice Distributors Association, National Association Of Wholesaler-Distributors, National Council Of Chain Restaurants, National Federation Of Independent Business, National Retail Federation, And Society For Human Resource Management In Support Of Petitioner Seeking Reversal, Case Number: 14-2222, filed 1/13/15]

The Court Ruled In The NLRB's Favor

The Court Ruled The NLRB Did Not Violate The NLRA In Certifying A Maintenance-Only Unit And Denied Dreyer's Petition For Review. According to the U.S. Chamber of Commerce, "The Fourth Circuit panel decided, 'Because the Board did not violate the NLRA or abuse its discretion in certifying the maintenance-only unit, we deny Dreyer's petition for review and grant the Board's cross-petition for enforcement of its order.'" [U.S. Chamber Of Commerce, 4/26/16]

TODD REPRESENTED THE CHAMBER OF COMMERCE AND OTHERS IN A CASE CHALLENGING WHETHER MARRIOTT LEGALLY FOLLOWED THE EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA)

Todd Was An Attorney On Behalf Of Amicus Supporting Appellee American Benefits Council, Chamber Of Commerce Of The United States Of America, ERISA Industry Committee In Dennis Bond, Sr. v. Marriott International, Incorp. According to Dennis Bond, Sr. v. Marriott International Incorp, Todd was an attorney on behalf of amicus supporting appellee American Benefits Council, Chamber Of Commerce Of The United States Of America, Erisa Industry Committee in Dennis Bond, Sr. v. Marriott International, Incorp. [U.S. Circuit Court Of Appeals, Fourth Circuit, Case Number 15-1199, filed 2/25/15]

In The Case, A Former Marriott Employee Tried To Argue That A Statute Of Limitations For Contract Actions Never Began Since The Company Never Denied Him Benefits Pursuant To ERISA Requirements

Bond, A Former Marriott Employee, Attempted To Argue That A Statute Of Limitations For Contract Actions Never Began Since The Company Never Formally Denied Him Benefits Pursuant To ERISA Requirements. According to Reed Smith, "A subsequent unpublished case from the Fourth Circuit is notable primarily for that court's failure to consider the Department of Labor's 1990 letter and the DOL's amicus brief defending the letter. In Bond v. Marriott (4th Cir. Jan. 29, 2016), Bond, a former Marriott employee, attempted to argue that Marriott's Deferred Stock Incentive Plan never formally denied him benefits pursuant to ERISA requirements and, thus, a statute of limitations never began to run against his claim that he was entitled to plan benefits." [Reed Smith, 3/18/16]

ERISA Provides Minimum Standards For Retirement And Health Plans In Private Industry

ERISA Provides Minimum Standards For Retirement And Health Plans In Private Industry. According to the Department of Labor, "The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans. ERISA requires plans to provide participants with plan information including important information about plan features and funding; sets minimum standards for participation, vesting, benefit accrual and funding; provides fiduciary responsibilities for those who manage and control plan assets; requires plans to establish a grievance and appeals process for participants to get benefits from their plans; gives participants the right to sue for benefits and breaches of fiduciary duty; and, if a defined benefit plan is terminated, guarantees payment of certain benefits through a federally chartered corporation, known as the Pension Benefit Guaranty Corporation (PBGC)." [Department of Labor, accessed 6/25/24]

The Amicus Brief From Todd And The Chamber Of Commerce Fought Against The Employees

The Amicus Brief From The Chamber Of Commerce Argued The Claims Asserted Were Untimely Under The Applicable Statute Of Limitations. According to the brief amici curiae of the American Benefits Council, the Chamber of Commerce of the United States of America, and the ERISA Industry Committee, "This Court should affirm the district court's judgment below because the claims asserted in this litigation under the Employee Retirement Income Security Act of

1974 ('ERISA'), Pub. L. No. 93-406, 88 Stat. 829 (1974), are time-barred by the applicable statute of limitations." [Brief Amici Curiae Of The American Benefits Council, The Chamber Of Commerce Of The United States Of America, And The ERISA Industry Committee In Support Of Appellees - Cross-Appellants, Case Number: 15-1199, filed 7/2/15]

The Court Ruled That The Employees' ERISA Claims Were Untimely

Court Concluded That The Appellant's ERISA Claims Were Untimely Under Maryland's Three-Year Statute Of Limitations For Contract Actions. According to Dennis Bond, Sr. v. Marriott International, Incorp, "For the foregoing reasons, we conclude that the Appellants' ERISA claims are untimely under Maryland's three-year statute of limitations for contract actions. We therefore reverse the district court's grant of summary judgment to the Appellants on that ground and grant summary judgment to Marriott." [U.S. Circuit Court Of Appeals, Fourth Circuit, Case Number 15-1199, filed 2/25/15]

TODD WAS AN ATTORNEY ON BEHALF OF AMICUS CURIAE IN A CONSOLIDATED CASE OPPOSING THE EPA'S CLEAN AIR ACT

Todd Was An Attorney On Behalf Of Amicus Curiae Chamber Of Commerce Of The United States Of America In State Of Utah v. EPA. [U.S. Circuit Court Of Appeals, Tenth Circuit, Case Number 16-9541, filed 9/1/16]

Todd Was An Attorney On Behalf Of Amicus Curiae Chamber Of Commerce Of The United States Of America In Deseret Generation v. EPA. [U.S. Circuit Court Of Appeals, Tenth Circuit, Case Number 16-9545, filed 9/6/16]

Todd Was An Attorney On Behalf Of Amicus Curiae Chamber Of Commerce Of The United States Of America In Utah Associated v. EPA. [U.S. Circuit Court Of Appeals, Tenth Circuit, Case Number 16-9543, filed 9/6/16]

Todd Was An Attorney On Behalf Of Amicus Curiae Chamber Of Commerce Of The United States Of America In PacifiCorp v. EPA. [U.S. Circuit Court Of Appeals, Tenth Circuit, Case Number 16-9542, filed 9/2/16]

The Chamber Of Commerce's Amicus Brief Alleged That The EPA's Clean Air Act Imposed "Massive Expenditures And Economic Harm On Businesses In Utah"

The Chamber Of Commerce's Amicus Brief Alleged That The EPA's Clean Air Act Imposed "Massive Expenditures And Economic Harm On Businesses In Utah." According to a Chamber of Commerce amicus brief related to the final EPA rule, "This case is of particular concern to the Chamber and its members because it is one of several recent cases resulting from the U.S. Environmental Protection Agency's ('EPA') regulatory overreach under the Clean Air Act ('CAA') and, in particular, the Regional Haze Program. Through its re-interpretation of the Regional Haze requirements in several end-of-administration rulemakings, EPA has sought to impose massive expenditures and economic harm on business in Utah and other States, but the result would be little if any actual benefit in terms of visibility improvements at the federal Class I areas covered by the program. The Chamber is participating in this case—and has a long track record of participating in other such cases—to provide the Court with a broader perspective on EPA's overreach and the substantial impact on business and economic development of EPA's new regulatory approach." [Amicus Brief, The Chamber Of Commerce Of The United States Of America In Support Of Petitioners And Vacatur Of Final EPA Rule, Case Number: 16-9541, accessed 6/24/24]

The Appeals Court Dismissed The Case Due To The EPA's Decision To Reconsider The Final Rule

The Appeals Court Dismissed The Case Due To The EPA's Decision To Reconsider The Final Rule. According to the tenth circuit Court of Appeals decision, "In light of EPA's decision to reconsider the Final Rule, it would be a waste of the court's and the litigants' resources and a hardship on EPA and the stay movants for the court to proceed with these matters. Accordingly, EPA's motion to abate is granted. These matters are abated until this court orders otherwise. To keep the court apprised of the progress of reconsideration, EPA shall file a status report on December 15, 2017, and every 90 days thereafter." [United States Court Of Appeals, Tenth Circuit, Appellate Case: 16-9541, 9/11/17]

TODD SUBMITTED AN AMICUS BRIEF CHALLENGING THE CONSTITUTIONALITY OF A BOARD CREATED BY CONGRESS TO REGULATE THE AUDITING OF PUBLIC COMPANIES FOLLOWING CORPORATE ACCOUNTING SCANDALS

Todd Submitted An Amicus Brief Challenging The Constitutionality Of A Board Created By Congress To Regulate The Auditing Of Public Companies Following Corporate Accounting Scandals. According to the Associated Press, "More than a decade earlier, she [Todd] submitted a friend-of-the-court brief challenging the constitutionality of a board that was created by Congress to regulate the auditing of public companies in the wake of corporate accounting scandals." [Associated Press, 9/22/20]

In Free Enterprise Fund Et Al v. Public Company Accounting Oversight Board Et Al, An Accounting Firm Asked The Court To Rule The Public Company Accounting Oversight Board Illegal Because It Was Appointed By The Securities And Exchange Commission. According to the New York Times, "A small accounting firm and a group called the Free Enterprise Fund had asked the court to rule the Public Company Accounting Oversight Board was illegal because it was appointed by the Securities and Exchange Commission, rather than the president." [New York Times, 6/29/10]

- **The Public Company Oversight Accounting Board Was Made To Monitor Accounting Firms That Audited Public Companies.** According to Salon, "Except, as the Journal and other publications soon reported, the court did no such thing. The court struck down a part of Sarbanes-Oxley that had to with the president's power to fire members of the Public Company Oversight Accounting Board, the regulatory body set up by Sarbanes-Oxley to watch over the accounting firms that audit public companies." [Salon, 6/28/10]

<u>**Conservative Groups, Like AEI, Called To Rein The Public Company Accounting Oversight Board**</u>

AEI Called To Bring The Public Company Accounting Oversight Board "Under Control." According to the American Enterprise Institute, "The Public Company Accounting Oversight Board is a not-for-profit corporation established by the Sarbanes-Oxley Act to regulate the business of auditing public companies. Although industry self-regulatory organizations are not unusual, this one has the extraordinary power to tax all public companies to support its operations. Its freedom from the ordinary mechanisms of accountability for quasi-governmental functions is already having an effect, shown in its rapidly growing budget. But that is only one of the costs that this agency will impose on the economy. Before these costs get completely out of hand, Congress should intervene and bring it under control." [American Enterprise Institute, 2/1/05]

Heritage Foundation Lamented That The Public Company Accounting Oversight Board Cost Companies "Billions Of Dollars." According to the Heritage Foundation, "Sarbanes-Oxley also added another level of oversight to the accounting industry by creating the Public Company Accounting Oversight Board. Since its creation, the PCAOB has issued broad interpretations of Sarbanes-Oxley's auditing rules, known as accounting standards, that have cost pub-lic companies and the overall U.S. economy billions of dollars each year." [Heritage Foundation, 5/16/07]

<u>**The Supreme Court Rejected The Challenge**</u>

The Supreme Court Rejected A Challenge To The Constitutionality Of The Sarbanes-Oxley Act Of 2002, Which Established The Public Company Accounting Oversight Board. According to the New York Times, "In its ruling, the Supreme Court unanimously rejected a challenge to the constitutionality of the Sarbanes-Oxley Act of 2002, which established the board and sought to reform corporate America after the Enron and WorldCom accounting scandals." [New York Times, 6/29/10]