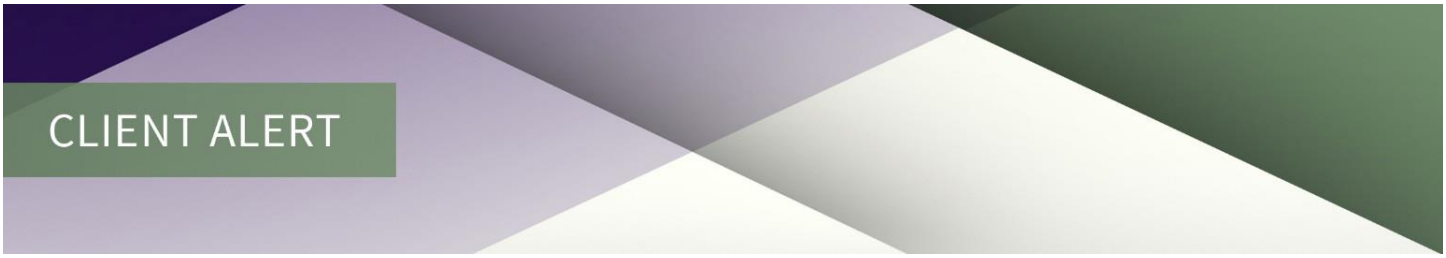

Supreme Court Unanimously Holds that Final Decisions in Cases Consolidated Under Rule 42(a) Are Individually Appealable

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In yet another unanimous decision issued this term, on March 27, 2018, the Supreme Court held that a party may appeal a final decision entered in a case consolidated under Rule 42(a) of the Federal Rules of Civil Procedure, regardless of the status of the other consolidated cases. The decision brings welcome clarity to this area of the law, will create more flexibility for parties involved in complex related cases that are consolidated under Rule 42(a), and eliminates any potential inconsistency between the treatment of such cases and the treatment of those consolidated for multi-district litigation ("MDL") under 28 U.S.C. § 1407.

Hall v. Hall, No. 16-1150, 2018 WL 1472897 (U.S. Mar. 27, 2018), involved two suits between siblings that had been consolidated in the district court. In the first case, the plaintiff sued her brother in her capacity as trustee of an *inter vivos* trust. In the second case, the brother brought a tort action against his sister in her individual capacity. The "individual case" and the "trust case" were consolidated under Rule 42(a), which allows a district court to consolidate actions that "involve a common question of law or fact." After a jury trial, final judgment was entered against the sister in the trust case, while a new trial was ordered in the individual case. The sister appealed the judgment in the trust case, but the Third Circuit, adopting a "case-by-case" approach, held that it was not appealable while the individual case against her remained pending.[1] On appeal, the Supreme Court reversed.

[1] *Hall v. Hall*, 679 F. App'x 142, 145 (3rd Cir. 2017) (holding that it would consider "whether a less-than-complete judgment is appealable" on a "case-by-case basis").

Writing for the Court, Chief Justice Roberts began his analysis by noting that, although the plain meaning of the word "consolidated" in Rule 42(a) was ambiguous, the term had a "legal lineage stretching back to at least" 1813, when the first consolidation statute was enacted. "From the outset," the Court noted, consolidation was viewed "not as completely merging the constituent cases into one," but instead as a mechanism for efficient case management that preserved the cases' distinct identities. Because Rule 42(a) did not define the term "consolidation" and was "expressly modeled" on the 1813 consolidation statute, it presumably carried forward the same meaning that had previously been ascribed to the term.

The respondent pointed to Rule 42(a)(1), which allows a district court to "join for hearing or trial any or all matters at issue" in related actions, arguing that the separate authority to "consolidate the actions" under Rule 42(a)(2) "must provide for something more if it is not to be superfluous." But the Court rejected the implication that Rule 42(a)(2) must therefore result in consolidated cases losing their distinct identities. Instead, it explained, subsection (a)(1) applies only to trials and hearings, while (a)(2) applies to broader litigation. This was supported by the proceedings of the Federal Rules Advisory Committee, which noted that Rule 42(a) was "based upon" its statutory predecessor. After all, the Court observed, the Advisory Committee "would not take a term that had long meant" one thing and "silently and abruptly reimagine the same term" to mean something else. The "traditional understanding" therefore remains in place.

In so holding, the Court eliminated the potential uncertainty for litigants inherent in the Third Circuit's "case-by-case basis" approach. It also resolved an issue expressly left open in *Gelboim v. Bank of America Corp.,* 135 S. Ct. 897 (2015), which held that a case consolidated with others for MDL purposes under 28 U.S.C. § 1407 was appealable upon an order disposing of that individual case. Following *Hall*, the law is now clear that an appeal from a final decision is a "matter of right" for constituent cases in an MDL as well as cases, such as *Hall*, consolidated outside of the MDL procedure. But the Court also introduced an element of uncertainty, emphasizing that its decision did not mean that district courts may not "consolidate cases for 'all purposes' in appropriate circumstances." It remains to be seen, therefore, whether and under what circumstances consolidation for "all purposes" prior to final judgment might be "appropriate."

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