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Proskauer Secures Unanimous Victory at Supreme Court on Behalf of Stuart Harrow

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Ruling Asserts Lower Courts Must Hear From Furloughed Employee Regarding Backpay

NEW YORK, May 20, 2024 – Leading international law firm Proskauer announced today that it secured a unanimous ruling at the U.S. Supreme Court on behalf of its client, Stuart Harrow, in a case challenging whether a statutory deadline to appeal a decision by an administrative agency is jurisdictional. The Supreme Court held that although the statute granting jurisdiction to the Federal Circuit cross-referenced another statute containing the deadline, the statutory language did not constitute a clear statement by Congress that the deadline was meant to be jurisdictional.

Following a furlough in 2013, Department of Defense employee Stuart Harrow appealed to the Merits Systems Protection Board (MSPB), an independent agency established to adjudicate federal employment disputes, for a hardship exemption. He argued that he was prevented from finding other work due to a discontinuous six-day furlough and, as a result, should receive lost pay. Following several years of waiting, in part due to the MSPB losing its quorum and not deciding cases for several years, the MSPB denied Mr. Harrow's claim. However, the decision was sent to a DOD email address of Mr. Harrow's which had been deactivated.

When Mr. Harrow later learned of the decision, he appealed to the Federal Circuit, but the court dismissed his appeal as untimely, finding the statutory filing deadline in 5 U.S.C. § 7703(b)(1)(A) to be jurisdictional and not able to be extended.

The Supreme Court accepted the case for review in 2023, at which time Proskauer joined Mr. Harrow's legal team to argue that the statutory filing deadline was not jurisdictional.

On May 16, 2024, the Supreme Court unanimously ruled that the deadline was not jurisdictional because Congress had not spoken with a clear statement to overcome the presumption that time bars are non-jurisdictional and open to equitable tolling. The statute granting jurisdiction to the Federal Circuit lists the types of cases the Federal Circuit can hear, including appeals "pursuant to" § 7703(b)(1)(A). Despite the long line of Federal Circuit precedent treating § 7703(b)(1)(A)'s deadline as jurisdictional, Proskauer helped convince the Court that this deadline should be treated like other statutory deadlines that are merely claims-processing rules.

The decision extends the Supreme Court's rulings over the past two decades defining the type of clear statement necessary for deadlines to be jurisdictional. The Supreme Court vacated the judgment and remanded the case back to the Federal Circuit.

The Proskauer team was led by partners Mark Harris and John E. Roberts and associate Isaiah D. Anderson (Appellate). Proskauer acted as co-counsel for Mr. Harrow alongside Josh Davis of Berger Montague PC and Scott Dodson of the Center for Litigation and Courts at the University of California College of the Law, San Francisco. This is Proskauer's second win at the U.S. Supreme Court in the past two terms.

About Proskauer

The world's leading organizations and global players choose Proskauer to represent them when they need it the most. With 800+ lawyers in key financial centers around the world, we are known for our pragmatic and commercial approach. Proskauer is the place to turn when a matter is complex, innovative and game-changing. We work seamlessly across practices, industries and jurisdictions with asset managers, private equity and venture capital firms, Fortune 500 and FTSE companies, major sports leagues, entertainment industry legends and other industry-redefining companies.

Proskauer has a full-service litigation practice with extensive trial experience in virtually every major forum across the globe. We take a collaborative approach to representing defendants and plaintiffs, multinationals, middle-market and small-cap businesses, financial institutions, partnerships and individuals, with one thing in mind – driving successful outcomes for our clients.

Recent successful representations include a landmark victory for Sanderson Farms in a $7 billion broiler chicken antitrust conspiracy case; a decisive victory for Gilead Sciences, Inc. in a $3.6 billion antitrust case; a victory for Shamrock Capital Advisors in a high-profile $1 billion lawsuit brought by the founders and other minority shareholders of FanDuel; and representing Monsanto in a case brought by multiple plaintiffs who claimed Roundup caused their non-Hodgkin's lymphoma.

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