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that Ray Stark suffered from either "delusional" insanity or an "insane impulse" at the time of the fire. The court found no scientific evidence in the record to indicate Stark possessed either form of insanity. Dr. Nagulendran's testimony indicated merely that Stark's severe depression caused him to be incapable of forming criminal intent. The doctor concluded that Stark did not know right from wrong and was not able to conform his behavior to the requirements of the law. Therefore, the Fourth Circuit found that the question of whether Ray Stark's mental capacity, even assuming a suicidal purpose, negated Erie's "intentional act" policy provision presented a genuine issue of material fact to be determined by the lower court.

The Starks further argued that if Ray Stark's sole purpose was to commit suicide, none of the policy clauses would be applicable even if the court found he possessed the mental capacity to act intentionally because the intentional act was not directed at the premises. The court found this argument to be foreclosed as a matter of law because of the Maryland rule that an insured is charged with intending the consequences of an act that are substantially certain to result from that act. The Fourth Circuit also found that the district court correctly dismissed the Stark's conversion and tortious interference counterclaims.

The Fourth Circuit resolved the unique issue of whether a homeowner's policy covered a loss caused by the insured's setting fire to his home in an attempt to commit suicide by applying the law of Maryland concerning the mental state of suicidal persons. Other circuits appear free to handle similar situations differently if faced with controlling precedent that has a divergent view of insanity. Nevertheless, the court's holding is reasonable and fair. First, the Fourth Circuit's decision allows individuals to recover from insurance companies when they can offer proof that they were incapable of entertaining intentionality, but excludes insurers, and consequently premium payers, from reimbursing an insured for the consequences of the insured's simple irrationality. Second, the court's requirement that the insured present evidence of very specific types of insanity makes claiming suicidal purpose as a disguise for arson very difficult.

J. Federal Courts

Guess v. Board of Medical Examiners

967 F.2d 998 (4th Cir. 1992)

The principle that a federal district court lacks jurisdiction to interfere with a judgment in a state court action in which the state court had jurisdiction of the subject matter and of the parties thereto is as old as our dual state and federal judicial systems.[441] A litigant seeking to remove

441. *See* Daniels v. Thomas, 225 F.2d 795, 797 (10th Cir. 1955) (stating that federal court is without jurisdiction to interfere with judgment of state court action in which state court had jurisdiction of subject matter and of parties), *cert. denied*, 350 U.S. 932 (1956).

a state case to federal court faces several established barriers, including abstention, federal preclusion, the Anti-Injunction Act, and the Eleventh Amendment.[442] The *Rooker-Feldman* doctrine is another obstacle that confronts prospective federal plaintiffs.[443] The *Rooker-Feldman* doctrine interprets 28 U.S.C. section 1257(a)[444] as ordinarily barring direct review in the lower federal courts of a decision reached by the highest state court, because such authority is vested solely in the Supreme Court.[445]

In *Rooker v. Fidelity Trust Co.*,[446] the United States Supreme Court advanced the doctrine that lower federal courts lack appellate jurisdiction to review the judgments of state courts that have been affirmed by the highest court of the state.[447] However, nothing in *Rooker* extended the scope of this principle beyond issues that were actually decided in state court and affirmed by the highest court in the state.[448] Prior to 1983, courts applied the *Rooker* principle fairly narrowly to preclude federal district court review of state cases involving claims actually decided by the state court.[449]

In 1983, the Supreme Court revived *Rooker* as a principle of federal district court jurisdiction in *District of Columbia Court of Appeals v. Feldman*.[450] The Supreme Court held that, while the district court in that

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442. *See* Gary Thompson, Note, *The Rooker-Feldman Doctrine and the Subject Matter Jurisdiction of Federal District Courts*, 42 RUTGERS L. REV. 859, 859 (1990) (describing obstacles litigants face when attempting to remove state case to federal court).

443. *See id.* (explaining that *Rooker-Feldman* doctrine is lesser-known obstacle which litigant must overcome in order to remove state case to federal court).

444. 28 U.S.C. § 1257(a) (1988). The statute states that:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Id.

445. *See* ASARCO, Inc. v. Kadish, 490 U.S. 605, 622 (1989) (explaining *Rooker-Feldman* doctrine's interpretation of 28 U.S.C. § 1257).

446. 263 U.S. 413 (1923).

447. *See* Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923) (stating that when judgment has been rendered by state trial court and affirmed by state's highest court, only United States Supreme Court can exercise appellate review).

448. *See* Thompson, *supra* note 431, at 863 (arguing that it cannot be assumed, based only on *Rooker v. Fidelity Trust Co.*, that scope of principle advanced in that case extends beyond issues actually decided in state court and affirmed by highest state court).

449. *See* Thompson, *supra* note 431, at 864 (observing that pre-*Feldman* application of *Rooker* principle among circuits was usually in cases with facts closely analogous to those in *Rooker*: issues were actually litigated and decided by state court, and affirmed by highest state court); *see also* England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411, 419 (1964) (stating that party forgoes his right to district court review when he submits federal claims to state courts, litigates federal claims there, and has them decided there).

450. 460 U.S. 462 (1983).

case lacked authority to review a state court's final determination, the district court did have jurisdiction over "general challenges" to the constitutionality of a statute or rule.[451] In laying the groundwork for future applications of this principle, the Court stipulated two conditions that lower federal courts have interpreted differently. First, the Court noted that district courts may not hear the constitutional claims if they are "inextricably intertwined" with the state court's decision.[452] This proposition has been interpreted as extending *Rooker* to issues that were not actually decided by the state court, but that were "inextricably intertwined" with the merits of the state court judgment.[453] Second, the Supreme Court in *Rooker* commented that by failing to raise claims in state court a plaintiff may forfeit his right to obtain review in any federal court.[454] While some commentators view this comment as nothing more than a reference to the limit on the Supreme Court's certiorari jurisdiction,[455] others have interpreted this comment to further extend *Rooker* to preclude federal district court jurisdiction over any claim that a litigant could have raised in state court, whether or not the claim either was actually decided by the state court or was inextricably intertwined with the claims that were litigated and decided.[456]

Thus, *Feldman* left a number of questions to be addressed by the lower courts, including the proper meaning and scope of "inextricably intertwined," as well as the "could have raised" question. Since *Feldman*, the United States Court of Appeals for the Fourth Circuit has decided cases in which the court dismissed the plaintiff's constitutional claims as impermissible particularized challenges "inextricably intertwined" with the state court judgment.[457] Against this background, the Fourth Circuit again

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451. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 488 (1983).

452. *Id.* at 483-84 n.16.

453. *See* Thompson, *supra* note 431, at 876 (stating that Justice Brennan's analysis in *Feldman* clearly extended the *Rooker* principle, which was previously applied to issues actually decided by state court, to issues that were not actually decided by state court).

454. *Feldman*, 460 U.S. at 484 n.16.

455. *See* Thompson, *supra* note 431, at 876 (arguing that Brennan's comment was reference to limit on Supreme Court's certiorari jurisdiction, rather than dicta suggesting that *Rooker* may extend to issued that could have been raised in state court).

456. *See* Thompson, *supra* note 431, at 876 (stating that other commentators have suggested that *Feldman* should be read to preclude federal district jurisdiction over any claim that litigant could have raised in state court, whether or not claim either was actually decided by state court or was inextricably intertwined with claims that were litigated and decided). Thompson cites to Robert B. Funkhouser et al., Comment, Texaco, Inc. v. Pennzoil Co.*: Some Thoughts on the Limits of Federal Court Power Over State Court Proceedings*, 54 FORDHAM L. REV. 767, 781 (1986) and Benjamin Smith, Note, Texaco, Inc. v. Pennzoil Co.*: Beyond a Crude Analysis of the Rooker-Feldman Doctrine's Preclusion of Federal Jurisdiction*, 41 U. MIAMI L. REV. 627, 643-47, 655 (1987).

457. *See generally* Leonard v. Suthard, 927 F.2d 168 (4th Cir. 1991) (holding that district court had no jurisdiction to hear state police officer's claim that transfer violated constitutional rights because claim was inextricably intertwined with state judicial determination that transfer was not grievable); Czura v. Supreme Court, 813 F.2d 644 (4th Cir. 1987) (holding that district

approached these issues in *Guess v. Board of Medical Examiners of North Carolina*.[458]

In *Guess*, the plaintiff Dr. George Guess challenged the constitutionality of a North Carolina statute and its application to him by the Board of Medical Examiners of North Carolina (Board). The Board had previously revoked the medical license of Guess pursuant to N.C. Gen. Stat. section 90-14(a)(6), which gives the Board power to revoke a physician's license for unprofessional conduct, including departure from, or failure to conform to, the standards of the medical profession. The Board had determined that Guess's prescribing of homeopathic medicine in the course of his medical practice departed from, and did not conform to, the standards of acceptable and prevailing medical practice in the State of North Carolina. The Board made this determination on the grounds that the state had no statutory scheme for the regulation of the practice of homeopathic medicine.

Guess appealed the Board's decision through the state system to the United States Supreme Court. The Superior Court of Wake County, North Carolina, overturned the Board's order, concluding that the Board's findings of fact were not supported by the evidence and that the decision was arbitrary and capricious. Upon the Board's appeal, the North Carolina Court of Appeals affirmed the Superior Court, explaining that there was an implicit requirement in the statute that the nonconforming practices harm the public in some way. The North Carolina Supreme Court granted discretionary review and reversed the court of appeals. The North Carolina Supreme Court further found that the statute was valid and contained no requirement of injury to the public. The United States Supreme Court denied Guess's petition for a writ of certiorari.

Guess attempted to enter the federal court system by bringing an action in the District Court for the Eastern District of North Carolina. Guess sought an injunction against the Board for violation of his First and Fourteenth Amendment rights and a declaratory judgment that the statute under which his license was revoked was unconstitutional. At the same time, patients of Guess brought a derivative action in the district court, seeking both an injunction against the Board's revocation of Guess' medical license and a declaration that the statute was unconstitutional.

With regard to Guess' claims, the district court held that it had no jurisdiction to hear Guess's claims because to do so would require improper review of the North Carolina court's decision. The district court found that Guess's claims were not separate federal constitutional claims that could be adjudicated, rather they were essentially the same claims and issues raised in state court. The district court concluded that addressing

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court had no jurisdiction to hear bar admission applicant's claim that state's bar admission rule was applied to him unconstitutionally, because claim was inextricably intertwined with state judicial determination denying applicant's waiver of rule).

458. 967 F.2d 998 (4th Cir. 1992).

these constitutional claims would involve improper review because Guess's current claims were inextricably intertwined with the state court decision. With regard to the patients' claims, the district court applied a balancing test and determined that an injunction could not be granted because the balance of harm and the public interest favored the Board.

Both Guess and his patients appealed to the United States Court of Appeals for the Fourth Circuit. The patients argued that the district court misapplied the balancing test. Guess argued that the North Carolina Supreme Court failed to address his constitutional claims and, therefore, he had not received adjudication of those claims. Furthermore, Guess argued that he asserted two new constitutional claims in his federal complaint which he did not assert in state court. To resolve the issues presented by Guess' claims, the Fourth Circuit first considered the constitutional challenges that Guess asserted in state court and then considered the new challenges.

The court found that Guess's claims that the statute was vague, deprived him of fundamental rights, and violated equal protection, were essentially the same constitutional challenges made in state court. Those state claims included allegations that the statute was unconstitutionally vague, violated equal protection, infringed upon constitutionally protected privacy rights, and was arbitrary and capricious as applied. As to these challenges, the court applied *Feldman* and found that Guess's effort to have the federal court relitigate claims already made to the state court was impermissible. The court also rejected Guess's argument that his constitutional claims were never addressed or adjudicated by the state court. The court cited *Feldman* for the proposition that even if a claim is not presented to a state court, or by inference is not ruled upon, a plaintiff is not entitled to bring that claim in federal court if the claim was one that should have been brought in the state court.

The Fourth Circuit next turned to the two new constitutional claims of abridgement of free speech rights and violation of the Commerce Clause by imposition of an impermissible barrier to the purchase and use of homeopathic drugs. The court held that, although *Feldman* permits general constitutional challenges, these new claims were impermissible to the extent that they challenge the statute's application to Guess. The court explained that the claims constituted a particularized challenge to the state court's adjudication, which is clearly prohibited by *Feldman*.

The court also noted that *Feldman* does not preclude the application of res judicata to general constitutional challenges. In this case, res judicata also precludes assertion of Guess's claims because, according to the court, there was no reason why Guess could not have raised all of his constitutional claims in the state court.

Next the Fourth Circuit discussed the interpretation of *Feldman* that precludes raising claims which could have been raised in the state court. The court approved of the reasoning of other circuits[459] that *Feldman* only

459. *See* Guess v. Board of Medical Examiners, 967 F.2d 998, 1004 (4th Cir. 1992) (citing

permits a claim to be raised in federal court which (1) the plaintiff had no opportunity to raise in the state court and (2) was not otherwise inextricably intertwined with the state court judgment.

Applying this two-prong test, the court found that, (1) since Guess had a full and fair opportunity to raise the Commerce Clause and First Amendment claims in state court, res judicata barred the district court from hearing those claims, and that, (2) in any case, the new claims were inextricably intertwined with the state court decision. The court considered the new claims inextricably intertwined because they were merely "artificial attempts to redefine the relief sought" and because hearing these claims would necessarily involve a review of the North Carolina decision against Guess.

Lastly, the court considered the appeal made by Guess' patients. Since the patients' claims were derivative of Guess' causes of action, the district court's lack of jurisdiction to review and hear Guess' case rendered the patients' derivative claims moot.

The *Rooker-Feldman* doctrine precludes federal district court jurisdiction over any issues that were decided in state court, and also over any new federal claims that are "inextricably intertwined" with the merits of the state court judgment. However, the distinction set forth by the Supreme Court in *Feldman* is difficult to draw, and the "inextricably intertwined" language by itself does not provide district courts with a bright line rule.[460] Consequently, district court interpretations of *Feldman* have been mixed. The Fourth Circuit's decision in *Guess* exemplifies one side of the gray line.

By holding that federal courts may not review issues which were raised, litigated, and decided in state courts, the *Guess* court is in accord with most other circuits. However, the circuits are split regarding whether federal courts may review issues which were raised in the state court, but which were not litigated or decided there. Some circuits allow federal district courts to decide constitutional claims that were raised in the state court but which the state court failed to consider.[461] Other circuits interpret *Feldman* to prohibit federal district court consideration of all issues raised at the state level, even if the issues were not litigated or decided.[462] The

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Wood v. Orange County, 715 F.2d 1543 (11th Cir. 1983), *cert. denied*, 467 U.S. 1210 (1984); Robinson v. Ariyoshi, 753 F.2d 1468 (9th Cir. 1985), *vacated on other grounds*, 477 U.S. 902 (1986)).

460. *See* Razatos v. Colorado Supreme Court, 746 F.2d 1429, 1433 (10th Cir. 1984) (stating that *Feldman* distinction is difficult to draw and that *Feldman* language does not provide district courts with bright line rule), *cert. denied*, 471 U.S. 1016 (1985).

461. *See* Robinson v. Ariyoshi, 753 F.2d 1468, 1472 (9th Cir. 1985) (approving federal district court's consideration of constitutional claims that state court had explicitly refused to consider). *But see* Partington v. Gedan, 961 F.2d 852, 865 (9th Cir. 1992) (prohibiting federal district court consideration of constitutional claim when state court refused to hear complete argument and refused evidentiary hearing, but stated that it had given plenary consideration to all claims).

462. *See* Leaf v. Supreme Court, No. 91-3725, 1992 WL 329010, at *10 (7th Cir. Nov. 12,

Fourth Circuit in *Guess* adopted the second approach in its opinion that Guess was not entitled to bring his constitutional claims in federal court despite the fact that the North Carolina Supreme Court failed to address those claims.

With regard to general constitutional challenges which were not raised in state court, the circuits have followed the *Feldman* "inextricably intertwined" standard, but the courts have taken different approaches in interpreting the term "inextricably intertwined." The only guidance offered by *Feldman* as to the "inextricably intertwined" inquiry is to look at the underlying claim and determine if the district court is "in essence" being called upon to review the state judgment.[463] Some courts have approached the issue by interpreting the *Feldman* language fairly narrowly and allowing jurisdiction over generalized or facial constitutional claims.[464] On the other side of the line, other courts have dismissed all of the plaintiff's claims, including claims under 42 U.S.C. section 1983, as particular challenges "inextricably intertwined" with the state court judgment.[465] The Fourth Circuit in *Guess*, which characterized Guess' general constitutional claims as particularized challenges to the state court's adjudication, clearly employed the latter approach.

Because the determination of whether the federal claims are "inextricably intertwined" is made in gray area with no clear definition or standard, cases with similar circumstances may have very different outcomes.[466] Questions concerning the scope of the *Rooker-Feldman* doctrine

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1992) (prohibiting federal district court adjudication of claims raised in state court, which state court refused to hear, because state court's refusal to hear claims constituted judgment on those claims).

463. *See* District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 483-84 n. 16 (1983) (stating that district court was "in essence" being called upon to review state court decision); Thompson, *supra* note 431, at 880 (discussing the scope of *Feldman*'s inextricably intertwined standard and citing Carbonell v. Louisiana Dep't of Health & Human Resources, 772 F.2d 185, 189 (5th Cir. 1985)).

464. *See* Schumacher v. Nix, 965 F.2d 1262, 1266 n.6 (3d Cir. 1992) (interpreting plaintiff's challenge to statute as general constitutional challenge not so inextricably intertwined with state's application of statute to plaintiff as to divest federal court of subject matter jurisdiction under *Rooker-Feldman*); Razatos v. Colorado Supreme Court, 746 F.2d 1429, 1433-34 (10th Cir. 1984) (interpreting plaintiff's claim as general constitutional attack); Lowrie v. Goldenhersh, 716 F.2d 401, 407-08 (7th Cir. 1983) (deciding that general constitutional challenges were not inextricably intertwined with state's denial of plaintiff's application to state bar despite fact that thrust of plaintiff's complaint was purely personal, not general constitutional attack); Thompson, *supra* note 431, at 880 & n.95 (citing cases with facts similar to *Feldman* situation where courts did allow jurisdiction over generalized constitutional challenges).

465. *See* Czura v. Supreme Court, 813 F.2d 644, 646 (4th Cir. 1987) (holding that action, despite its framing as broad constitutional challenge, was actually particular attack); Thompson, *supra* note 431, at 881 & n.98 (citing cases in which courts have dismissed constitutional challenges as particular challenges inextricably intertwined with state court judgment).

466. *See* Thompson, *supra* note 431, at 882 (discussing two cases involving similar complaints and circumstances that circuit court treated differently in applying "inextricably intertwined" standard).

can be decided simply according to the way a court reads a plaintiff's complaint.[467]

Neufeld v. City of Baltimore

964 F.2d 347 (4th Cir. 1992)

The United States Supreme Court's decision in *Burford v. Sun Oil Co.*[468] allows a federal district court to abstain from hearing a case in order to avoid conflict with a state's administration of its own affairs. *Burford* abstention is appropriate when a case presented to a federal district court contains complex state law issues, or when federal review would disrupt the administration of important state policies.[469]

The Supreme Court refined the criteria for *Burford* abstention in *New Orleans Public Service, Inc. v. New Orleans (NOPSI).*[470] *NOPSI* set forth the test for *Burford* abstention which is now used by the Fourth Circuit.[471] Under *NOPSI*, *Burford* abstention is proper when a federal court is faced with difficult questions of state law and policy, and the questions are more important than the case before the court. The *NOPSI* test also allows *Burford* abstention where federal review would disrupt a significant state policy.[472] The Court also noted that neither the presence of complex state administrative processes, nor the possibility of overturning state policy in a federal court mandated abstention.[473]

Applying these criteria, courts often find *Burford* abstention to be proper in cases involving land use issues. These issues are generally local issues of great import, which state courts are best equipped to decide.[474] *Burford* abstention, however, often is inappropriate when questions of

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467. *See* Thompson, *supra* note 431, at 882 (concluding that difference in treatment of similar cases was result of how courts read plaintiff's complaints).

468. 319 U.S. 315 (1943).

469. New Orleans Pub. Serv., Inc. v. New Orleans [NOPSI], 491 U.S. 350, 361 (1989).

470. *Id.*

471. *See* Pomponio v. Fauquier County Bd. of Supervisors, No. 91-1107, 1992 U.S. App. LEXIS 17636, at *10 (4th Cir. Aug. 3, 1992) (using *NOPSI* two-prong test for *Burford* abstention).

472. *NOPSI*, 491 U.S. at 361 (quoting Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 814 (1976)). *NOPSI* allows *Burford* abstention:

> (1) when there are 'difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar'; or (2) where the 'exercise of federal review of a question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.'

Id. at 814.

473. *Id.* at 362.

474. *See* Browning-Ferris, Inc. v. Baltimore County, 774 F.2d 77, 79 (4th Cir. 1985) (stating that land use questions are matters of local concern, and that federal courts traditionally do not interfere with state courts in land use policy); Caleb Stowe Assoc. v. County of Albermarle, 724 F.2d 1079, 1080 (4th Cir. 1984) (stating that abstention is proper when claims rest upon construction of state land use law).

federal preemption are present, as deciding the case may be beyond the state's authority.[475]

In *Neufeld v. City of Baltimore*,[476] the United States Court of Appeals for the Fourth Circuit considered whether *Burford* abstention was proper in a case involving both preemption and land use issues. In *Neufeld*, the plaintiff, Neufeld, installed a satellite dish in his front yard in order to improve his television reception. Neufeld had not received approval from the Baltimore Board of Municipal and Zoning Appeals (the Board) before installing his satellite dish, nor had he complied with the set-back requirements in the zoning code.

When the City of Baltimore informed Neufeld that he was in violation of the zoning laws, Neufeld appealed to the Board. Neufeld requested a variance from the zoning laws or a conditional use permit for the satellite dish. The Board denied Neufeld's request, finding that the dish was harmful to the general welfare of the community. Neufeld then appealed the Board's decision to the circuit court for the City of Baltimore. The circuit court affirmed the Board's findings.

Although Neufeld's placement of the satellite dish violated the zoning laws, Neufeld did not remove the dish from his front yard. The City convicted and fined Neufeld for violating the zoning ordinance. Neufeld appealed the conviction to the circuit court for the City of Baltimore, claiming that a Federal Communications Commission (FCC) regulation preempted the zoning laws. The regulation stated that state and local zoning regulations that differentiate between satellite dishes and other antennas are preempted unless the regulations have a clear objective and do not impose unreasonable limitations on satellite dish owners.[477]

In addition to the preemption claim, Neufeld also claimed that the zoning laws violated his First and Fourteenth Amendment rights. Neufeld claimed that the zoning laws restricted his First Amendment right of access to information, due to the size and placement limitations on satellite

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475. *See, e.g.*, International Bhd. of Elec. Workers, Local 1245 v. Public Serv. Comm'n, 614 F.2d 206, 212 n.1 (9th Cir. 1980) (stating that *Burford* abstention is particularly inappropriate in cases with preemption claims because preemption claims allege that Congress has determined that certain matters are of federal concern, and therefore federal courts can not abstain without implicitly ruling on merits of preemption claims).

476. 964 F.2d 347 (4th Cir. 1992).

477. Federal Communications Commission Regulation, 47 C.F.R. § 25.104 (1991). The regulation states:

> State and local zoning or other regulations that differentiate between satellite receive-only antennas and other types of antenna facilities are preempted unless such regulations:
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> (a) Have a reasonable and clearly defined health, safety, or aesthetic objective; and
>
> (b) Do not operate to impose unreasonable limitations on, or prevent, reception of satellite delivered signals by receive-only antennas or to impose costs on the users of such antennas that are excessive in light ot the purchase and installation cost of the equipment.

Id.

dishes. Neufeld also claimed that the zoning restrictions violated his Fourteenth Amendment rights under the Equal Protection Clause, because the zoning laws discriminated among users of satellite dishes, allowing schools, churches, and motels to operate larger dishes than other users. Despite Neufeld's arguments, the circuit court affirmed the conviction. Neufeld was later convicted of ten additional violations of the same ordinance and fined. He then removed the satellite dish from his property.

Neufeld filed a complaint in the United States District Court for the District of Maryland against the City of Baltimore and other city officials and agencies. He reasserted that the FCC regulation preempted Baltimore's zoning laws, and that the enforcement of the zoning laws violated his constitutional rights. Neufeld requested declaratory and injunctive relief, as well as damages. The district court abstained under the *Burford* doctrine and dismissed the action.

Neufeld appealed to the Fourth Circuit, claiming that *Burford* abstention was inappropriate due to his preemption and constitutional claims. In addressing the appeal, the Fourth Circuit relied upon the *NOPSI* formulation of the criteria for *Burford* abstention. In discussing *NOPSI*, the court emphasized that because the plaintiff's claim in *NOPSI* was primarily a preemption claim, it did not directly involve state law claims or federal interference in the administration of the state's policy.

The court first analyzed Neufeld's preemption claim and held that the district court erred in abstaining. The court found that Neufeld's preemption claim did not present a difficult question of state law involving local concerns. In addition, federal review would not disrupt state policy. The court reasoned that because Neufeld had not attacked the substantive basis of the zoning decision, but had asserted that the FCC regulation had preempted the entire zoning ordinance, a federal construction of local law was not necessary. Therefore, neither prong of the test for *Burford* abstention was satisfied. The court indicated that the United States Courts of Appeals for the Eighth,[478] Ninth,[479] and Eleventh Circuits[480] have emphasized that preemption issues should rarely be the subject of *Burford* abstention.

The Fourth Circuit next held that Neufeld's constitutional claims did not meet the criteria for *Burford* abstention. Neufeld's First and Fourteenth Amendment claims did not present difficult questions of state law, nor would the determination of those claims disrupt an important state policy. Further, the court stated that the threat that a federal court might declare an entire state system unconstitutional is not a valid basis for *Burford* abstention.

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478. *See* Middle S. Energy, Inc. v. Arkansas Pub. Serv. Comm'n, 772 F.2d 404, 417 (8th Cir. 1985) (stating that premise of *Burford* abstention is lacking when federal law or Constitution makes proceeding or regulation beyond state's authority), *cert. denied*, 474 U.S. 1102 (1986).

479. *See International Bhd.*, 614 F.2d at 212 n.1 (9th Cir. 1980) (stating that *Burford* abstention is inappropriate if matter is of national, not local, scope).

480. *See* Bagget v. Department of Professional Regulation, 717 F.2d 521, 524 (11th Cir. 1983) (stating that *Burford* abstention should not be used to save state regulatory schemes from preemption scrutiny because goal of *Burford* abstention is to protect only valid state regulations).

Finally, the Fourth Circuit acknowledged that it had, in previous cases, stated that *Burford* abstention is often appropriate where land use issues are present. However, the court characterized *Neufeld* as involving land use issues in only a peripheral sense, and therefore held that the land use issues involved in *Neufeld* did not meet the *NOPSI* test for abstention. Consequently, the Fourth Circuit reversed and remanded the case to the district court.

In *Neufeld*, the Fourth Circuit applied the *NOPSI* test for *Burford* abstention for the first time in a published opinion.[481] Although the *NOPSI* two-prong test does not change the requirements for *Burford* abstentions, the *NOPSI* test is a clearer, more concise statement of the considerations involved in determining the appropriateness of *Burford* abstention.

In addition, the Fourth Circuit's *Neufeld* decision subtly changes the balancing of the factors involved in a *Burford* abstention. Previously, the Fourth Circuit had held that a preemption claim must show a conflict between state and federal law which is "readily discernable from the pleadings."[482] Under that test, the challenged state statute must clearly conflict with the federal statute, so that the federal court would not have to engage in detailed factfinding before settling the *Burford* issue. *Neufeld*, however, did not mention this requirement. As the FCC regulation at issue in *Neufeld* set forth a "reasonableness" standard,[483] which would require factfinding by the federal court, it appears that a facial conflict is no longer required.

The *Neufeld* decision also implies that a preemption issue, which indicates that *Burford* abstention is improper, outweighs a land use issue, which points towards abstention. However, the land use issue involved in *Neufeld* was not as important or complex as the land use issues involved in previous Fourth Circuit opinions.[484] Despite this distinction, the court's characterization of the land use issue as "peripheral" to the preemption issue may mean that the careful pleading of federal issues, such as preemption or constitutional claims, may make any case inappropriate for *Burford* abstention.

Coakley & Williams Construction, Inc. v. Structural Concrete Equipment, Inc.

973 F.2d 349 (4th Cir. 1992)

While the United States Courts of Appeal generally agree that the Due Process clauses of the Fifth and Fourteenth amendments to the United States

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481. *See* Millison v. Wilzack, 953 F.2d 638 (Table, Text in Westlaw), Unpublished Disposition (4th Cir. 1992) (using *NOPSI* test for first time in Fourth Circuit).

482. Aluminum Co. of Am. v. Utilities Comm'n, 713 F.2d 1024, 1029-30 (4th Cir. 1983) (stating that abstention is not per se inappropriate in cases alleging preemption, rather, there must be direct and facial conflict between statutes).

483. *See* 47 C.F.R. § 25.104 (stating that local ordinances are preempted unless ordinances have reasonable objective and do not impose unreasonable limitations or excessive costs on satellite dish owners).

484. *Compare Neufeld*, 964 F.2d at 347 (involving prior approval and set-back requirements for individual satellite dish) *with* Browning-Ferris, Inc. v. Baltimore County, 774 F.2d 77, 79 (1985) (concerning regulation of solid waste landfill) *and* Caleb Stowe Assocs. v. County of Albermarle, 724 F.2d 1079, 1080 (1984) (involving acceptability of sewage facilities for subdivision).

Constitution[485] do not confer upon litigants a right to oral argument on a motion,[486] the circuits are divided on the question of whether it is proper for a federal district court to grant a motion for summary judgment without first affording the nonmoving party an opportunity for an oral hearing.[487] The United States Courts of Appeal for the Fifth and Ninth Circuits have held that a court must give the adverse party the opportunity for such a hearing.[488]

Conversely, the United States Courts of Appeal for the First, Third, Seventh, Eighth, Tenth, and District of Columbia Circuits have held that a court may dispense with oral argument on motions for summary judgment in appropriate circumstances.[489] Some of the circuits holding that an opportunity for an oral hearing on a motion for summary judgment is not absolutely essential have expressed the view that courts should nonetheless hear oral arguments in most cases.[490] Other circuits have left the matter entirely within the discretion of the trial court.[491]

The United States Court of Appeals for the Fourth Circuit resolved a similar question in the 1964 case of *United States Fidelity & Guaranty Co.*

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485. U.S. CONST. amend. V; U.S. CONST. amend. XIV, § 1.

486. *See* Wilkins v. Rogers, 581 F.2d 399, 405 (4th Cir. 1978) (holding that constitutional due process does not require court to hear oral argument before ruling on motion); Atkinson v. Bass, 579 F.2d 865, 866-67 (4th Cir.) (same), *cert denied*, 439 U.S. 1003 (1978); Spark v. Catholic Univ., 510 F.2d 1277, 1280 (D.C. Cir. 1975) (same); Morrow v. Topping, 437 F.2d 1155, 1155 (9th Cir. 1971) (same); United States Fidelity & Guar. Co. v. Lawrenson, 334 F.2d 464, 467 (4th Cir.) (same), *cert denied*, 379 U.S. 869 (1964); Sarelas v. Porikos, 320 F.2d 827, 828 (7th Cir. 1963) (same), *cert denied*, 375 U.S. 985 (1964).

487. *See Spark*, 510 F.2d at 1280 (recognizing division of authority in federal circuit courts on question of whether district courts may grant summary judgment motions without giving adverse party opportunity for oral hearing).

488. *See* Georgia S. & Fla. Ry. v. Atlantic Coast Line R.R. Co., 373 F.2d 493, 496-98 (5th Cir.) (holding that it is abuse of discretion for district court to grant summary judgment motion without oral hearing), *cert. denied*, 389 U.S. 851 (1967); Dredge Corp. v. Penny, 338 F.2d 456, 461-62 (9th Cir. 1964) (holding that because summary judgment motion disposes of action on merits with prejudice, district court may not deny request for oral hearing of party opposing motion unless it denies motion); *cf.* Gary v. Louisiana, 601 F.2d 240, 244 (5th Cir. 1979) (noting that generally, district court has discretion not to hear oral testimony on motions); Morrow v. Topping, 437 F.2d 1155, 1156-57 (9th Cir. 1971) (same).

489. *See* CIA. Petrolera Caribe, Inc. v. Arco Caribbean, Inc., 754 F.2d 404, 411 (1st Cir. 1985) (holding that trial court did not err in denying request for oral argument before rendering summary judgment because briefs sufficiently set out legal arguments); Spark v. Catholic Univ., 510 F.2d 1277, 1280 (D.C. Cir. 1975) (holding that court may dispense with oral argument on motion for summary judgment in appropriate circumstances); Parish v. Howard, 459 F.2d 616, 620 (8th Cir. 1972) (same); Season-All Indus. Inc. v. Turkiye Sise Ve Cam Fabrikalari, 425 F.2d 34, 39 (3d Cir. 1970) (same); Hazen v. S. Hills Nat'l Bank, 414 F.2d 778, 780 (10th Cir. 1969) (holding that when parties filed comprehensive briefs, court did not err in denying hearing before ruling on motion for summary judgment); Skolnick v. Martin, 317 F.2d 855, 857 (7th Cir. 1963) (same), *cert. denied*, 375 U.S. 908 (1964).

490. *See, e.g.*, *Season-All*, 425 F.2d at 39 (expressing view that courts should not deny hearing on motion for summary judgment except in very narrow circumstances because granting motion disposes of claim or defense with finality).

491. *See, e.g.*, *CIA. Petrolera*, 754 F.2d at 411 (holding that trial court has "wide latitude" in deciding whether to hear oral argument before rendering summary judgment).

v. Lawrenson[492] in which it decided that it is not improper for a district court to rule on a motion for a new trial without granting the nonmoving party the opportunity to make an oral argument against it.[493] In *Coakley & Williams Construction, Inc. v. Structural Concrete Equipment, Inc.*,[494] the Fourth Circuit considered, for the first time, whether a trial court errs when it grants a motion for summary judgment without first affording the parties an opportunity for an oral hearing on the motion.

Coakley & Williams involved a release provision in a settlement agreement that terminated an earlier suit between the same parties. Interpreting the settlement agreement as barring the claims asserted in the later case, the United States District Court for the District of Maryland granted summary judgment to the defendant, Structural Concrete Equipment (SCE) without first allowing the plaintiff, Coakley & Williams (C&W) to present its case orally against the motion. The issue in *Coakley & Williams* was whether it is proper for a district court to deny a party opposing a motion for summary judgment an opportunity for an oral hearing before granting the motion.

In *Coakley & Williams*, C&W was the general contractor on a project to construct a Days Inn. SCE contracted to construct the cast-in-place structural concrete work for the project but later recommended that C&W subcontract that work to Superior Contractors (Superior), an entity whose president was also the president of SCE. C&W hired Superior on SCE's recommendation, but later dismissed Superior from the job. In 1988, SCE brought suit against C&W for conversion of certain concrete forms that Superior had leased from SCE, and C&W counterclaimed for trespass. In a 1989 offer of settlement, C&W proposed that the parties settle all disputes between them and that they reserve any claims which either of them might have against Superior. The litigation ended eleven days later when the parties executed a settlement agreement that included a provision releasing their claims against each other with regard to matters arising out of the pleadings in the then-current litigation. The agreement further stated that the settlement was intended to prevent further litigation.

In 1991, C&W sued SCE for fraudulent and negligent inducement, alleging that SCE's misrepresentations induced C&W to award the subcontract to Superior. Pursuant to a local Maryland rule, the district court granted SCE's motion for summary judgment without an oral hearing. The court based its decision to grant summary judgment on its finding that in entering into the settlement agreement, the parties intended to settle all their claims against each other arising out of the Days Inn construction project, irrespective of whether they were pleaded in the presettlement litigation. Despite the wording of the release provision (in terms of causes of action arising out of the pleadings in the litigation which the parties were resolving),

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492. 334 F.2d 464 (4th Cir.), *cert denied*, 379 U.S. 869 (1964).

493. United States Fidelity & Guar. Co. v. Lawrenson, 334 F.2d 464, 466-67 (4th Cir.), *cert denied*, 379 U.S. 869 (1964).

494. 973 F.2d 349 (4th Cir. 1992).

the district court held that the settlement agreement evidenced the parties' intent to release all claims associated with the project, because it contained two separate statements of intent to avoid further litigation.

On appeal, the Fourth Circuit had to determine whether the district court erred in granting SCE's motion for summary judgment without holding a hearing. Having never previously ruled on the specific question raised in *Coakley & Williams*, the Fourth Circuit relied on its decision in *Lawrenson*.[495]

The Fourth Circuit noted the division among the circuits that have passed upon the question of whether it is proper for a district court to grant a motion for summary judgment absent an opportunity for an oral hearing. Looking to precedent for guidance, the court compared the motion for summary judgment in *Coakley & Williams* to the motion for new trial in *Lawrenson* and held that an abuse of discretion standard governs a district court's decision to grant a motion for summary judgment without a hearing. In addition to *Lawrenson*, Rule 78 of the Federal Rules of Civil Procedure,[496] which provided the basis for the local Maryland rule, guided the Fourth Circuit's decision in *Coakley & Williams*. According to the Fourth Circuit, Rule 78 makes it clear that the question of whether to hold oral hearings on motions is a matter within the discretion of the district court.[497] Because the language of both Rule 78 and *Lawrenson* is broad, the Fourth Circuit determined that the abuse of discretion standard applies to all motions granted without an opportunity for an oral hearing, including motions for summary judgment. Accordingly, the Fourth Circuit affirmed the judgment of the district court in granting defendant's motion for summary judgment.

Though due process clearly does not require courts to give a litigant who is opposing a motion for summary judgment the opportunity for an oral hearing before granting the motion,[498] a minority of United States Courts of Appeal have held that, at times, it is proper for a district court to grant a motion for summary judgment without first affording the adverse party an opportunity for oral argument on the matter. The minority position emphasizes that the weighty nature of a motion for summary judgment should entitle the adverse party to an opportunity to argue the motion

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495. 334 F.2d 464 (4th Cir.), *cert denied*, 379 U.S. 869 (1964).

496. FED. R. CIV. P. 78.

497. FED. R. CIV. P. 78. Rule 78 reads in pertinent part:

> To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

Id.

498. U.S. CONST. amend. V; U.S. CONST. amend. XIV, § 1; *See* Wilkins v. Rogers, 581 F.2d 399, 405 (4th Cir. 1978) (holding that constitutional due process does not require court to hear oral argument before ruling on motion); Atkinson v. Bass, 579 F.2d 865, 866-67 (4th Cir.) (same), *cert denied*, 439 U.S. 1003 (1978); Spark v. Catholic Univ., 510 F.2d 1277, 1280 (D.C. Cir. 1975) (same); Morrow v. Topping, 437 F.2d 1155, 1155 (9th Cir. 1971) (same); United States Fidelity & Guar. Co. v. Lawrenson, 334 F.2d 464, 467 (4th Cir.) (same), *cert denied*, 379 U.S. 869 (1964); Sarelas v. Porikos, 320 F.2d 827, 828 (7th Cir.) (same), *cert denied*, 375 U.S. 985 (1964).