

## NEWSLETTERS

### Decision In Case Consolidated Under Rule 42 Can Be Immediately Appealed, Despite Ongoing Related Litigation

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### Barnes & Thornburg Commercial Litigation Update, May 2018

The unanimous U.S. Supreme Court, in a decision written by Chief Justice Roberts, recently ruled that when one of several cases consolidated under Rule 42(a) is finally decided, that decision confers upon the losing party the immediate right to appeal, regardless of whether any of the other consolidated cases remain pending. In *Hall v. Hall*, the court relied on 125 years of history under the consolidation statute that preceded Rule 42 to the effect that consolidation did not result in merger of consolidated cases and therefore a final decision in one was immediately appealable, even if another was still pending.

The Supreme Court rejected the argument that Rule 42 changed this meaning of “consolidated” because subsection (A)(1) of Rule 42 was the exclusive source of the power to consolidate cases for limited purposes. Instead, the court concluded that subsection (A)(2) is the source of that power and that subsection reflects the traditional pre Rule-42 understanding of consolidation.

The court did note that district courts may still consolidate cases for all purposes “in appropriate circumstances” and that if the holding created practical problems for district courts and litigants, the Federal Rules Advisory Committee was free to address those issues and recommend revisions accordingly.

The court's decision does not address the res judicata or collateral estoppel effect a final decision on appeal might have on a pending consolidated companion case. Presumably, the traditional rules of those doctrines would still apply, putting a common party to the first decided companion case at risk of being held to the result in the first case in the other pending matter.

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Commercial Litigation

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