



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

September 7, 2021

MEMORANDUM

To: Office of the Legislative Counsel, United States House of Representatives
Office of the Legislative Counsel, United States Senate
Office of the Law Revision Counsel, United States House of Representatives

From: Gavin Young, Attorney Advisor, Administrative Conference of the United States

Subject: The Administrative Conference's Statutory Review Program

The Office of the Chairman of the Administrative Conference of the United States is transmitting the attached three judicial opinions under its *Statutory Review Program*. Under the Program, ACUS transmits federal judicial and agency adjudicative decisions that identify technical problems in statutes dealing with administrative procedure. For more information on the Program and its objective, please visit www.acus.gov/research-projects/statutory-review-program. The opinions are as follows:

- In *Pharmaceutical Manufacturing Research Services, Inc. v. Food & Drug Administration*, 957 F.3d 254 (D.C. Cir. 2020), an amendment to the Food, Drug, and Cosmetics Act added a new subsection (d)(6) and redesignated the previous subsection (d)(6) as subsection (d)(7), but the amendment did not update the next sentence which provides that the Secretary of Health and Human Services may grant a new drug application where “clauses (1) through (6) do not apply.” 21 U.S.C. § 355. The court found that the amendment resulted in a scrivener’s error, stating that a reading of § 355 “in light of the broader context and structure of the statute demonstrates that the lingering reference to ‘clauses (1) through (6)’ is best understood as an error. We will not privilege one contradictory numbered reference over the rest of the statutory text, context, and structure.”
- In *Moran v. Screening Pros, LLC*, 943 F.3d 1175 (9th Cir. 2019), the court found that an amendment to the Fair Credit Reporting Act—relating to information to be excluded from consumer reports—resulted in a scrivener’s error. The court stated that a comma is needed in order to properly separate an exclusionary clause and thus accord with the plain meaning and structure of the statute, found at 15 U.S.C. § 1681c(a)(5).
- In *In re Products International Co.*, 395 B.R. 101 (Bankr. D.Ariz. 2008), the court stated that, in the Bankruptcy Abuse Prevention and Consumer Protection Act, a list of items describing cause to convert or dismiss a chapter 7 bankruptcy was erroneously joined by the conjunctive “and” rather than the disjunctive “or.” The court treated the provision, found at 11 U.S.C. § 1112(b)(4), as a disjunctive list, citing the fact that certain items in

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the list were contradictory and would lead to absurd or impossible results if read in the conjunctive.