



July 30, 2014

DC Circuit's En Banc Meat Packers Ruling Strengthens the SEC's Hand on Conflict Minerals Disclosure Requirements

By: [Jane C. Luxton](#)

In its July 29, 2014 *en banc* opinion in a high-profile commercial free speech case, [American Meat Institute v. U.S. Department of Agriculture](#), the U.S. Court of Appeals for the D.C. Circuit expanded the scope of permissible disclosure requirements, rejecting claims of the meat packing industry that federally mandated country-of-origin labeling violated its members' First Amendment rights. The majority opinion drew two concurrences and two dissents in interpreting previous Supreme Court precedent (*Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985)) in an expansive way, holding that the government may require disclosure of factual and uncontroversial information that goes beyond protecting consumers against deception, so long as the government's interest in the disclosure is "substantial" and the requirement is a "reasonable fit" for advancing that interest.

The ruling will likely strengthen the SEC's position in defending its 2012 Conflict Minerals Rule, which, as written, requires companies subject to the Rule to disclose whether their manufactured products are "conflict free," that is, sourced from mines other than those in the Democratic Republic of the Congo or adjacent countries that are providing funding to warlords in a violent civil war. In an April 14, 2014 three-judge decision in [National Association of Manufacturers v. SEC](#), the D.C. Circuit upheld most of the Conflict

For more information contact:

Kenneth von Schaumburg
kvonschaumburg@clarkhill.com
202.772.0904

Team:

Robert M. Andersen
Jeffrey M. Bloom
Joseph R. Brendel
Christopher B. Clare
Roderick S. Coy
Jack O. Kalmink
Kaveh Kashef
Douglas R. Kelly
Ronald A. King
Russ Kolsrud
Joseph S. Kopietz
Jane C. Luxton
Joshua J. McClatchey
Stephen P. Ormond
Michael J. Pattwell
Jennifer Sackett Pohlenz
Haran C. Rashes
David G. Ries
Leland R. Rosier
John A. Sheehan
Mark S. Sifferman

Minerals Rule but struck down SEC-mandated disclosures that, it said, "compelled an issuer to confess blood on its hands" and thereby interfered with those companies' exercise of their First Amendment rights. The SEC moved in June 2014 for *en banc* review of the opinion, pending the outcome of the rehearing in the *AMI* case. While a full-court review of the Conflict Minerals Rule will no doubt center on whether the arguably controversial "conflict free" language passes muster as a "reasonable fit" for advancing the government's interests, which would require the D.C. Circuit to decide questions it was able to avoid in the *Meat Packers* case, even if the SEC loses on that specific language, it is on much stronger ground than previously for requiring some type of factual disclosure about the origins of conflict minerals for those companies subject to SEC reporting requirements.

It is likely that this issue will end up before the U.S. Supreme Court, particularly since there is a split in the Circuits on how narrowly to interpret the Supreme Court's *Zauderer* standard. The Sixth and Tenth Circuits have tended toward a strict interpretation, limiting government disclosure requirements to guarding against consumer deception, while the First and now D.C. Circuits have allowed a broader view of permissible government regulation. The outcome of this debate is important in determining the scope of mandatory disclosure requirements, an increasingly common method of regulation.

If you have any questions about the subject matter of this newsletter, please contact Jane Luxton at (202) 572-8674, jluxton@clarkhill.com, or another member of Clark Hill's Environment, Energy and Natural Resources practice group.

Todd J. Skowronski
Robert A. Strong
Richard A. Sundquist
Reginald M. Tumer
Stephen D. Tumer

About Clark Hill

Clark Hill PLC is a full-service law firm that provides business legal services, government and public affairs, and personal legal services to our clients throughout the country. With offices in Arizona, Delaware, Illinois, Michigan, New Jersey, Pennsylvania, Washington, DC, and West Virginia, Clark Hill has more than 300 attorneys and professionals.

For more information please visit Clark Hill's [Environment, Energy & Natural Resources Practice Group](#) or call 800.949.3124.



The foregoing publication is intended solely for the education and information of the recipient. It is not intended to be legal advice or a legal opinion and should not be regarded as either legal advice or a legal opinion.