High Court Is Facing Key Business Issues
By LINDA GREENHOUSE Special to The New York Times
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WASHINGTON, Oct. 5 — The Supreme Court begins its term tomorrow facing some new issues on its docket of business-related cases as well as some it has failed to resolve in the past.

Among the issues the Justices struggled with last term that have returned are the relationship between cost and health benefits in Federal job safety regulation and the legal rights of property owners whose land loses value as a result of zoning changes.

The new issues coming before the Court this term range from shared antitrust liability to the scope of the attorney-client privilege. In the absence of a definitive Supreme Court ruling, these issues have been the source of contradictory decisions among the lower Federal courts.

There are 74 cases already scheduled for oral argument during the nine-month term. The Justices will add about 80 more in the next few months, selected from some 2,000 petitions for review.

Among the more important business-related cases on the docket are the following:

Antitrust

The Justices will decide whether a defendant in an antitrust conspiracy case can require other defendants who settled before trial to share the cost of an unfavorable jury verdict. Legal and academic specialists are sharply divided over what effect such a "right to contribution" would have on antitrust enforcement.

Without a right to contribution, a defendant who stands trial rather than settle can be held liable for damages for an entire industrywide conspiracy, a fact that creates settlement "stampedes" in major antitrust cases. With a right to contribution, there would be fewer settlements and more trials. Liability might be shared more fairly, but the court system could become hopelessly clogged.

To decide the issue, the Justices granted review last June in Westvaco Corporation v. Adams Extract Company, No. 79-972, the outgrowth of a massive private antitrust suit charging an 18-year conspiracy among corrugated cardboard manufacturers to fix prices. But because the three companies that sought review have since entered into settlements, the Justices may now regard the case is moot. However, the same issue is presented in two other pending petitions, one of which the Justices would almost certainly substitute for Westvaco.

Meanwhile, the Court has scheduled arguments in a case involving a right to contribution in the employment rather than antitrust area. The question in Northwest Airlines v. Transport Workers Union, No. 79-1,056, is whether an employer found to have violated the Equal Pay Act can in turn assess damages from a labor union it asserts is jointly responsible for the violation.

Federal Regulation

The Court will decide whether the Federal Trade Commission's decision to issue an administrative complaint, the first step in its enforcement process, is immediately appealable by the target company. A Federal appeals court ruled that such an appeal was available, a decision the F.T.C. says will create delay and confusion not only for itself but also for many other Federal agencies that use similar procedures. The case, F.T.C. v. Standard Oil of California, No. 79-900, is therefore an important one for any company that deals with Federal regulators.

In Environmental Protection Agency

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The Supreme Court's Major Business Cases

ANTITRUST: Westvaco v. Adams Extract Company. The Justices will decide whether a defendant in an antitrust conspiracy case can require other defendants, who settled before trial, to share the cost of an unfavorable jury verdict.

FEDERAL REGULATION: Federal Trade Commission v. Standard Oil of California. The Court will decide whether the commission's decision to issue an "administrative complaint," the first step in the enforcement process, can be appealed immediately in Federal court by the target company.

Environmental Protection Agency v. National Crushed Stone Association. The Court will decide whether the E.P.A. is required to consider a company's ability to afford measures needed to comply with standards in enforcing clean water rules.

PATENT LAW: Diamond v. Bradley and Diamond v. Diehr. In these cases, the Court will be determining whether computer programs may be patented.

SECURITIES/BANKING: Steadman v. Securities and Exchange Commission. The Court must decide how much proof the S.E.C. needs in administrative actions to enforce Federal securities laws.

Board of Governors v. Investment Company Institute. The Justices will determine whether the Federal Reserve Board had the legal authority to allow bank holding companies to organize and manage closed-end investment companies.

LEGAL PRACTICE: Upjohn v. U.S. The Court will resolve a dispute among lower courts over the scope of the attorney-client privilege within the corporate setting.

PROPERTY RIGHTS: San Diego Gas and Electric v. San Diego. The Court will define the legal rights of property owners whose land loses value as a result of zoning changes.

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v. National Crushed Stone Association, No. 79-770, the Court will interpret the Clean Water Act and decide whether the E.P.A. is required to grant a variance from its pollution regulations for any company that cannot afford to meet the standards. The agency argued unsuccessfully in the lower court that its mandate was to set nationally uniform standards and not to take individual economic circumstances into account.

Last term, the Court tried but failed to resolve the question of whether the Occupational Safety and Health Administration was obliged to weigh the costs of safety regulations against their anticipated benefits. The Justices planned to tackle the question again in a case involving coke oven emissions in steel mills, but the steel industry recently withdrew its appeal in that case.

If the Justices want to try a third time, they may agree to hear the textile industry's challenge to OSHA's standards for exposure to cotton dust, American Textile Manufacturers v. Marshall, No. 79-1,429.

Patent Law

This term's patent cases, Diamond v. Bradley, No. 79-855, and Diamond v. Diehr, No. 79-1,112, concern the patentability of computer programs. Highly technical, they lack the glamour of last term's big patent case in which the Court granted patent protection to new forms of life created in the laboratory. But if the Court uses the cases to make a sweeping declaration about the applicability of the patent laws to computer software, the result could be as important.

Securities/Banking

In Steadman v. S.E.C., No. 79-1,266, the Court will tell the Securities and Exchange Commission what standard of proof it must meet to prove a violation of the antifraud provisions of the Federal securities laws.

The lower courts are divided on the issue. The commission argues for the easiest standard, "preponderance of the evidence," under which it need only prove that it was more likely than not that the alleged violation occurred. The securities industry argues that the commission should be held to the higher standard of "clear and convincing evidence." The case involves civil enforcement proceedings, not criminal trials, in which the standard is "beyond a reasonable doubt."

The Court will decide whether the Federal Reserve Board had the legal authority to issue a regulation in 1972 allowing bank-holding companies to organize and manage closed-end investment companies. The case, Board of Governors v. Investment Company Institute, No. 79-927, is the Fed's appeal from a lower court ruling that invalidated the regulation. If that ruling is upheld, banking organizations will have to end their involvement with closed-end funds totaling $670 million in assets. Unlike the more common open-end, a closed-end fund typically does not issue new shares after the initial offering.

Legal Practice

The Court will resolve a dispute among the lower courts over the scope of the attorney-client privilege within the corporate setting. There are now two approaches. Under the "control group test," the only corporate communications that are privileged against compelled disclosure in court are those between the company's lawyers and the members of senior management who have the authority to direct the company's response to legal advice.

Under the "subject matter test," the privilege extends further to encompass any employee-lawyer communication, as long as the employee has confided in the lawyer at a supervisor's request and about work-related matters. In this case, Upjohn v. U.S., No. 79-886, the American Bar Association and several dozen major law firms have weighed in on the side of the broader privilege, while the Justice Department supports the narrower one.

Property Rights

If the Government condemns private property under its eminent domain power, it is constitutionally obliged to compensate the owner. But if Government action lowers the property's value while leaving it in private hands, the owner's rights are much less clear. In San Diego Gas and Electric Company v. San Diego, No. 79-678, the Court will decide whether the owner is entitled to monetary damages under a legal theory called inverse condemnation.

The Court considered a similar case last year, Agins v. Tiburon, but did not reach the damages issue because the owners had not actually applied for a development permit. In the San Diego case, a utility spent $2 million assembling industrially zoned land on which to build a power plant, only to see the land rezoned for "open space" and its investment lost. The California courts have rejected the inverse condemnation theory.