

Supreme Court Declines To Review First Circuit's *Textron*



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The U.S. Supreme Court has declined to review the First Circuit's decision in *Textron Inc. v. United States*, 2009 U.S. App. LEXIS 18103, that casts a heavy question mark over the work product protection afforded to "dual purpose" corporate documents, that is, documents prepared both to allow companies to assess litigation risks and to make effective business decisions guided by those risks. Although it is too early to know whether and how far the work product ramifications of this decision will spread beyond the type of corporate documents at issue in *Textron* -- tax accrual papers -- corporate lawyers will at least want to be on notice of the dissent's pronouncement, however hyperbolic, that "Corporate attorneys preparing such analyses should now be aware that their work product is not protected in this circuit." A heavy question mark therefore looms in the First Circuit. For further discussion of *Textron*, please see my earlier blog entry.