FALL 2022

US LAW

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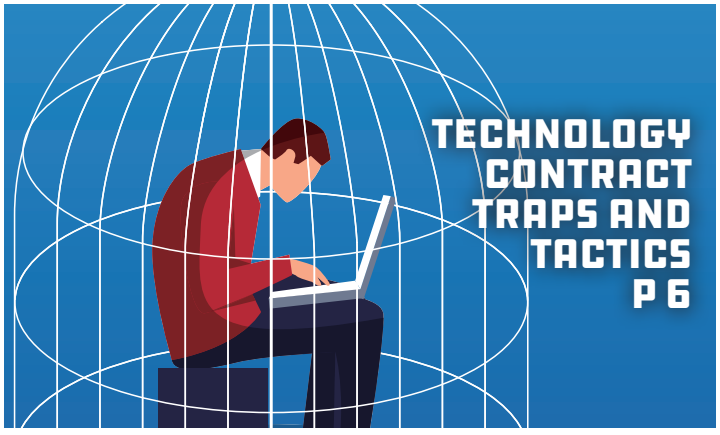

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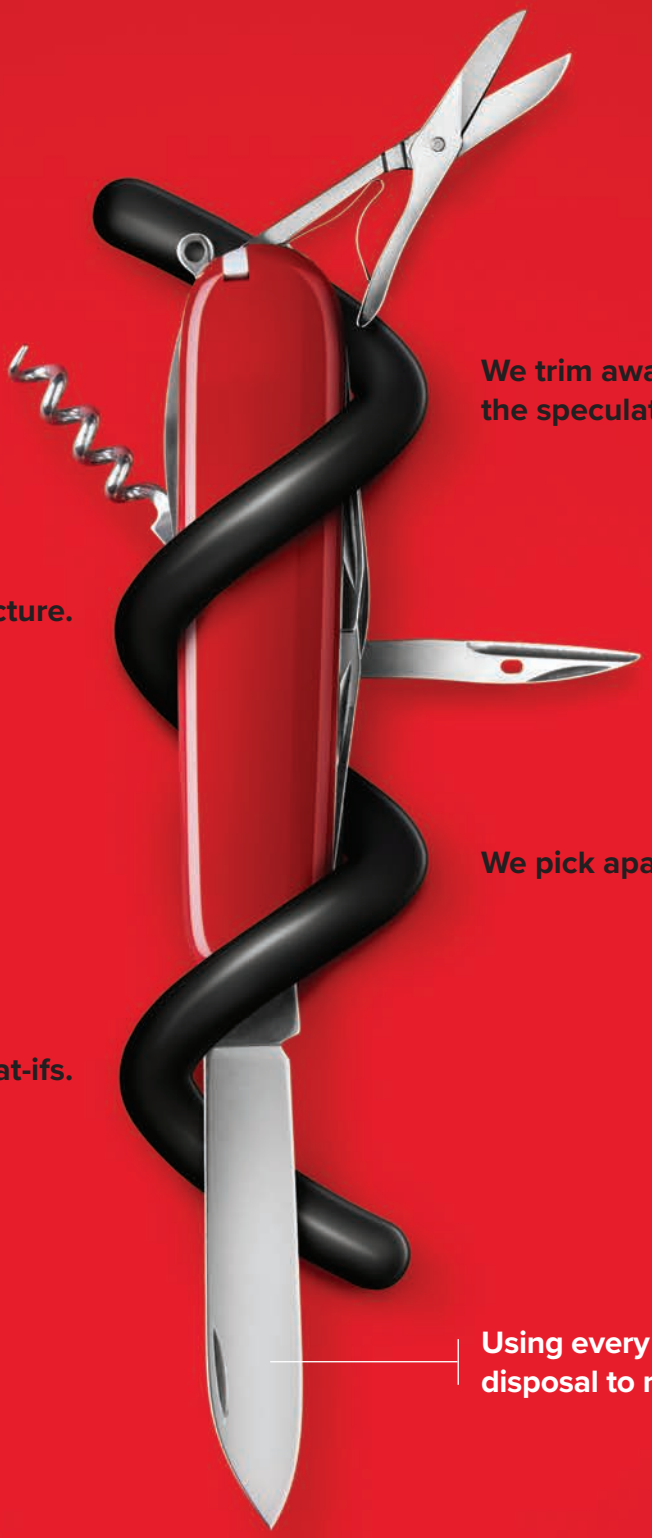

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from the INCOMING CHAIR

As one of my first official duties as the incoming chair of USLAW NETWORK, it is my pleasure to share the fall issue of USLAW Magazine. This is one of the many complimentary client resources USLAW delivers throughout the year.

In this issue, our member attorneys and exclusive corporate partners share their insights on topics that range from strategies for settlement in the days of mega and nuclear verdicts, what you need to know before signing a technology contract, medical card requirements for commercial drivers, updates on United States' money laundering laws, understanding evidence spoliation, the benefits of simulation in accident reconstruction and so much more.

For more than 20 years, USLAW has had an unwavering focus on our client community. While we are a member-led organization of approximately 100 law firms and more than 6,000 attorneys from across the United States and in key international jurisdictions, we are 100% client-service focused. Our members continually support our broad client community that encompasses thousands of legal decision-makers in an array of industries. That is our commitment to each other and to each of you. From timely jurisdictional updates and rapid response to numerous networking and business development events, we are proud to create connections and opportunities to support your legal needs and help you move your business forward.

We recently refreshed USLAW.org and launched My USLAW, a password-protected site that serves the broader USLAW community. Our recent tech enhancements demonstrate USLAW's investment in a next-generation site that creates opportunities for increased engagement.

As the saying goes, the only constant is change, and we wholeheartedly embrace the changing landscape. We are excited for what the future holds as we continue to innovate and adapt while remaining squarely focused on serving our USLAW community.

I am excited to serve as USLAW NETWORK chair for the coming year. As we continue to create business development opportunities for our members while supporting legal decision-makers across a spectrum of industries and jurisdictions, please let us know how we can support your legal needs.

Sincerely,

Amanda Pennington Ketchum
Dysart Taylor Cotter McMonigle & Brumitt, P.C.,
Kansas City, Missouri

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USLAW

Publisher **Roger M. Yaffe**
Editor **Connie Wilson**
Art Director **Jeff Freibert** • Compass Creative

USLAW NETWORK, INC®

Roger M. Yaffe, *Chief Executive Officer*
roger@uslaw.org

Michelle Besu, *Director of Meetings and Events*
michelle@uslaw.org

Cheryl Hanley, *Practice Group, Special Projects, and Corporate Partner Director*
cheryl@uslaw.org

Jennifer Randall, *Membership Services Manager*
jennifer@uslaw.org

Paige Thompson, *Membership Services Coordinator*
paige@uslaw.org

Connie Wilson, *Communications Specialist*
connie@uslaw.org

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GUT CHECK

When a Valid Medical Card Isn't Enough

Pamela Hallford Carr Allison

INTRODUCTION

Other than a valid CDL, one of the most important documents a driver can present to a motor carrier is a valid medical card. But, in today's climate, is a valid medical card enough? A recent trend in litigation across the country, but specifically in the southeast, is to perform discovery into a driver's full medical history and then use any medical conditions and/or illness to invalidate the driver's qualifications to operate a commercial motor vehicle. The driver, most certainly, has an obligation to be truthful and forthcoming with their medical certifying doctor. But, as the motor carrier, what additional obligations do you have to assess the driver's medical qualifications? The answer is just about as clear as mud!

MEDICAL CARD REQUIREMENTS

49 C.F.R. § 391.41(a) requires that the driver have a valid medical examiner's certification to prove physical qualifications. The physical qualifications are proven through a proper medical examination that evaluates 13 different categories of the driver's physical abilities. At the outset of the medical examination, the driver supplies the examiner with a health history, which the examiner then transcribes onto the long-form medical card. It is incumbent on the driver to provide an accurate health history as the examiner will not have access to the driver's prior medical records. A failure to be forthcoming, according to the card itself, can invalidate the medical certification and subject the driver to criminal action. In the context of litigation, the driver's prior medical records are admissible to show that the medical card was fraudulently obtained by a failure to provide an accurate medical history. *Hayter v. Griffin*, 785 S.W.2d 590, 596 (Mo. App. 1990). Based on the examination and interview of the driver, a medical card is issued for the prescribed period of typically six months, one year or two years.

Armed with a valid medical card, the

driver confidently advises their prospective or current employer that they are qualified to drive a commercial vehicle. Larger carriers tend to track when the driver's medical card is expiring to ensure that cards are up to date at all times. For mid-size or small carriers, this can create more of a problem. However, failure to ensure the driver is carrying a valid medical card can create direct liability against the carrier in the event of an accident. In a 2016 Michigan case, a Court held that a jury could reasonably conclude that there was a connection between competency to drive a commercial motor vehicle and the lack of a valid medical card. *Melrose v. Warner*, No. 325717, 2016 Mich. App. LEXIS 1470, at *8 (Ct. App. Aug. 2, 2016). This created a path to a direct action against the motor carrier. It is important to remember that the effort to monitor compliance on the front end can have big payoffs if, and when, litigation ensues.

PREVENTING DISCOVERY INTO MEDICAL HISTORY

Federal Rules of Evidence 401 states that relevant evidence "(a) has a tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence to determining the action." Courts across the country have held that patients have a right to refuse disclosure of medical records *unless patient has put his medical condition at issue. See Powell v. McLain*, 105 So. 3d 308, 314-15 (Miss. 2012); *Empley v. Fedex Ground Package Sys.*, 2016 U.S. Dist. LEXIS 194561, *26 (D.N.M., July 7, 2016). Generally, if the plaintiff is requesting medical records from the defendant, the obvious argument is that the defendant has not placed his medical condition at issue, and as such, any evidence related to that condition is irrelevant. Therefore, medical records related to that condition would not be likely to lead to the discovery of admissible evidence. The issue over the production of a driver's past medical records is not simply a dispute over invasiveness, but rather, the dispute is fundamentally one over the relevance, privilege, and general discoverability of the medical records of a commercial vehicle driver who has been medically certified pursuant to onerous federal guidelines, not placed his health at issue in the litigation, and has not waived his legally protected privilege to his private health records merely by being hauled into court by the plaintiff.

BEYOND THE MEDICAL CARD

Other than simply accepting a medical card, some employers do require that an application field be completed indicating if the driver is physically qualified to perform job-related duties. In addition, on rare occasions, employers ask if the prospective driver is taking any medication which might impact their ability to operate a commercial motor vehicle. I have never seen or heard of a carrier asking these questions on a continuing basis. Of course, there are many carriers with policies related to the notification of a change in the health status of medication. However, as a matter of course, I do not see a question on, for example, the annual MVR certification related to a driver's physical fitness to operate a commercial motor vehicle. But is this required? Under the FMCSRs, the answer is no. However, I think public opinion (i.e., a jury) would dictate that a carrier make this assessment on a continuing basis.

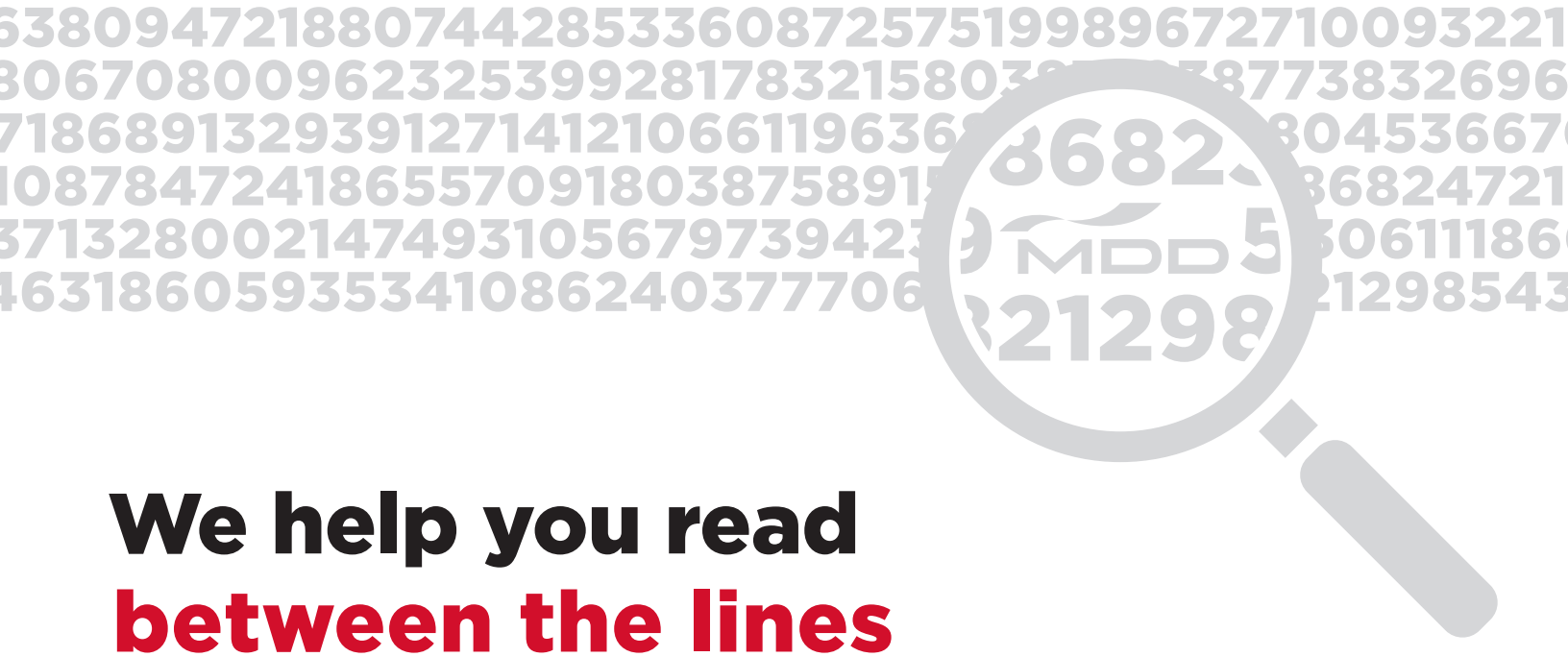
In a recent case pending in Alabama, while defending the carrier, plaintiff's counsel discovered a driver with a storied medical history that went unreported to his medical examiner; nevertheless, some of his health issues were obvious to the naked eye. The argument advanced by plaintiff's counsel centered not only on the driver's dishonesty but also on how the company acted when presented with the medical issues that could be observed by those on the local management level. This led to an interesting analysis of the motor carrier's obligations, or rather rights, under the Americans with Disabilities Act (ADA) and Health Insurance Portability and Accountability Act. Apart from examinations necessitated by law, medical testing without evidence of current *performance issues* or observable evidence that a driver poses a *direct threat* is only allowed where the employees are in a *position affecting public safety. Jackson v. Regal Beloit America, Inc.*, 2018 U.S. Dist. LEXIS 103682, *8 (E.D. Ky. Jun. 21, 2018). The guidance to (s) 391.45 explains that the FMCSRs do not require an examination in the event a driver returns from an illness or injury "unless the injury or illness has impaired the driver's ability to perform his/her normal duties. However, the motor carrier may require a driver returning from any illness or injury to take a physical examination. But, in either case, the motor carrier has the obligation to determine if an injury or illness renders the driver medically unqualified." Based on the guidance quoted above, as well as the limitations on ADA, a savvy opposing counsel will be able to articulately argue that a motor carrier with evidence that a driver suffers from illness or injury has an obligation to require the driver to undergo an additional medical examination before allowing him to operate a commercial motor vehicle.

Of course, in real-world scenarios, enforcement of policies requiring more than just a valid medical card would be incredibly difficult. Nevertheless, it is the adherence to the "minimum standards" that often results in the irrationally high verdicts we see coming down across the county. To contradict arguments related to driver fitness based on observable illness or injury, there are multiple sources at which to direct a jury. First, look at a driver's drug testing results. Testing is prescribed on six occasions: pre-employment, reasonable suspicion, random, post-accident, return-to-duty, and follow-up situations. 49 C.F.R. §§382.309, .311. If all the driver's drug screening results are negative, this is one piece of evidence upon which a company can rely in determining if a driver is fit to drive. Second, consider maintaining a copy of the driver's long form, which discloses health history and medication usage. Keeping the long form will establish that the carrier is going beyond the minimum standards of the FMCSRs, and up to the thresholds of ADA and HIPAA. Additionally, a company can rely on the driver's PSP and MVR. The PSP allows companies to make an informed decision before hiring a driver by reviewing any history of unsafe driving available therein. Annual MVR checks are another way to ensure continued safe driving. Continued safe driving is another piece of circumstantial evidence upon which a company can rely to determine that a driver is physically capable of meeting the job requirements and mandates of the FMCSRs.

CONCLUSION

The rise of arguments related to a driver's medical fitness to operate a CMV is just beginning. It is incumbent on the carrier and defense counsel to fully address and evaluate these issues at the outset of a claim or, better yet, before a claim arises. Sharing our strategies in combating arguments placings an unreasonable burden on carriers is vital to obtaining defense wins.

Pamela Hallford is a shareholder of Carr Allison. Pam focuses on the defense of commercial motor carriers and assists an array of clients throughout Alabama. Pam is an active member of USLAW Women's Connection, USLAW Transportation and Logistics Practice Group, and Carr Allison's GO TEAM. Contact Pam at pshallford@carrallison.com.



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Technology Contract TRAPS AND TACTICS

Charles Nerko and **Sarah O'Brien** Barclay Damon LLP

Every organization relies on technology to power its business and store its sensitive information. Before signing a technology contract, organizations should carefully consider the following questions to minimize risks.

HAS DUE DILIGENCE ON THE SERVICE PROVIDER BEEN PERFORMED?

Before turning to the contract terms, the organization should conduct independent due diligence on the service provider. This includes analyzing the service provider's experience and abilities, financial statements, insurance policies, cybersecurity response program and test results, business contingency plans and test results, internal audits, security assessments, and litigation history.

DOES THE CONTRACT ADEQUATELY DEFINE PERFORMANCE STANDARDS?

The contract should specify the deliverables and benchmarks to hold the service provider accountable and make certain it is following through on promises. Common metrics include system uptime percentage and the deadline for service completion.

WHAT HAPPENS IF PERFORMANCE STANDARDS ARE NOT MET?

The contract should detail reporting processes, escalation procedures, and remedies for nonperformance that motivate the right behavior.

ARE IMPORTANT PROMISES MISSING FROM THE CONTRACT?

Many times, key promises related to performance standards are in RFP responses, marketing materials, or oral statements. Everything the service provider promised during negotiations or in the RFP process should be incorporated into the final contract. A contract's merger and integration clause will generally cancel out collateral representations. If the service provider refuses to incorporate a crucial performance standard into the formal contract, it is a red flag.

ARE THE FEES QUANTIFIED?

Make sure that important fees are quantified in the contract. A service provider's undefined "standard rates," "customary rates," or "rates then in effect"—particularly for services needed only when a relationship terminates—invite costly surprises when the actual fees are revealed later on.

IF THE SERVICE PROVIDER REQUIRES EXCLUSIVITY, IS IT REASONABLE?

Consider the implications when a service provider insists on exclusivity. It is reasonable to assure a service provider it will not have to reconcile a competitor's data provided in a proprietary format or maintain compatibility with a software program provided by another service provider. Some service providers, however, seek overbroad exclusivity agreements that cover an organization's entire technology needs. Exclusivity agreements should be limited to the service provider's legitimate needs while also giving the organization flexibility to use other service providers.

IS THE CONTRACT LENGTH APPROPRIATE?

Contract lengths that seem routine in non-technology contexts can be an eternity for a technology deal. Consider the lifespan of the technology itself as it relates to the hardware that will power it. A contract with a three-year term will likely lock the organization into the technology even though the hardware will likely be replaced during that time. And a lengthy contract term carries an opportunity cost of foregoing future innovations.

HOW AND WHEN DOES THE CONTRACT RENEW?

Be aware of automatic renewal language. Ensure key contract dates are appropriately calendared if the contract requires a nonrenewal notice. Ideally, contract length should be measured from a specific date rather than an undefined date tied to the "commencement of services," which may inadvertently lengthen the contract term as new services are added.

DO THE SERVICE PROVIDER'S LIABILITY LIMITS FAIRLY APPORTION RISK?

A service provider's acts and omissions can potentially inflict crushing liability on

an organization, particularly if it exposes the organization to a data breach or loss of critical data. Do your best to negotiate liability limitations to ensure a fair allocation of risk if something goes wrong, especially when the events giving rise to liability are solely within the service provider's control.

IS A REASONABLE INDEMNITY OFFERED?

Pay close attention to indemnity provisions to avoid situations where the organization may be liable for claims arising from incidents within the service provider's control. The service provider should provide a reasonable indemnity for issues within its control, such as covering losses from data breaches or the service provider's infringement of a third party's intellectual property. An intellectual property infringement indemnity is particularly valuable because a service provider can foist liability for patent infringement on an organization without the organization even knowing about the patent issue.

IS THERE A FAIR PROCESS FOR RESOLVING DISPUTES?

Make sure the dispute resolution clause provides a balanced method of resolving disagreements. Technology service providers tend to use dispute resolution clauses that favor their business, such as getting the "home court" advantage in litigation or arbitration. Some service providers have manifestly unfair dispute resolution protocols, such as requiring an arbitrator to be selected from the service provider's other (presumably satisfied) customers. Consider the implications of the dispute resolution procedure to ensure the process is fair, impartial, and balanced.

WHAT HAPPENS WHEN THE PARTIES SEPARATE?

It is important to "plan the breakup" at the outset of the relationship. A customer may want to invoke early termination rights when the service provider fails to meet service levels or when replacing the service provider results in cost savings or service enhancements. Terminations may also occur due to a service provider's company closure. Adequately plan the logistics for a separation at the outset of a relationship, including details such as the service provider's exit fees and obligation to facilitate a transition to a successor service provider.

WHO OWNS THE DATA AND DELIVERABLES?

Carefully review provisions addressing data and IP ownership. It is critical for your organization to retain ownership of its data and that the service provider is given access only to the data required to perform its service. A terminated service provider lacks incentives to safeguard data belonging to a former customer, so a service provider should be contractually obligated to return and destroy the organization's data when the relationship concludes. IP ownership provisions should align with the organization's expectations regarding its ownership and use of the deliverables, including after the relationship with the service provider ends.

IS THE SERVICE PROVIDER'S SECURITY ADEQUATE?

Third-party service providers are often the weak link in an organization's cybersecurity. The service provider should offer sufficient security precautions, including firewalls, encryption, and authentication. These precautions should satisfy the legal requirements of every state in which the organization does business as well as the states in which its employees and its customers are located.

ARE THERE MEANINGFUL AUDIT RIGHTS?

A service provider's performance should be monitored after a contract is signed to evaluate cost-effectiveness, benefit, service delivery, and adherence to contractual and legal requirements. A service provider should permit periodic audits by an independent third party to ensure compliance with contract terms.

WHO IS ON THE OTHER SIDE?

In the absence of an express commitment to the contrary, contracts are generally freely assignable. The organization should consider prohibiting the service provider from assigning the contract to a third party or changing its permitted subcontractors. If subcontracts are used, they should be identified, and the service provider should accept responsibility for the subcontractors' performance.

HOW WILL DISRUPTIVE EVENTS BE MANAGED?

Have proper plans to address adverse events, including a service provider's outage or disruption. For critical technology contracts, an organization should identify and prepare for significant disruptive events, including those with a low probability of occurring but a high potential impact.

HOW WILL THE SERVICE PROVIDER RESPOND TO SIGNIFICANT CHANGES?

Changes to the relationship may be necessitated by changes to laws or other regulations, changes in risk levels, changes in technology, mergers and acquisitions, and changes to the organization's business processes or priorities. Assess how the service provider will evolve and respond to changes to ensure the organization will be best served.

ARE THE BUSINESS BENEFITS WORTH THE RISKS?

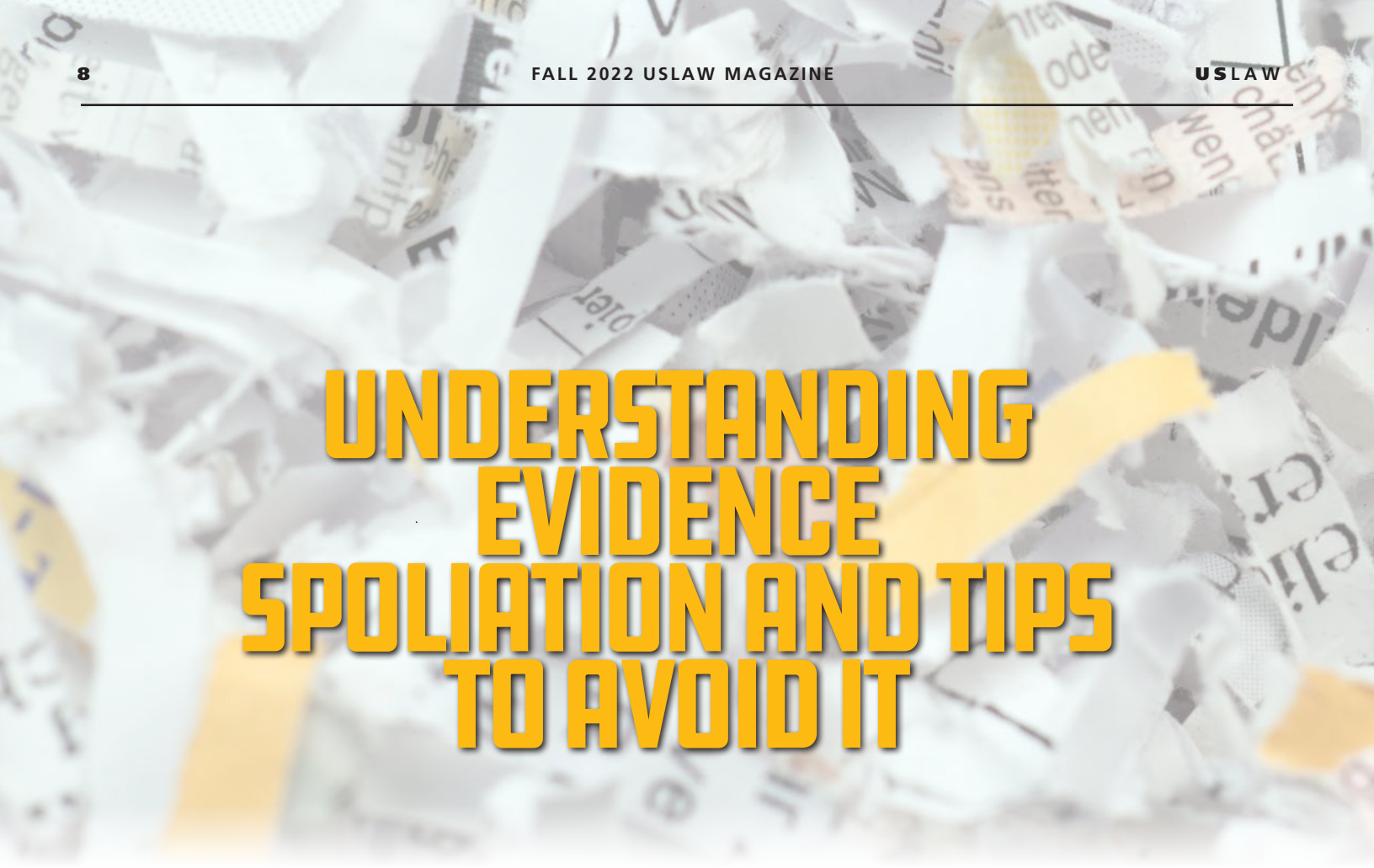
Above all, an organization's relationship with a service provider should be beneficial to the business. Every contract has risk, and some service providers will simply not budge on a one-sided contract term. Management should perform a business review of the contract and its legal risks to ensure they are confident that the business benefits outweigh the legal risks associated with the relationship.

ARE EMPLOYEES TRAINED TO AVOID INADVERTENT CONTRACT FORMATION THAT MAY EVADE LEGAL REVIEW?

Employees may unknowingly bind their organization to a contract or contract amendment by purchasing from or interacting with a website with posted terms of use, paying an invoice with contract terms, emailing deal terms, or requesting upgrades from a service provider. Service providers are increasingly welcoming of large credit card payments because employees' credit card transactions typically have relaxed legal review compared to requesting payments by company check. Employees should be trained to detect things that may contractually bind the organization and flag them for appropriate legal review.

Charles Nerko is a partner and a co-leader of the Cybersecurity Team at Barclay Damon LLP. He helps businesses remain competitive, protect their confidential information, and increase their bottom line through technology contract negotiation as well as litigation against technology service providers.

Sarah O'Brien is an associate at Barclay Damon LLP and a member of its Cybersecurity Team. She concentrates her practice on state and federal commercial litigation matters involving technology and a variety of business disputes.



UNDERSTANDING EVIDENCE SPOLIATION AND TIPS TO AVOID IT

Kevin L. Fritz and **Shannon C. King** Lashly & Baer, P.C.

SPOLIATION EXPLAINED

Spoliation is the act of destroying or otherwise suppressing evidence. It can arise in virtually any type of case, from wrongful death to antitrust litigation. Both plaintiffs and defendants can be liable for spoliation. Spoliation of evidence occurs when someone with an obligation to preserve evidence related to a legal claim either neglects to do so or intentionally fails to do so.[1] A failure to preserve evidence can take place by intentional or inadvertent destruction of evidence, damage to the evidence or loss of evidence.[2] When spoliation occurs, the party responsible may be held liable in court through a variety of different sanctions, adverse inferences or even judgments. This will vary greatly from state to state.

TRIGGERING THE DUTY TO PRESERVE

The duty to preserve evidence, including documents, electronically stored information (ESI) or other tangible evidence that generally arises when a party is aware of pending litigation, litigation is threatened, or when litigation is reasonably foreseeable under the facts and circumstances of the incident in question. Being served with a complaint or petition can trigger the duty to preserve. However, the complaint must allege facts describing the conduct that affords notice to the party in possession of the evidence.[3]

The duty to preserve potentially relevant evidence may arise before the commencement of a lawsuit if it is reasonably foreseeable that a lawsuit will be filed.[4] "It matters not whether an organization is the initiator or the target of litigation," the duty to preserve evidence arises at "the moment that litigation is reasonably anticipated."[5] This can arise when a potential defendant receives a letter of representation from counsel of a potential litigant, a demand letter, a preservation of evidence letter or if an event or other circumstance would reasonably put an organization on notice that a lawsuit is likely to be filed. Further, pre-litigation discussions, requests to inspect evidence, or a history of previous litigation arising out of similar events or circumstances can trigger a duty to preserve relevant evidence.[6]

The duty to preserve can also arise from other sources, including a contract, a voluntarily assumed duty (such as a company's document retention policy), a statute or regulation, an ethical code, or another special circumstance.

Absent notice of pending or probable litigation, reasonably foreseeable litigation or a duty to preserve triggered by another source, a company or individual has the right to dispose of its own documents or property without liability.

DETERMINING WHAT NEEDS TO BE PRESERVED

A party need not preserve all documents, ESI, or tangible evidence. The general rule is that a "potential spoliator" need only do what is reasonable under the circumstances and does not need to take extraordinary measures.[7] A party needs to preserve relevant records which include:

> Any documents or tangible things… made by individuals "likely to have discoverable information that the disclosing party may use to support its claims or defenses." The duty also includes documents prepared for those individuals, to the extent those documents can readily be identified… The duty also extends to information that is relevant to the claims or defenses of any party, or which is "relevant to the subject matter involved in the action." Thus, the duty to preserve extends to those employees likely to have relevant information—the "key players" in the case.[8]

Generally, this means preserving documents, ESI, and tangible evidence that is reasonably related to the subject claim. It is also recommended to preserve up to six

months of related records if possible. This includes items like call logs, time sheets, project correspondence, surveillance videos - anything that is recorded in the day-to-day function or operation of the business. This time frame of preservation is likely beyond what will ultimately be discoverable during litigation; however, six months of pertinent records allows your attorney to effectively evaluate your claim or defense and as ensure you have preserved a reasonable amount of information.

Relevant ESI must be actively preserved. Many computer systems have automatic deletion features that periodically purge and delete documents. Once the duty to preserve is triggered, a party must take affirmative steps to stop any automatic deletion process.[9]

CONSEQUENCES OF SPOLIATION

The consequences of spoliation vary from state to state. There are a handful of states that recognize an independent tort claim for spoliation of evidence, which allows a plaintiff to recover money damages if they can prove the requisite elements of the claim. In most states, the consequences are civil or evidentiary sanctions. The sanctions can take the form of specific jury instructions (adverse inference), exclusion of additional relevant evidence, dismissal, or even an adverse judgment.

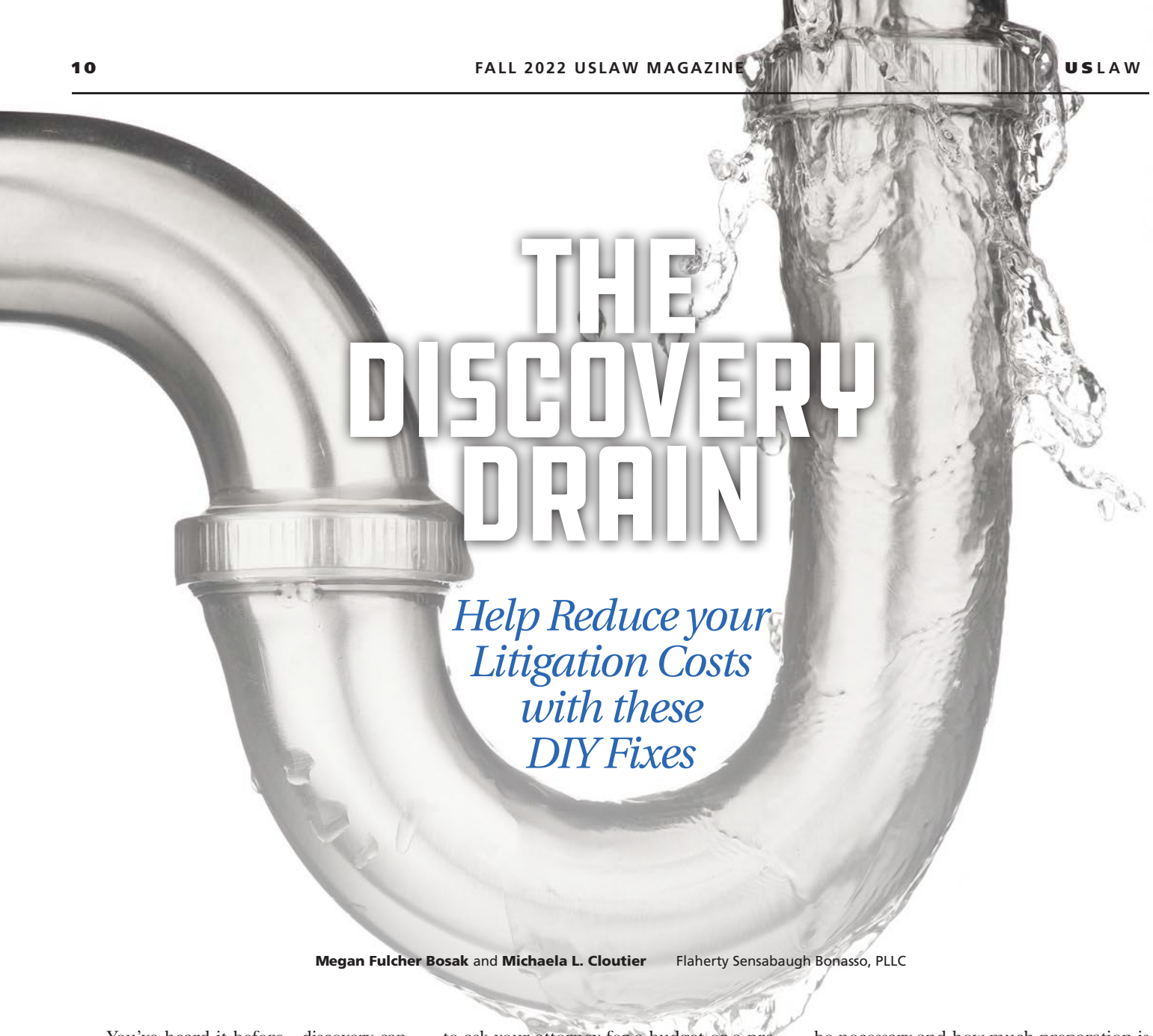
TIPS TO AVOID SPOLIATION

- Err on the side of caution when deciding to preserve evidence. Analyze a situation early to determine if litigation is reasonably foreseeable or if the duty is triggered by other sources. Preserve beyond what you think is relevant. As a rule of thumb, preserve six months worth of records.
- Provide litigants or potential litigants with a reasonable opportunity to inspect and test evidence before it is destroyed if evidence cannot reasonably be retained.
- Keep a written record of all preservation requests or offers to inspect evidence.
- Take photographs or videos of the evidence, if possible.
- Review all company document retention policies to determine that you are acting within those guidelines.
- Take an active role in document preservation efforts, including placing a legal or litigation hold on relevant items.
- Designate a person such as a client records manager or information technology manager to be responsible for locating and preserving hard copies and electronically stored information.
- Contact your attorney in the relevant jurisdiction for assistance.

Kevin L. Fritz is a partner at Lashly & Baer, P.C. in Missouri. He engages in all aspects of civil litigation, in both state and federal courts, with an emphasis on transportation litigation involving motor carriers, insurance defense, premises liability, product liability, commercial and business litigation, including pre-trial and discovery matters, trials before judges and juries and upon appeal.

Shannon C. King is an associate at Lashly & Baer, P.C. in Missouri. She is a litigator who focuses her practice on civil litigation, with an emphasis on transportation and commercial litigation. She has experience in all phases of the litigation process from intake, evaluation, investigation and discovery, motion practice and trial preparation.

All footnotes referenced in this article are available at lashlybaer.com/footnotes.



THE DISCOVERY DRAIN

Help Reduce your Litigation Costs with these DIY Fixes

Megan Fulcher Bosak and **Michaela L. Cloutier** Flaherty Sensabaugh Bonasso, PLLC

You've heard it before—discovery can be expensive and burdensome. Given that written discovery is one of the most significant expenses in litigation,[1] it makes sense that discovery costs are a frequent complaint. Today's litigants are especially eager to reduce litigation costs in light of sky-high inflation across the board. But discovery expenses don't have to be such a drain on your litigation budget. Proactively participating in your defense can help you get specialized, cost-effective legal representation and a better outcome. While every case is different, some simple ways to get more involved are applicable in most types of litigation and can help you stop the discovery drain.

PIPE UP! ASK QUESTIONS, INCLUDING "HOW MUCH IS THIS GOING TO COST?"

It is in the best interest of the attorney-client partnership if the client is educated about the litigation process and able to assist in their defense, so don't be afraid to ask your attorney for a budget or a prediction of likely litigation costs. At most firms, there are a variety of billing arrangements available. Attorneys can often tailor their legal services to meet varying needs and budgets—but only if you inform them of your litigation needs. Your attorney won't be offended if you ask—they're used to providing budgets and/or litigation plans to their clients at the outset of litigation, and it's beneficial to them if they can understand your financial constraints as well. It can help them determine which aspects of the case they should focus on and inform a strategic decision regarding how quickly you should attempt to resolve the matter.

Also, be sure to ask your attorney what will be needed from you throughout the litigation, especially during the discovery process. For example, your attorney could give you an estimate of when to expect written discovery requests and a prediction regarding whether corporate depositions will be necessary and how much preparation is likely to be required.

And, pipe up! Don't be afraid to ask your attorney if there are any other ways you can help to keep costs down.

HELP IDENTIFY THE SOURCE OF THE LEAK

One specific way to help minimize costs is to do some preemptive investigation and document collection at the very outset of litigation when recollections are the freshest. While the information your attorney requests might vary depending on the type of case, the venue, and other considerations, there is a good bit of information that attorneys consistently need for common motions, defenses, and discovery requests:

- The story: what happened from your perspective (especially the date of any relevant events, as this might form the basis for statute of limitations or statute of repose de-

fenses);
- The name of any individuals with knowledge of the incident at the heart of the litigation;
- Any documents that relate to the incident at the heart of the litigation (especially any documents that you know the opposing party is aware of);
- Information about the incorporation or founding of your company/organization;
- The location of your organization's current headquarters;
- The location of any other facilities owned by your organization at which a significant number of employees work and the number of employees at each.

You know your organization better than your attorney does. While it might seem counterintuitive, being over-inclusive with the information you provide can reduce costs. An attorney who places your interests first will hold off on reviewing a document until they know it's necessary to do so, especially if you provide some context for the documents you send. Sending your attorney all the relevant information you have, especially the above-listed information, can help you avoid significant charges for time spent interviewing witnesses or tracking down information about your company's history from other sources.

Litigation attorneys also start thinking about a "theme" for a case as soon as they receive notice of the suit. This information helps your attorney develop their theme quickly, as they can see the full picture—including potential defenses—early on. If your attorney has the information they need, they can strategize when and how to conduct negotiations and proceed with defenses quickly, helping the litigation to resolve more efficiently.

KEEP THE INFORMATION FLOWING

It is imperative to send your attorney any information that you think might harm your defense. You should be ready to say right away whether there is anything "out there" that might negatively affect your case.

Sometimes clients think that their defense will benefit from hiding alarming facts from their attorney, hoping that those facts never get out, but this is not a reliable strategy. Bad information almost always comes out. You should have faith in your legal counsel's ability to advise you, regardless of the factual situation. However, to properly advise you, your attorney needs to know *all* the relevant facts from the outset, so they have time to formulate an effective defense or to better evaluate how much a case is worth. Otherwise, your attorney may plan a defense around good facts and later be forced to spend time formulating an entirely new defense. This will harm the consistency of your overall case, cost you money in legal fees, and even cause you to miss settlement opportunities.

In short, your attorney needs to know the holes in your defense, so they can help you figure out how to patch them and avoid wasting time and money on untenable legal positions.

DON'T FORGET PREEMPTIVE MAINTENANCE!

Discovery disputes can blow your discovery budget and prolong the discovery process, but investing a bit of time on preemptive maintenance early on can ensure you don't face a big blowout later in the litigation.

Boilerplate objections are a major cause of discovery disputes. Admittedly, boilerplate objections are sometimes the result of attorney laziness or obstructionist tactics. However, they are often the result of an attorney simply lacking the information required to respond to discovery requests substantively, necessitating evasive and incomplete responses and objections. Such boilerplate responses rarely satisfy the opposing party, frequently causing a dispute. Additional communications and/or pleadings associated with such a dispute can quickly add up, further raising discovery-related litigation costs. Necessary supplemental discovery responses will result in more attorney and/or paralegal time billed. Boilerplate discovery responses also irritate the courts and can lead to sanctions.[2] If all likely relevant information is produced to your attorney early in the litigation, your attorney will already have most of the information they need when they receive discovery requests, and these expenses can be avoided or minimized.

Other discovery disputes that can quickly cause discovery costs to skyrocket often arise from the propounding of multiple sets of discovery requests and the noticing of unnecessary corporate representative depositions. Though technically disallowed by the Rules of Civil Procedure,[3] attorneys will often use the propounding of multiple burdensome discovery requests as a strategy to force the other party to settle. But the expense associated with responding to multiple sets of discovery requests can be minimized if your attorney has the information necessary to respond without having to communicate with you extensively or eliminated when your attorney has the required information to submit complete—rather than evasive—responses initially. The noticing and taking of corporate depositions is also often used as a tactic to force a settlement, but these expenses can be avoided by providing the information that opposing counsel requests during the first round of written discovery. (If all relevant information has already been produced, there won't be anything for the opposing party to seek.) Both disputes can be avoided through good attorney-client communication and planning, saving you from dispute-related expenses.

Sometimes discovery expenses feel like a slow leak, and other times—especially when disputes arise—they come in the form of one big, costly repair. But being forthright with your attorney, and giving them access to necessary documents, can save you money, especially by helping to avoid discovery disputes.

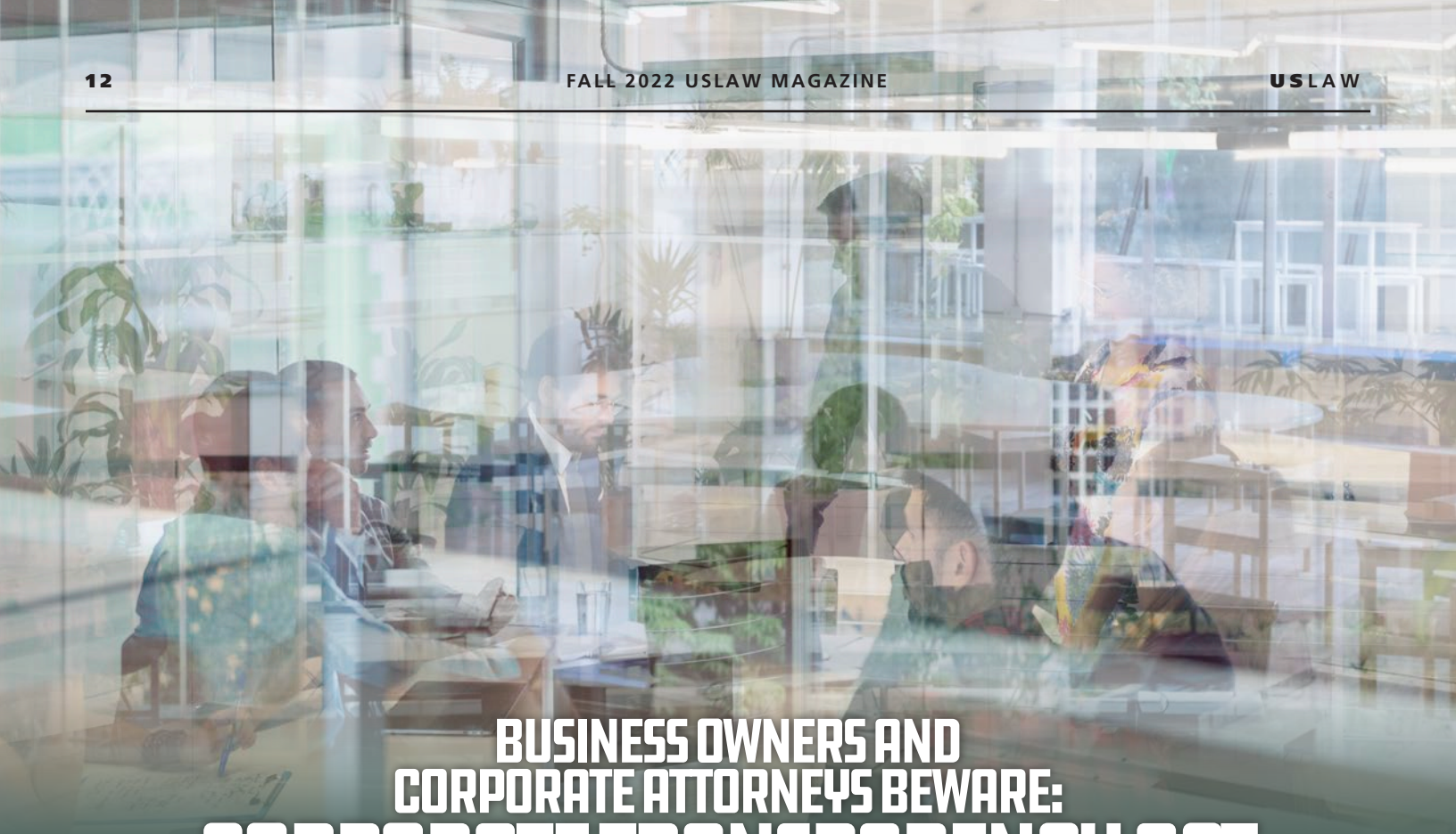
Megan Fulcher Bosak is a member in Flaherty's Charleston office. She focuses her practice on mass litigation, medical malpractice, and long-term care with proven results. Megan may be reached at mbosak@flahertylegal.com.

Michaela L. Cloutier is an associate in our Charleston office, where she is a member of our complex tort and product liability practice group. Michaela may be reached at mcloutier@flahertylegal.com.

[1] *See* Lawyers for Civil Justice et al., Statement, Litigation Cost Survey of Major Companies, 2010 Conf. Civ. Litig., DUKE L. SCH., https://www.uscourts.gov/sites/default/files/litigation_cost_survey_of_major_companies_0.pdf at 2 (2010) ("discovery costs comprise at least one-fourth of total outside legal fees"). *See also* Institute for the Advancement of the American Legal System, Electronic Discovery: A View from the Front Lines, at 3–4, 25 (2008) (e-discovery costs alone amount to approximately $3.5 million for a typical mid-size lawsuit).

[2] *See* Fischer v. Forrest, No. 1:14-cv-01307-PAE-AJP (S.D.N.Y Feb. 28, 2017) (order instructing parties to comply with Rule 34's requirement to state objections with specificity), https://uploads-ssl.webflow.com/60f0542421b57fec161904f4/610ab7884091b7b2bcd3992e_Fischer-v-Forrest-Judge-Peck.pdf and Liguria Foods, Inc. v. Griffith Lab'ys, Inc., 320 F.R.D. 168, 171 (N.D. Iowa 2017) (warning about imposition of sanctions due to obstructionist discovery responses). *See also* Wesley Corp. v. Zoom T.V. Prod., LLC, No. 17-10021, 2018 WL 372700, at *1 (E.D. Mich. Jan. 11, 2018) (imposing sanctions).

[3] *See* Fed. R. Civ. P. 26(g)(1)(B)(ii).



BUSINESS OWNERS AND CORPORATE ATTORNEYS BEWARE: CORPORATE TRANSPARENCY ACT IMPOSES REGULATORY REGIME

John D. Cromie Connell Foley LLP

On January 1, 2021, the United States Congress passed the Corporate Transparency Act (the "CTA"), which was included in amendments to the Anti-Money Laundering Act of 2020 (the "AMLA"). These federal statutes are designed to update and amend the United States' money laundering laws. The AMLA "seeks to strengthen, modernize, and streamline the existing AMLA regime by promoting innovation, regulatory reform, and industry engagement." As part of this process, the CTA is designed to increase transparency by requiring entities meeting the statutory definitions of "reporting companies" to file "beneficial ownership" and "company applicant" information with the United States Treasury Department's Financial Crime Enforcement Network ("FinCEN"). In implementing regulations, the CTA will have a considerable impact, and impose new and significant reporting obligations, on small businesses and entrepreneurs who until now have not had a federal reporting requirement of any kind. These requirements may come as an unwelcome surprise to clients. Practitioners should be aware of the significant obligations and penalties for non-compliance.

Under the CTA, FinCEN is authorized to establish and maintain a national registry of "beneficial owners" of entities that are deemed "reporting companies." Congress believes that the lack of uniform state laws and regulations requiring entities to disclose beneficial owners had arguably facilitated the use of "shell" companies to engage in illicit activities, including money laundering, securities fraud, terrorism, and human and drug trafficking. CTA is designed to limit the ability of criminals to utilize entities to engage in criminal conduct. As a practical matter, however, law-abiding business owners and entrepreneurs will now be subject to new additional national reporting and compliance requirements.

APPLICABILITY

Under the CTA, a "reporting company" is defined as any corporation, limited liability company, or similar entity created by way of filing a document with a Secretary of State or similar office in any state, territory or federally recognized Indian Tribe, or formed under the laws of a foreign country and registered to do business in the United States. It should be noted that it is unclear, pending formal adoption of implementing regulations, whether limited liability partnerships are included. Because the focus of the CTA is on "shell companies and other entities with limited or no operations," the legislation includes exceptions for entities in a regulated industry, publicly traded companies, investment vehicles operated by investment advisors, non-profits and governmental entities. There is also an exception from required reporting for an entity that: employs more than 20 employees; filed in the previous tax year a tax return demonstrating more than $5 million in gross receipts or sales; and has an operating presence at a physical office within the United States. In addition, entities that are subsidiaries of such excluded companies are also exempted from the reporting requirements.

BENEFICIAL OWNER

The CTA defines a "beneficial owner" of an entity as any individual who, directly or indirectly, (i) exercises substantial control over the entity or (ii) owns or controls not less than 25% equity in the entity. Of particular note, the term "substantial control" is not defined in the CTA. Certain individuals are specifically excluded from

the definition of beneficial ownership, including a minor child (as long as the child's parents' or guardian's information is reported); an individual acting as an intermediary or agent on behalf of another; a person whose control over reporting the company derives solely from their employment; an individual whose only interest in a reporting company is through a right of inheritance; or a creditor of a reporting company (unless they qualify as a beneficial owner through substantial control or equity ownership).

When reporting to FinCEN, a reporting company must provide each beneficial owner's name, date of birth, residential or business address, and a form of unique identifying number from an acceptable identification document (e.g., state driver's license or passport). The date for reporting purposes depends on whether a reporting company is an existing entity or a newly formed entity. After the effective date of FinCEN's anticipated implementing regulations, new reporting companies will be required to report beneficial owner information at formation. Existing companies will need to provide such information within two years from the promulgation of the implementing regulations. A reporting company will also be required to update information within the year of any change of new beneficial ownership.

PENALTIES FOR VIOLATIONS

There are significant penalties for violating the CTA's reporting requirements. Willful failure to provide a report with complete information or otherwise willfully providing false information can result in fines of up to $10,000 and imprisonment for up to two years. CTA does contain a safe harbor from such civil and criminal penalties for the submission of inaccurate information if the reporting individual voluntarily and promptly corrects the report within 90 days.

NATIONAL REGISTRY

Significantly, it is anticipated that FinCEN will be responsible for storing the collected information required to be submitted pursuant to the CTA in a secure "private database." CTA provides that beneficial ownership information will only be made available in connection with a request by a federal law enforcement agency; a state, local or tribal law enforcement agency (if authorized by court order); a federal agency on behalf of a foreign country; or a financial institution for customer due diligence purposes and if authorized by the reporting company. Additionally, it is expected that the laws regarding "know your customer" due diligence requirements for financial institutions will be updated to conform to the CTA's anticipated methodology to verify financial institutions' customer information.

IMPLEMENTING REGULATIONS

FinCEN released proposed regulations on December 7, 2021, to implement the requirements of the CTA. Notably, the proposed rules seek to clarify the meaning of "beneficial owner" by defining the terms "substantial control" and "ownership interest." The proposed CTA regulations set forth three specific indicators of "substantial control" as follows: service as a senior officer of a reporting company; authority over the appointment or removal of any officer or dominate majority of the board of directors or similar body of a reporting company; or direction, determination or decision of, or substantial influence over, important matters of the reporting company, including sale, lease or transfer of any principal assets of the company, the entry into or termination of significant contracts, major expenditures, and investments by the company in compensation programs for senior executives. The proposed regulations also include an omnibus provision defining "substantial control" to include "any other form of substantial control over the reporting company." FinCEN has noted this catch-all provision was included to make it clear that a substantial control can take additional forms not specifically listed in the regulations and to prevent individuals from evading compliance by hiding behind formalism.

The proposed regulations also take a broad view of what constitutes an "ownership interest." Under the proposed rules, an ownership interest would include both equity in the reporting company and other types of interests, such as capital or profit interest, including partnership interest or convertible instruments, warrants or rights, or other options or privileges to acquire equity, capital or other interest in the reporting company. An ownership interest would also include any ownership interest by another person who an individual has the ability to control. With respect to the required information to be disclosed, the proposed rules or regulations state that individual beneficial owners and company applicants who do not act as formation agents must report their residential address for tax residency purposes because such information would be most "useful for establishing the ambiguous identity of an identified good and official owner."

Regarding company applicants, FinCEN has proposed a bifurcated approach. Company applicants who provide a business service as a corporate or formation agent would need to report their business address. For all other company applicants, the reporting company would need to report the residential street address the individual uses for residency purposes. Under the proposed regulations, FinCEN has determined it has the authority to require reporting companies to provide scanned copies of identification documents to the agency in connection with reporting the unique identifying number. FinCEN believes collecting such images would "significantly contribute to the creation of a highly useful database for law enforcement and other authorized users and that the proposed requirement would make it more difficult to provide false identification information." In addition, although not specified by the CTA, under the proposed rules, reporting companies will be required to provide certain information to FinCEN, including the following data: name and alternative name; business street address; jurisdiction of formation or registration; and a unique identification number. The rulemaking process with respect to the CTA is ongoing. It is anticipated that future rulemaking administrative proceedings will address other aspects of the CTA, including the establishment of protocols to determine access to and disclosure of beneficial ownership information.

RECOMMENDATIONS

While the goals of the CTA may be laudable, law-abiding entrepreneurs and businesses will be required to comply with a new and rigorous regulatory regime. Corporate attorneys should be mindful of the new obligations imposed under the CTA and educate their clients (some of whom may not be enthusiastic) on the requirements. Practitioners would be well advised to (i) assemble beneficial ownership information for legacy entities subject to the CTA requirements; (ii) analyze governance documents for provisions that conflict with the requirements of the CTA; (iii) where necessary, amend such agreements to provide for compliance; and (iv) develop protocols to address ongoing reporting obligations.

John Cromie is a partner with Connell Foley LLP in New Jersey. He is Chair Emeritus of USLAW NETWORK, Inc. and Chair of Connelly Foley's Corporate and Business Law Group.

Settlement Strategies in the Days of Mega and Nuclear Verdicts

Rachel D. Grant, CSSC Arcadia Settlements Group

Insurance claims professionals and their attorneys face many challenges throughout the course of a claim, especially as nuclear and mega verdicts loom so large, making it critical that industry leaders consider Structured Settlements in early resolutions.

Historically, U.S. law has recognized that personal injury damages should be excluded from taxable income since the Revenue Act of 1918. Section 104(a)(2) of the Internal Revenue Code codified the law, guaranteeing that lump sum monies received for the damages "on account of" physical injury are excluded from gross income. There was, however, no exclusion for interest and investment earnings. In 1983, Public Law 97-473 amended Section 104(a)(2) to allow that the full amount of the future periodic payments from a structured settlement, which consists of both principal and interest, constitute damages and are, therefore, exempt from federal tax liability. In 1997, amendments to the federal tax law expanded the use of structured settlements to include workers' compensation claims [Section 104(a)(1)].

A VALUABLE PIECE IN YOUR CLAIMS TOOLKIT

Structured settlements are often misunderstood - or simply forgotten about - during the claims resolution process. While not every matter may resolve with a structured settlement component, they are useful to consider to avoid nuclear verdicts, evaluate settlement value, and calculate future financial and/or medical needs of claimants and their families. While the list below is not exhaustive, the following are instances when consideration of a structured settlement might make sense.

Claims for which a structured settlement are most useful:

- Wrongful death
- Minor or mentally incompetent person
- Disability and catastrophic injuries
- Plaintiffs with limited investment or financial expertise
- Offer and demand are too far apart
- Workers' compensation claims and Medicare Set-Aside Arrangements (MSA)
- Attorney fees can be structured

LIFE CARE PLANS Structured funds can address the future value of life care plans that will satisfy the plaintiff's or claimant's medical needs while potentially saving the defendants and insurers hundreds of thousands, if not millions, of dollars. Purchasing future benefits is the most affordable way to close the gaps between available settlement dollars and proposed life care plans and mega pre-suit demands.

CLAIMANTS ON GOVERNMENT ASSISTANCE Claimants who receive government assistance can benefit from a structured settlement to preserve their ability to qualify. Settlement funds accepted as cash might destroy their eligibility, but when settlement dollars are placed in a structured settlement annuity and strategically paired with a Special Needs Trust, claimants' eligibility for needs-based assistance is often protected.

MINORS AND OTHER PROTECTED INDIVIDUALS When the claimant is a minor or a protected individual, the Courts necessarily review the settlement to ensure that settlement funds are wisely invested for the benefit of the claimant. Structured settlements are overwhelmingly approved by the Courts for their protection of an injured party's best interests. They are especially desirable for guaranteed tax-exempt growth between the time of the settlement and first payments after the age of majority. A structured settlement is an excellent solution when compared to more common investment alternatives that incur trustee fees and taxable growth.

WORKERS' COMPENSATION CLAIMS In workers' compensation claims, the traditional structured settlement is a tried-and-true method to fund Medicare Set-Aside Arrangements (MSAs). After the initial "seed" cash payment, a structured settlement can be established to annually fund the MSA to pay for medical expenses at-

tributed to the work-related illness or injury. This protects the MSA account from premature consumption and is, therefore, viewed favorably by CMS.

NEEDS-BASED SETTLEMENT DISCUSSIONS

While a lump sum settlement is one-dimensional, structured settlements allow claims professionals to foster a dialogue on the actual past, present, and future needs of the plaintiff that extends beyond a simple discussion of settlement dollars. In developing a settlement strategy, a structured settlement offers claims professionals and their attorneys an alternative to cash-only negotiation, allowing claims organizations to legitimately stretch their claims dollars while negotiating in good faith.

This focus on needs can identify and address both immediate and future needs for medical treatments, lost earnings, education, scholarship funds, and to provide for ongoing income to a plaintiff's surviving beneficiaries.

Personal injury plaintiffs and beneficiaries of wrongful death actions generally have very low or no investment risk tolerance due to ongoing financial needs. Structured settlements offer spendthrift protection for plaintiffs to ensure adequate funds are available as needs arise and should be coordinated with current and anticipated income sources of the injured party.

THE ROLE OF STRUCTURED SETTLEMENT CONSULTANTS

In 2014, the National Structured Settlements Trade Association (NSSTA) joined forces with CLM Advisors to survey 100+ claims professionals about how they use structured settlements in their claims practice.

THE STUDY FOUND THAT CLAIMS PROFESSIONALS ESTIMATED THAT:

- 40% of the structured settlement proposals they have requested from consultants are used.
- 25% of the study's participants said that they believe that using structured settlement proposals helps to speed up the resolution of the claim.
- Almost 50% felt that utilizing a structured settlement makes a case more likely to settle.
- Interestingly, 75% of those surveyed stated that they themselves would take advantage of a structured settlement if they were an injured party.

The NSSTA/CLM study showed that the claims professionals surveyed agreed that claims are more likely to settle when a creative approach is taken during settlement negotiations. A full 96% ranked their structured settlement consultants' experience, knowledge and level of expertise as "valuable" to "very valuable" to their claims process. Further, 67% of those surveyed stated that the participation of their structured settlement consultants at mediations and settlement conferences was "valuable" to "very valuable."

ADVANTAGES FOR THE DEFENDANT/INSURER AND DEFENSE COUNSEL

- Reduces administrative and legal expenses
- Reduces expense of trial and appeal
- Eliminates the potential for nuclear verdicts
- Bridges gap between offer and demand
- Eliminates potential bad faith claim
- Settles case without risk of adverse trial results
- Can break a negotiation impasse
- Services provided at no additional cost to the parties.

ADVANTAGES FOR PLAINTIFFS AND PLAINTIFF'S COUNSEL

- Tailored income stream to meet specific financial needs
- Guaranteed money for plaintiff and family
- Investment advantages
- Competitive "taxable equivalent" return
- Payments are income tax-exempt
- Can integrate the structured settlement program with asset management solutions and/or trust
- Avoids hazards of litigation, expenses of discovery and trial
- Services provided at no additional cost to the parties.

A NO-COST SERVICE

There is no downside or out-of-pocket costs to any of the parties for considering a structured settlement. During the early recognition and early resolution stages, an independent structured settlement consultant can bring an advantage to the defense during the settlement process. An independent structured settlement consultant is empathetic to both the needs of the defendants (committed to avoiding high-risk exposures) and the injured party (fairly compensating for sustained injuries and protecting the financial security of the claimant).

Collaboration is essential to achieving a good resolution. Your structured settlement consultant will help identify the benefits of a structured settlement to all parties and assist the plaintiff in understanding the advantages and tax-exempt benefits, as well as coordinating the settlement with other legal vehicles so that eligibility for public benefits is preserved. Further, your consultant will assist in the preparation of the necessary settlement documents to ensure that the proper corporate entities are included and protected and that the IRS requirements are met so that the tax advantages are preserved.

CONCLUSION

With a structured settlement, the settlement team is able to negotiate benefits, not just bottom-line costs. All settlements involve compromise, and, while you may not meet all the plaintiff's needs, utilizing structured settlement options in your claims negotiations demonstrates a willingness to creatively address the plaintiff's unique needs.

The economic uncertainty of current market conditions has caused a surge in interest for structured settlements: plaintiffs and their attorneys are increasingly using structured settlements to ensure that guaranteed tax-exempt payments act to ensure good financial management and avoid volatility in the financial markets.

Rachel D. Grant, CSSC is a certified structured settlement consultant with Arcadia Settlements Group, USLAW NETWORK's exclusive structured settlements corporate partner. Rachel is based in the metro-Detroit area but provides services to her clients nationwide.

THE VALUE OF RISK TRANSFER CONSULTING IN REAL ESTATE TRANSACTIONS AND CONSTRUCTION PROJECTS

Michael A. Kotula and **Robert A. Maloney** Rivkin Radler LLP

In real estate transactions, like ground leases, access agreements, or construction agreements, parties often make risk transfer promises to one another to indemnify against liabilities and obtain insurance.

Attorneys handling these matters specialize in real estate or construction law but may not be as familiar with the nuances of liability and insurance coverage. A risk transfer consultant can add immeasurable value by helping draft insurance requirements and indemnity provisions that maximize risk transfer. And they can review insurance policies bought to comply with these requirements and recommend commercially reasonable changes to the policies before the project commences and a loss occurs.

Most policies bought to comply with these requirements have fundamental disconnects to the project at hand. But they can be easily fixed by a risk transfer professional who speaks the same language as the insurance brokers and underwriters and knows what is available in the insurance marketplace. A risk transfer consultant complements a transactional attorney's practice, leading to better outcomes for clients and placing the risk of loss on others, where it belongs.

UNDERSTANDING THE PROJECT

Three different project scenarios illustrate the value of risk transfer consulting. In Scenario 1, a property owner negotiates a ground lease, under which the tenant will construct a structure on the landlord's property. In Scenario 2, a property owner negotiates an access agreement with a neighboring property owner to allow access to its property for construction activities on the neighbor's property. In Scenario 3, a property owner negotiates construction contracts for a project on its own property. In each of these scenarios, one has superior bargaining power to demand risk transfer.

RISK TRANSFER CONCEPTS

The most basic risk transfer concept is to maximize one's ability to shed risks of loss to others. Risk transfer involves using many tracks to afford protection from liability for the risk of loss. One track is contractual indemnity and hold harmless. Another track is insurance procurement – typically, being named as an additional insured. Each track comes with certain benefits and limits, but together they can provide maximum protection for losses attendant to a project. The goal is to obtain both forms of risk transfer protection from as many parties as possible.

THE CONTRACTUAL INDEMNIFICATION TRACK A party (the indemnitee) can require another party (the indemnitor) to agree to indemnify, defend, and hold it harmless from liabilities arising out of a project. The enforceability of a contractual indemnity provision may be limited under state law in some cases. A risk transfer consultant will be familiar with these limitations. For example, some states prohibit a party from being indemnified for its own negligence in a case involving construction or renovation activities. As a result, an indemnity provision which purports to require the indemnitor to indemnify the indemnitee for any and all liabilities may be unenforceable if the indemnitee has any affirmative negligence. Yet case law provides that if the indemnification is specifically afforded "to the fullest extent permitted by law," then an indemnitee who is 1% negligent may recover indemnification from the indemnitor for the remaining 99% of its liability.

We often see overbroad indemnity provisions that are unenforceable, but there are often easy fixes. Even where an indemnity provision is enforceable, it may not confer a benefit if the indemnitor lacks insurance for the risk of loss, or assets to pay if insurance is unavailable.

THE INSURANCE PROCUREMENT TRACK Each project presents challenges to make sure that the insurance obtained will, in fact, afford coverage for the project. Failure to get it right will result in insurers disclaiming coverage for the loss. For example, ground lease and access agreement scenarios have one thing in common: The work is not performed for the landlord in the ground lease or the property owner affording access to its property to a neighbor. The most common additional insured (AI) endorsements in contractors' policies contain language that the AI coverage is afforded when the liability for bodily injury or property damage "arises out of" or is "caused by" the named insured contractor's ongoing or completed operations "performed for" the AI. This is a trap for the unwary. In these scenarios, insurers with these endorsements will seize on this distinction to deny coverage to the landlord or property owner if a claim arises. A risk transfer consultant will insist on the use of a different AI endorsement – often the ISO CG 20 26 AI endorsement – which names the right party in a schedule, identifies their address, and affords coverage for liability arising out of the "use" of their property.

Another pitfall to look out for is priority of coverage. In these scenarios, the party to be named as an AI expects the AI coverage to pay first. In insurance parlance, they expect it to be primary and noncontributory insurance. But there is no uniformity of insurance policy language; differences abound. Increasingly, many insurers have inserted excess "other insurance" provisions in their policies. In today's insurance market, however, primary, umbrella and excess policies may contain what is called a Primary and Noncontributory (PNC) endorsement, which provides that the insurance afforded as AI protection will be primary and will not seek contribution from any insurance issued to the AI as a named insured. If a policy doesn't contain a PNC endorsement, one should be requested; virtually all insurers have PNC endorsements that they use on request. Like many things, if you don't ask, you don't get. And not specifying PNC coverage in the written contract can also be fatal. Failure to get this right may result in a client's own insurance having to pay before all the AI coverage has paid.

The insurance track also entails making sure the right types of policies are procured. While primary CGL, umbrella, and excess are standard requests, commercial auto may be important for the risk of injury or loss from loading or unloading an auto. This may be barred in the primary CGL policy by the auto exclusion (which bars coverage for liability for the use of an auto, including the loading or unloading of an auto). The auto coverage picks up this risk.

The insurance track also involves determining what limits of insurance should be required, which entails understanding what is common for a party or trade contractor. Finally, the insurance track involves reading each of the policies that are bought to make sure that no provisions take away the required coverage. Insurance policies may contain provisions which modify how the contractual liability and employers' liability exclusions work, or may contain non-standard exclusions, which upend the coverage that parties expect and are counting on. A risk transfer consultant can spot these issues easily.

It is always better to have more risk transfer than less. To maximize it, we use a site access agreement with each party that comes onto the premises to perform work. Such an agreement, which may be only two pages in length, contains contractual indemnity and insurance procurement requirements in plain English. Many insurance policies issued to contractors contain blanket AI endorsements, which automatically afford AI coverage if there is a written contract between the named insured and the would-be AI. Courts have read these standard endorsements as requiring direct privity of contract between the named insured contractor and the AI. By requiring everyone to sign a site access agreement, the party increases the likelihood of greater risk transfer in the event of a loss by satisfying this privity requirement.

A risk transfer consultant familiar with liability and insurance coverage, the insurance claims review process, and the availability of terms in the insurance marketplace can review policies bought to comply with insurance requirements to assess their adequacy. It is a rare case in which the policies do not present issues which would preclude coverage. If this review is done before the project commences and a loss occurs, a risk transfer consultant can identify shortcomings in the policies and prescribe fixes that are commercially reasonable and readily made. When an insurance broker advises that something requested cannot be done, risk transfer consultants are often able to provide an endorsement that the insurer used in another policy. In short, a risk transfer consultant can remove hurdles to coverage before there is a problem, so that when a claim arises it will be covered.

A party can make whatever risk transfer requirements they like in a contract, but if they don't review the insurance policies bought to meet those requirements, they are accepting them at face value and will often find out the hard way that hope is not a strategy. Obtaining the policies and reviewing them for compliance with the insurance requirements is integral to ensuring effective risk transfer.

A risk transfer consultant can help to lay the foundation for a successful loss avoidance strategy that effectively shifts the risk of loss to other parties and their insurers, thereby keeping the client's insurance loss history clear and their insurance premiums as low as possible. And it may be easier to sleep at night knowing this has been done.

Michael A. Kotula and Robert A. Maloney are Insurance Coverage and Risk Transfer Partners at Rivkin Radler LLP. They have deep experience representing insurers in insurance coverage matters and counseling institutions, businesses and property owners on risk transfer.

MORE THAN BLACK OR WHITE

By Ashley Ahn IMS Consulting

In the federal courts, a jury is composed of U.S. citizens from within the federal district in which a court sits. Often, the citizens who make up a jury represent a rich mixture of different races, ethnicities, religions, sexualities, ages, abilities, education levels, and socioeconomic statuses. Because of the variety of people who sit on juries, attorneys must relay their case stories, facts, and arguments in ways that are accessible to all jurors and that all jurors can understand.

This article describes how you can create courtroom designs that are appealing to and useful for a diverse audience.

DESIGN FOR PEOPLE'S PHYSICAL LIMITATIONS

The term "inclusive design" refers to digital designs that are accessible and meaningful for many different types of people. According to Microsoft, "Inclusive design is a methodology born out of digital environments that enables and draws on the full range of human diversity." Microsoft goes on to explain that inclusive design reflects "how people really are."

In the courtroom, just like in the larger society, there will be people who have physical challenges. It is ethical practice, benefits your case, and betters the legal system as a whole when you make sure that every juror has access to the information you relay in the courtroom. For instance, your presentation text should be large and clear enough so that all jurors can easily read it. Consider too that some people are color blind, so ensure your images use colors that most people can differentiate. Make allowance for hearing issues as well. Can sound levels be adjusted so that all jurors clearly hear your presentation?

KEEP IMAGES REAL

Courtroom imagery that reflects the diversity within our society makes viewers feel more included in the judicial process. That is not to say attorneys need to go out on a limb to ensure that every possible type of person existing in society is represented in each visual presentation. You just have to accurately reflect that you and your client are aware that our society is diverse.

Furthermore, it is smart and ethical practice to avoid depicting stereotypes in your graphics. For instance, not all doctors are males, not all nurses are females, not all basketball players are Black, nor is every scientist Asian, etc. Stereotypes exist in our society, and unfortunately, they have sticking power—despite the fact that they are inaccurate and offensive. Your chances of engaging and persuading jurors can decrease immensely if you offend them.

USE INCLUSIVE METAPHORS AND ANALOGIES

Analogies are an excellent tool for attorneys and expert witnesses to use when they need to explain complex information outside of the realm of most jurors' day-to-day lives. The analogies and metaphors, however, must also be understandable to a large audience.

Jurors who have never played or watched sports, for instance, are not going to understand your football game analogy. Some jurors who have had little experience playing board games are not going to comprehend how the business deal at the crux of your case is like a game of Stratego. Try to make certain that the metaphors and analogies you use relate to experiences that most people have had. If that goal is not possible, use a variety of analogies to explain the same concept.

CHOOSE WORDS CAREFULLY

Many commonplace phrases are nefarious stereotypes, or they stem from points

Inclusive Design for Courtroom Graphics

in history that remain painfully alive in the consciousness of various groups of people. For instance, referring to a business meeting as a "pow wow" denigrates the cultural significance that term holds for Native Americans. "Sold them down the river" hearkens back to slavery times when masters sent "misbehaving" slaves down the Mississippi River where conditions were especially harsh. "Dumb blondes," "women drivers," "paddy wagons"—those terms might seem harmless, but they are not harmless to the people who are the targets of those terms.

You may not always be aware of some of the commonplace phrases that have the power to offend, so it will make sense for you to present your courtroom slides to others before trial in order to gain their insights. For instance, I once had a client who not only wanted to use the term "circle the wagons," he wanted to display an image of the wagons circling. I had to explain to him that the phrase has its roots in racist perceptions of Indigenous Peoples. He was unaware of the phrase's negative connotation and was happy to receive that information and be saved from possibly offending a juror.

DON'T BE AFRAID TO ASK FOR MORE INCLUSIVE DESIGNS

Inclusive design must become the norm for courtroom presentations, and therefore, attorneys must be unafraid to ask their graphic designers to use imagery that is real and will resonate with all.

I once had a case in which we depicted a hypothetical negotiation on one of the slides. Both people in the image were Caucasian. The attorney, smartly, considered that the image might be more inclusive if it depicted one person as being non-White. He was, however, very uncomfortable making that request to me. His request went something like this, "So…the guy on the right…can we make…um…can one of them…uhh…have slightly darker…um…a bolder pigment?"

I recognized that he was self-conscious about making a request that pertained to race, and I was appreciative of the fact that he was trying to avoid in any way offending me. By asking for a more inclusive design, he was doing the right thing, however awkward his delivery of that message might have been.

It's OK to say Black, Brown, and White. It's OK to ask for a visual representation of someone older or shorter or in a wheelchair. These are the people who make up our society and whose rights, lives, and livelihoods are dependent upon the decisions made in our courtrooms.

When you show you recognize the diverse backgrounds of your jurors and you strive to be inclusive and respectful, judges and jurors will appreciate your efforts — and your client will benefit. On a larger scale, when you create courtroom imagery that is diverse, inclusive, and accessible, you contribute to creating a legal system that is fair, equitable, and truly designed to serve all people.

Ashley Ahn is a Trial Consulting Expert at IMS Consulting & Expert Services, and she serves on the company's Diversity, Equity, Inclusion, & Belonging (DEIB) Committee. To date, Ashley has been a senior consultant on over 30 patent cases heard in courts throughout the country, including in the International Commission in Washington, D.C.

COMPLETING THE PUZZLE

THE BENEFITS OF SIMULATION IN ACCIDENT RECONSTRUCTION

Marcos Salinas and **Zachary Cable** S-E-A

INTRODUCTION

First responders arrive to a routine accident scene. Three vehicles are strewn about on the roadway, each with heavy damage on multiple sides. Tire marks paint the pavement while the debris is scattered, illuminated by the flashing lights of emergency vehicles.

As paramedics get to work ensuring the safety and care for each passenger, the police attempt to make sense of the scene. As they interview each driver, no one can seem to recall coherently how the accident started and who could have caused it. The officers believe one vehicle was speeding, but that vehicle also had the right-of-way. In the midst of the confusion and uncertainty, they decide not to issue any citations.

The injuries are treated, the cars are towed, and the insurance companies are notified. Yet, in the wake of the accident, we are left with a police report with limited data, conflicting stories from each driver, and no clear party at fault. How can we

make sense of this chaos? What can be used to understand this incident, and moreover, can we trust it? Let us examine the evidence.

The vehicle damage, final resting positions, available electronic data, and tire marks are all pieces of the puzzle, but this is just the start. With these pieces, we can begin to reconstruct the puzzle, matching inter-vehicle damage patterns and placing cars on tire marks. Skilled reconstructionists can place the vehicles in their pre-impact lane positions in the moments leading up to the accident. But how can we get from these pre-impact conditions to understanding what actually happened? One answer is physics-based modeling, or as it is commonly called, simulation. Simulation allows an objective process of testing in order to scientifically validate how the laws of physics correspond with the available physical and testimonial evidence.

WHAT IS A SIMULATION

Intrinsically, simulation offers a mathematical approach that evaluates different parameters to see how the physics play out. Specifically, accident reconstruction simulation packages are based on Newtonian laws of motion as well as scientific principles, including the conservation of energy and the conservation of momentum. In the case of motor vehicle accident reconstruction, much like the incident outlined above, a scenario can be evaluated based on available evidence known by the reconstructionist. From here, with data like scene roadway evidence, 3D scan measurements, and vehicle EDR (Event Data Recorder) information, the simulation can be run and the results evaluated. These results can then be compared to the known conditions of the subject incident, and through an iterative process, a series of hypotheses are tested and considered. What changes is the sequence most sensitive to? Are there parameters that have less influence on the outcome?

All these questions can be answered with the use of simulation. In the end, the test series should develop into a chain of reliable scientific conclusions. In the case of an accident scenario, reconstructionists can utilize evidence determined from camera-matching techniques and 3D data taken from the site inspection. Simulation iterations can then be performed to determine initial vehicle positions, headings, and speeds that match the final rest positions and damage profiles of the subject vehicles. Performing simulations that match vehicle pre-impact positions, roadway evidence such as tire marks and gouges, vehicle damage profiles, final rest positions, EDR data, and testimonial evidence from drivers and witnesses, give reconstructionists a high level of confidence that their reconstruction is accurate and consistent with the available evidence. This further allows them to perform avoidance and alternate scenarios to answer many questions surrounding an investigation.

Different simulation software can make use of different mathematical models. These models are extensively validated before they are accepted for the court. However, there are instances where results can be misleading or simply, the models disagree. For example, when dissecting a simulation, it may be found that it requires a rate of acceleration on par with a Ferrari, but the vehicle is a loaded tractor trailer. This is a clear indicator that the approach taken by the expert should be questioned. Was the loaded tractor trailer electric? Was it traveling down a hill without brakes? Why, and how, was the acceleration rate chosen? The idea also extends to braking capabilities, steering inputs, and any other physical parameter related to the sequence. A steering input that, on the surface exceeds human capability, should be explored and questioned. Ensuring this type of continuity throughout a simulation can assist in scrutinizing the conclusions proposed and help make certain, or at least less likely, that a dubious result is believed. Whether it is a simulation on your side or the opposing side, scientific principles must be applied and followed.

SIMULATION V ANIMATION

It is important to note that while animations are a sister to simulations, they do not always provide the same value to a case. A simulation must rely on a proven mathematical model, and in the case of accident reconstruction, to the laws of physics. While in contrast, an animation does not have the same requirement. It is possible to animate a sequence that looks realistic enough to persuade a jury, however, violates the laws of physics and contains no scientific integrity. That is not to say that all animations are lacking scientific integrity, however, physics-based simulations are bound by scientific principles and result in confidence that can be conveyed to your client and to a jury.

Animations are developed by the hands and mind of the designer and can be operated without constraints to physical reality. Simulations, specifically ones like HVE or PC Crash, are programmed to operate within these constraints. The person operating the program can only manipulate parameters (speed, direction location, etc.), but not the way the vehicles move. The program moves them based on the mathematical parameters that govern vehicle motion. Thus, as it relates to vehicle accident reconstruction, animations are strongest when underpinned by a sound scientific simulation. Without this foundation, an animation is an artistic rendering, susceptible to being questioned and challenged by opposing counsel. Conversely, an animation based on physics-based simulation packages can accurately and easily explain and demonstrate complex accident situations with clarity and confidence.

CONCLUSION

The simulations for the crash scenario outlined in the opening provided a valuable result for our case which showed that the vehicle with the right-of-way was speeding and traveling 65 mph in a 35-mph zone. The reconstructionist was able to provide opinions regarding the perception and response for the other drivers and determined that had the speeding vehicle been abiding by the limit, there would have been an additional 150 feet available for the drivers to avoid the collision.

There are many unknown parameters when evaluating an accident, but the value of an experienced reconstructionist utilizing the tool of simulation can help make the picture clearer. To begin with chaos and end with an understanding of any incident offers the confidence of being informed based on a scientific methodology to formulate valid conclusions.

Marco Salinas is a mechanical consultant with S-E-A. He received his Bachelor of Science degree in mechanical engineering, with a minor in business administration from the University of Texas at San Antonio. His experience includes the reconstruction of incidents involving passenger vehicles, commercial vehicles, motorcycles, bicycles, pedestrians, as well as rail and other large industrial equipment.

Zachary Cable is a mechanical consultant with S-E-A. He received his Bachelor of Science degree in mechanical engineering from Auburn University and is actively pursuing his Master of Science degree in mechanical engineering from Purdue University. His responsibilities at S-E-A include consulting on vehicle accident reconstruction involving automobiles, light trucks and commercial trucks.

SURVEILLANCE 101
WHAT IT TAKES TO BE SUCCESSFUL

Matt Mills Marshall Investigative Group

What does it take to be a successful Surveillance Investigator? What is it that makes a person good at surveillance? Is it experience? Is it luck? Is it intuition? A sixth sense? Street smarts? Maybe it is a combination of all these things and the patience of a saint. I believe the formula for a great surveillance investigator includes someone interested in what people do and why they do it. A good surveillance investigator can identify how they will do it, even before the subject does. They must be someone who can outthink an opponent, a chess player, and a puzzle solver.

Most of the people conducting investigations have some of what I would call "the right stuff," but only a few have it all. I know many surveillance experts, all of whom have been in the business for many years. They have passed their knowledge on to numerous others over the years but dollar for dollar, they are the best in the business. I have spent many years working with, talking to, and drilling into what makes these "surveillance experts" successful.

Every one of these surveillance leaders said they have family that supports them and understands that they may not be home for some special events. I can confirm that for years, holidays were celebrated late in the day, if at all.

In this article, I explore ways surveillance professionals collectively agree on the right way to conduct a successful surveillance investigation.

ASSIGNING A FILE FOR SURVEILLANCE

First things first: the collection of data and building case information. The client needs to understand that any information can be helpful. They need to provide all information available, including written reports, depositions, court filings, pictures, and even an original job application if it is available. You may not have filled out an application lately, but there is a small innocuous section that includes emergency contact information. That is a person who the subject trusts and believes will be at that number if needed. Guess what? They will probably know where your subject is as well.

PRE-SURVEILLANCE

This is where the rubber meets the road. Taking the information provided by a client and analyzing it. Use what you gleaned from what is already known and determine what is needed.

1. **Mapping** - Checking mapping applications to get a feel for the area is important. You may need to use a different type of vehicle to blend in with the locals. Mapping will also show what the surrounding area offers and where the potential shopping areas and local restaurants are located. Most importantly, assess the easiest ways in and out of the neighborhood, not just for the subject but for the savvy investigator.
2. **Internet presence** - Checking for an individual's internet presence may yield pictures of your subject and their family. You may uncover what they do regularly, such as planned activities, vacations, family outings, or a work schedule. Sometimes surveillance may not be required following an internet presence report. Posted content may show physical activities that appear to conflict with alleged limitations.
3. **Background check** - A background check can supply insight into the type of person you will be watching. Knowing a subject's criminal and civil records show a propensity to do things that might change the focus of your investigation. A person who has multiple criminal charges from bar fights to domestic violence should be watched from a greater distance, and you may want to focus on nights and weekends instead of work activities. Civil

cases may give your insight into why they filed the claim. If you uncover a bankruptcy, recent divorce, or other financial hardship could show that they need money to satisfy creditors. Never rule out potential greed.

4. **Driving history** - Checking a subject's driving history and determining all their registered vehicles is invaluable. Some states even provide driver's license pictures, registered vehicles, and a physical driver description. These records are essential when more than one potential subject may reside at the residence.

SETTING UP SURVEILLANCE

The prep work in your pre-surveillance has hopefully allowed you to gain an advantage over the subject or at least leveled the playing field. On some level, you should know where the subject could potentially go and how the subject may get there. Positioning can easily make or break your surveillance. Where you choose to set up is essential and understanding potential activities that could benefit the file can determine where you choose to position yourself. For example, if a subject doing yard work can close a file, your position will need to be where that activity can be documented. Here is where the patience factor comes in. Once you choose a spot, you cannot be moving around in the vehicle or changing positions in the area. Think of it this way, by arriving early in the morning; the vehicle is now part of the neighborhood as people wake up. If it is set in one spot for an hour, then moves to a new location, your subject may not be suspicious, but the neighbors may be alerted. If the subject working away from home is important to the matter, then your position needs to be where it is easier to follow the subject from the area.

FOLLOWING A SUBJECT

Following the subject is the most challenging portion of the surveillance process. Not only do you need to outguess the subject you are following, but you must be ready for every potential move other drivers might make in traffic. Shortly after starting to follow someone, you will need to profile their driving habits, so you can see or recognize what they will do before they might do it. For example, next time you are driving, pay attention to the vehicle in front of you. Most people telegraph the move they are going to make. Before someone changes lanes, they will start to fade toward the lane they will move into. Someone preparing to turn right may begin to move left to have more space to make the turn; I call this the *Muncie Swing Turn.*

You must constantly calculate how long a light will stay green, watching for other drivers and pedestrians, all while staying out of your subjects' mirrors. Once you have followed them to a location, you may not know the area and need to determine where you can document their activity quickly.

This all plays into the chess player analogy where experience comes into play. Let's not discount the luck factor; however, "proper planning prevents poor performance."

DOCUMENTING ACTIVITY

Long before you arrive on surveillance, you have tested your equipment, charged your batteries, curtains are in place, and ensured that your tripods are in working order. Again, patience is essential, but you must be ready to go when any activity starts.

The simplest files will be when the subject is active at home on multiple occasions and stays at home. However, experience dictates that is not how it goes. When a subject leaves home and makes multiple stops, you must make tough decisions as to what activities will benefit the file. You need to determine, "is the squeeze worth the juice." For example, documenting someone driving from their home and stopping to pump gas is always useful information, but if they go into a mini mart, is there anything they will do that will help the file? If the injury is a traumatic brain injury, where the claimed limitations are they can't do anything, especially where they would be required to do calculations or interact with the general public, surveilling them in the mini mart could be a good step. The surveillance experts' consensus is that most files wait for other activities like grocery shopping, big box stores, or clothing stores to film indoors.

Once a subject arrives at a worksite or other location like a park, where you can document activity for an extended time, it will be necessary to identify the potential activity and where you can discreetly document the majority or all of what your subject is doing. The surveillance team and the client need to have reasonable expectations. Sometimes you will be able to see and document everything, but there will be times when the subject will walk in and out of view.

REPORTING

Investigative reports culminate all that has happened before and during the surveillance. The report should be written from the perspective of a disinterested third party: "Just the facts, ma'am." There should be a comprehensive summary of the whole surveillance. When the report is completed, it should include all media the documentation collected. Embedded links are an industry standard at this point.

The final key differentiator for a surveillance investigator is being ready to testify. Investigators are rarely called upon in liability and disability files but much more often in workers' compensation claims. Regardless of the type of file, the investigator must always be prepared to testify. The client's attorney should prep the investigator before their testimony, including any known tactics by the subject's attorney.

Over the years, this group of surveillance experts has conducted thousands of successful investigations. They have obtained innumerable hours of video of subjects doing everything from mundane daily activities to racing cars or skydiving. This important surveillance work has saved millions of dollars on claims. Moreover, surveillance is a valuable tool for many types of files. I hope this overview gives your insight into surveillance considerations and what it takes to succeed.

Matt Mills is vice president/business development of Marshall Investigative Group. Matt has been in the surveillance and investigative field for 37 years. He has conducted surveillance investigations in every state except Alaska and in several countries. He has trained numerous surveillance investigators over the years. At present, he is guiding his clients on the best practices and efficient use of their claims dollars. He is a member of many claims organizations, exhibits and speaks at conferences around the United States and has spoken at Lloyds of London on several occasions.

FACES of USLAW

WICKER SMITH 70 YEAR ANNIVERSARY

Wicker Smith O'Hara McCoy & Ford P.A. celebrates its 70th anniversary
Over its 70 years of existence, Wicker Smith has developed a strong reputation for handling complex litigation in both state and federal courts. Although the firm has changed in size and scope over the years, exceptional legal representation is still at the forefront.

Richards H. Ford, Managing Partner of Wicker Smith commented, "The growth and success of Wicker Smith are the results of our exceptional attorneys and staff and their commitment to our clients and each other. So many exciting things have happened over the past 70+ years, and we are very proud to reach this milestone. It continues to be our privilege to help our clients rise to their most complicated challenges, and we are both proud of the firm's past and excited for its future."

Hanson Bridgett LLP in San Francisco has long participated in the annual Food From the Bar program. Every year, the legal community comes together for **Food From the Bar**. They are united for one common goal: to end hunger in San Francisco and Marin. This year, teams have raised $445,815, which is equivalent to 891,630 meals for neighbors! Hanson Bridgett has received a Platinum Achievement for its efforts in donating.

On June 7, **Hanson Bridgett** Managing Partner **Kristina Lawson** moderated the Newsmakers: Lesher Speaker Series for Ruben Navarette, who is part of The Washington Post Writers Group.

Baird Holm hosted its Best Places to Work in Omaha Award Luncheon in May to celebrate the winning companies with hundreds of professionals from the Omaha community. Created in 2003 by Baird Holm LLP and sponsored by the Greater Omaha Chamber, the initiative publicly recognizes and celebrates local employers who foster an engaged work environment and cultivate a culture dedicated to organizational success.

Michele Smith, a shareholder in **MehaffyWeber** in Houston, was elected president elect to the International Association of Defense Counsel (IADC) at its annual meeting in Berlin in July. Smith joined the IADC in 2006 and has served the IADC in multiple leadership capacities including chair of the Civil Justice Response (2009-2011-instrumental in rebranding the Committee), In-House and Law Firm Management (2016-2018-interviewing in the first IADC Speaks podcast), and CLE (2019) Committees. Among other committees, Smith is a member of the Diversity, Equity and Inclusion and International Committees. She was elected a Board member in 2019.

Donn C. Alexander of **Jones, Skelton & Hochuli** in Arizona and **Heidi L. Mandt** of **Williams Kastner** in Oregon have been named chair and vice chair, respectively, of the newly formed **USLAW NETWORK Medical Law Practice Group.** The USLAW Medical Law Practice Group is a network of experienced medical law attorneys handling healthcare litigation, regulatory and transactional matters for healthcare systems, pharmaceutical and medical device companies, and insurers across the country.

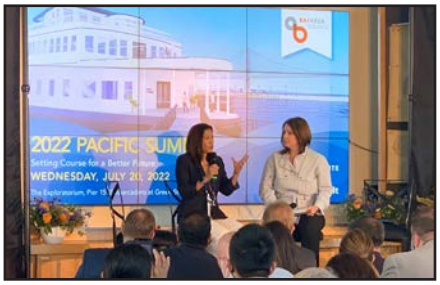
Sheryl Willert of **Williams Kastner** in Washington was featured on the cover of the 2022 Washington Super Lawyers Magazine.

In July, colleagues in **Lewis Roca**'s Denver office volunteered to prepare and serve lunch at the **Denver Rescue Mission**.

Lewis Roca and Denver Litigation Partner **Angela Vichick** hosted the Colorado Bar Association's Leadership Training "COBALT" Class of 2022's "Brews & Backpacks" fundraising event where they raised over $18,000 for the Mujeres de Colores charity.

Check out **SmithAmundsen**'s podcast, Litigation Nation, hosted by attorney **Jack Sanker**. Litigation Nation is a weekly roundup of the most important and interesting legal developments delivered in 15-minute episodes every Tuesday. You can listen on Apple Podcasts, Spotify, Google Play or on SmithAmundsen's website

Hanson Bridgett Managing Partner **Kristina Lawson** moderated a discussion with Chief Justice Tani Cantil-Sakauye of the California Supreme Court at the Bay Area Council's Pacific Summit on July 20. **Hanson Bridgett** in-person attendees included **Kristina Lawson, Cara Compesi, Samir Abdelnour, Laura Long,** and **Natalie Kirkish**. Many others from the firm tuned into the live feed remotely.



The **2022 Strong & Hanni Day of Service** gave attorneys and staff time together to spruce up the beautiful grounds of Camp Kostopulos in Salt Lake City, Utah. From painting, trail clearing, weed pulling and mulch spreading, the Strong & Hanni team helped prepare the camp for a summer of active campers. Camp Kostopulos provides camp opportunities for people of all abilities.

Barclay Damon's Mark Whitford, Paul Sanders, Roy Rotenberg, Amy Hahn, Sanjeev Devabhakthuni and **Cassandra Rich** attended the Legal Aid Society of Rochester's 100th Anniversary Gala. Barclay Damon sponsored this event which helps fund the Legal Aid Society's mission to provide legal support to the underserved low- and moderate-income members of the Rochester, New York, and Monroe County community. ▼

▲ **Barclay Damon LLP** was a lead sponsor for client Brookfield Renewable US's Pacesetter Day at the Races at the Saratoga Racetrack, a fundraiser supporting critical organizations in the community. **Rick Capozza, Kevin McAuliffe, Genevieve Trigg,** and **Amy D'Ambrogio** attended, showing support for this important client — and a great cause.

FEEDING ALABAMA®

Carr Allison once again participated in the **Alabama Legal Food Frenzy**. The Birmingham office earned top recognition for meals donated by large law firms statewide. Carr Allison attorneys supplied the food bank with more than 41,840 meals. Alabama Food Frenzy combines the power of attorneys to provide food assistance for fellow Alabamians. This year attorneys throughout the state donated a total of $68,715 in donations, which equates to over 350,000 meals.

Attorneys and staff from across **Barclay Damon LLP** took part in **Community Days**. Each office organized by the Diversity Leadership team volunteered to serve the community. This year the Syracuse office cleaned up the Onondaga Creekwalk Park, by picking up trash, clearing debris, and working to create a clean and relaxing green space for community residents in Syracuse's Southside neighborhood. The New York City office donated a number of foodstuffs, household, and sanitary necessities for the organization, **Crossroad Community Services.**

Oliver Young, of counsel at **Barclay Damon LLP** in Buffalo, New York, served as moderator for a panel discussion entitled "New York's Red Flag Law: What Attorneys Need to Know to File an Application (Extreme Risk Protection Order)." The program was organized by the Minority Bar Association of Western New York in conjunction with the Bar Association of Erie County and the Empire Justice Center in response to the May 14 mass shooting tragedy at the Jefferson Avenue Tops. It was the first part of a series to address the legal issues surrounding mass shootings.

The historic Inn on Biltmore Estate in Asheville, North Carolina, served as a magnificent backdrop to the **2022 USLAW NETWORK Transportation Industry Summer Legal Forum.**

USLAW Women's Connection Chair **Moira Pietrowski** of **Roetzel & Andress** in Ohio, and Women's Connection keynote speaker **Allison Massari** at the **2022 Women's Connection** in San Diego.

Pedal power and sails helped attendees enjoy the sights and sounds of San Diego during the **2022 USLAW NETWORK Women's Connection.**

Faces from around the USLAW educational circuit...

Throughout the year, USLAW members and clients lead facilitated discussions at USLAW events from coast to coast. Here are some of the recent leading voices.

***Kevin T. McCarthy**, Larson King LLP (St. Paul, MN); **Thomas L. Oliver, II**, Carr Allison (Birmingham, AL)*

***Toni Browne**, S-E-A (St. Louis, MO); **Jessica L. Dark**, Pierce Couch Hendrickson Baysinger & Green, L.L.P. (Oklahoma City, OK); **Sheryl J. Willert**, Williams Kastner (Seattle, WA)*

***Amanda V. Ritucci**, Wicker Smith (West Palm Beach, FL); **Lisa M. Rolle**, Traub Lieberman (Hawthorne, NY); **Michelle Akerman**, Hanson Bridgett LLP (San Francisco, CA)*

***Eliot M. Harris**, Williams Kastner (Seattle, WA); **Lisa D. Angelo**, Murchison & Cumming, LLP (Los Angeles, CA)*

***Sandra L. Rappaport**, Hanson Bridgett, LLP (San Francisco, CA); **Julie Z. Devine**, Lashly & Baer, P.C. (St. Louis, MO); **Julie A. Proscia**, SmithAmundsen LLC (Chicago, IL)*

***Michael B. Heister**, Quattlebaum, Grooms & Tull PLLC (Little Rock, AR); **J. Gary Linder**, Jones, Skelton & Hochuli, P.L.C. (Phoenix, AZ)*

***Nadia P. Bermudez**, Klinedinst PC (San Diego, CA); **Colleen E. Hastie**, Traub Lieberman (Hawthorne, NY); **E. Holland "Holly" Howanitz**, Wicker Smith (Jacksonville, FL)*

***Monique Ferraro**, HSB Global Cyber Products, Cyber Counsel (Hartford, CT); **Karen P. Randall**, Connell Foley LLP (Roseland, NJ)*

***Barbara J. Barron**, MehaffyWeber (Houston, TX); **Molly E. Mitchell**, Duke Evett, PLLC (Boise, ID); **Pamela S. Hallford**, Carr Allison (Dothan, AL)*

***Heather L. Rosing**, Klinedinst PC (San Diego, CA)*

***Leslie D. Parker**, Adler Pollock & Sheehan P.C. (Providence, RI); **Mark M. Leitner**, Laffey, Leitner & Goode LLC (Milwaukee, WI)*

***Lisa D. Angelo**, Murchison & Cumming, LLP (Los Angeles, CA); **Kenneth A. Perry**, SmithAmundsen LLC (Chicago, IL)*

...and from the 2022 USLAW NETWORK Transportation Industry Summer Legal Forum

Richard C. Moreno
Murchison & Cumming, LLP (Los Angeles, CA)

Christopher E. Cotter
Roetzel & Andress (Cleveland, OH)

Clarice E. Spicker
Jones, Skelton & Hochuli, P.L.C. (Phoenix, AZ)

Patrick E. Foppe
Lashly & Baer, P.C. (St. Louis, MO)

Bradley A. Wright
Roetzel & Andress (Cleveland, OH)

Kevin, L. Fritz
Lashly & Baer, P.C. (St. Louis, MO)

Douglas Moor
S-E-A, Ltd. (Columbus, OH)

Thomas L. Oliver, II
Carr Allison (Birmingham, AL)

Lew R. C. Bricker
Smith-Amundsen (Chicago, IL)

Jill Leibold
IMS Consulting (Overland Park, KS)

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President
dmarshall@mi-pi.com


Matt Mills
VP Business Development


Amie Norton
Business Development Manager
anorton@mi-pi.com


Juan Antonio Rodriguez
VP SIU
arodriguez@mi-pi.com


Adam Kabarec
VP Surveillance Operations
akabarec@mi-pi.com


Thom Kramer
Director Internet Presence &
Business Development
tkramer@mi-pi.com


Jake Marshall
Business Development Manager
jmarshall@mi-pi.com


Valentina Benjamin
SIU Manager
vbenjamin@mi-pi.com

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firms ON THE MOVE

Nicole Benjamin of **Adler Pollock & Sheehan, P.C.** in Rhode Island has been appointed to the Rhode Island Council of The New England Legal Foundation, the leading non-profit public interest law firm in the region dedicated to addressing policy and constitutional concerns related to free enterprise. Benjamin also has been named president-elect of the Rhode Island Bar Association. Her term runs from July 1, 2022, through June 30, 2023.

In honor of his wife Pat, who recently passed away, **John A. Tarantino** of **Adler Pollock & Sheehan, P.C.** in Rhode Island will establish The Patrice A. Tarantino Memorial Scholarship to be administered by the Rhode Island Bar Foundation using the same criteria as the Thomas F. Black, Jr. Memorial Scholarship. The Thomas F. Black, Jr. Memorial Scholarship was established in 1989 to support and foster high legal practice standards by assisting Rhode Island residents who show promise that they will become outstanding lawyers and who need financial assistance to study law. The Patrice A. Tarantino Memorial Scholarship will start awarding a $25,000 scholarship each year for four successive years (June 2024, 2025, 2026, and 2027) for a total of $100,000.

"Pat worked as a teacher to provide us with income while I attended law school," said Tarantino. "Without her financial contributions, support, sacrifices and love I would not have been able to go to and get through law school. This scholarship will help law students who need financial assistance to one day become outstanding lawyers."

Baird Holm attorney **David P. Kennison** graduated from Leadership Omaha "Class 44." Additionally, Baird Holm Partner **Kara Stockdale** was admitted to the Omaha Chamber's Leadership Omaha "Class 45." The Leadership Omaha participants spend 10 months learning about the challenges and opportunities in the Omaha area with a focus on strengthening our community.

John Langan from **Barclay Damon LLP** in Syracuse, New York, was recognized at the Onondaga County Bar Association's (OCBA) 145th Distinguished Lawyer Celebration for his leadership role at Barclay Damon and in the legal community.

Keely E. Duke of **Duke Evett PLLC** has been appointed to serve as one of seven members on the Idaho Judicial Council. The Council serves the following two functions: recommend to Idaho's Governor, persons qualified for appointments to vacancies in the Supreme Court, Court of Appeals and District Courts throughout Idaho; and investigate complaints against any judge in the State of Idaho and members of the Industrial Commission, and in appropriate cases, recommend to the Idaho Supreme Court the removal, discipline, or retirement of a justice, judge, or magistrate judge.

Joseph M. Sullivan, a partner at **Davis, Hatley, Haffeman and Tighe, P.C.**, Great Falls, Montana, has accepted the gavel as president of the National Conference of Bar Presidents (NCBP) for 2022-23. NCBP was founded in 1950 to provide information and training to state and local bar association leaders. Current membership includes 130 state, local and affinity bar organizations and 150 individual members from 53 states and territories.

Rene Mauricio Alva of Mexico member firm **EC Rubio** and a member of the USALW NETWORK Board of Directors has been appointed by ANADE Colegio, a Mexican corporate counsel association, as its ambassador to the American Bar Association.

Kristina Lawson, managing partner of **Hanson Bridgett** in San Francisco, has been reappointed to the Medical Board of California (Board) by Governor Gavin Newsom. Lawson was initially appointed to the Board in 2015 by Governor Jerry Brown. The mission of the Board is to protect health care consumers through the proper licensing and regulation of physicians and surgeons and certain allied health care professionals and through the vigorous, objective enforcement of the Medical Practice Act, and to promote access to quality medical care through the Board's licensing and regulatory functions.

Hanson Bridgett Partner and Labor & Employment Section Co-Leader **Alfonso Estrada** has been named to The Daily Journal's Top Labor & Employment attorney list. This annual list recognizes California's top attorneys who have made significant contributions to their field of practice.

David Casarrubias of **Hanson Bridgett LLP** in San Francisco has been elected to serve on the UC Hastings Alumni Association Board of Governors. He also has been selected as the chair-elect of the Hispanic National Bar Association Young Lawyers Division (HNBA-YLD). He will serve as chair-elect for the 2022-2023 term and then assume the position of chair for the 2023-2024 term.

firms ON THE MOVE

(Continued)

Jones, Skelton & Hochuli partner **Justin Ackerman** has been named member-at-large on the Arizona State Bar Appellate Practice Executive Council. Ackerman will act as a liaison between the Court of Appeals/Arizona Supreme Court and the State Bar.

Michael Shumway, who recently joined **Jones, Skelton & Hochuli** in Arizona as an associate attorney in the Transportation trial group, was named the Arizona Prosecuting Attorney's Advisory Council Appellate Prosecutor of the Year for his work while serving as the Navajo County Attorney's Office Appellate Section Chief.

Following a successful term as the Arizona Association of Defense Council's Young Lawyer Division (AADC YLD) president, **Jones, Skelton & Hochuli** (JSH) partner **Kimberly Page** passes this important leadership role to JSH associate attorney **Anne-Grace Reule** for the upcoming year. Page will remain on the AADC YLD Board as past-president, and Reule will also be supported by JSH attorneys **Stephanie Baldwin** (AADC YLD secretary) and **Seraphim Sparrow** (AADC YLD community outreach chair).

Klinedinst CEO and President **Heather L. Rosing** has been appointed to lead the American Bar Association (ABA) Standing Committee on Lawyers' Professional Liability.

Colorado Bar Association's (CBA) Environmental Law Section has selected **Dietrich C. Hoefner**, a partner in **Lewis Roca**'s Litigation Practice Group, to serve as vice chair of the 2022-2023 Environmental Law Section Executive Council. The CBA Environmental Law Section deals with legal and technical aspects of federal, state, and local environmental regulatory programs and related litigation. As vice chair, Hoefner and the executive council will monitor the statues, regulations and court opinions affecting environmental law and policy.

Doug Tumminello, a **Lewis Roca** commercial litigation lawyer, has been named a Fellow of the Litigation Counsel of America, an invitation-only honorary organization in which members are highly qualified trial lawyers providing guidance and leadership on issues and legislation affecting the American judicial litigation process.

Karen Kahn of **Modrall Sperling** has been elected a Fellow of the American Bar Foundation (ABF). Membership is limited to just one percent of lawyers licensed to practice in each jurisdiction. Kahn concentrates her practice in ERISA and employee benefits law.

Attorney **Chad D. Brakhahn** of **Simmons Perrine Moyer Bergman PLC** in Iowa has been selected as a Fellow of the Construction Lawyers Society of America (CLSA).

Nick Ellis of **Poyner Spruill LLP** in North Carolina has been awarded the J. Robert Elster Award for Professional Excellence by the North Carolina Association of Defense Attorneys.

Jennifer Hillman and **Heather Milanese** from **Rivkin Radler LLP** in Uniondale, New York, were elected members of the Estate Planning Council of Nassau County, an affiliate of the National Association of Estate Planners & Councils.

Rivkin Radler LLP Partner **Alan S. Rutkin** was chosen to join the Federation of Defense & Corporation Counsel's (FDCC's) Board of Directors. He will serve a one-year term.

Rivkin Radler Managing Partner **Evan H. Krinick** was named to the Long Island Press Power List. The annual list and corresponding event, now in its 19th year, honors Long Island's most influential leaders who have the most impact on the lives of those in the region.

Siobhain Minarovich of **Rivkin Radler LLP** in Uniondale, New York, has joined the boards of directors for Forestdale, Inc. and Community Mainstreaming Associates, Inc. (CMA), where she is also the chair of the Personnel & Compensation Committee. Forestdale provides foster care, preventative care and other services to families in Brooklyn and Queens. CMA provides residential programs, day programs, vocational training and other services to individuals on Long Island with intellectual and developmental disabilities.

North Shore Child & Family Guidance Center, the preeminent not-for-profit children's mental health agency on Long Island, named **Michael Schnepper** of **Rivkin Radler LLP** in Uniondale, New York, to its board of directors.

Heather Bailey from **SmithAmundsen** in Illinois was named one of the winners of the Most Influential Women in Convenience Services Awards. The award recognizes the outstanding women who have made a difference in the convenience service industry and who are shaping the future of the industry.

successful RECENT USLAW LAW FIRM VERDICTS & TRANSACTIONS

VERDICTS

Barclay Damon LLP (Buffalo, NY)

Barclay Damon's Murphy, Christiano earn title defense for Firefighters Association of the State of New York

Barclay Damon's Michael Murphy and Brienna Christiano were successful at trial on behalf of client Firefighters Association of the State of New York (FASNY) and Steven Klein. The plaintiff alleged FASNY, his former employer, and its then president terminated him in retaliation for reporting alleged violations of FASNY policies. The jury unanimously concluded the defendants did not retaliate against the plaintiff.

Carr Allison (Mobile, AL)

Pryor and Townsley obtain summary judgment

Carr Allison attorneys Caroline Pryor and Alex Townsley of our Mobile (AL) office, recently won summary judgment for a retail client in a case where the plaintiff tripped on a gas pump island, sustaining a fractured shoulder. In support of the argument that the gas pump island was open and obvious under Alabama's objective standard, the defense showed that nothing was blocking the plaintiff's view of the pump island at the time of the accident and in the eight years before the accident no other patron had tripped over any gas pump island at this station. The Court agreed that the evidence presented demonstrated that the gas pump island was in no way hidden, veiled or obscured.

Carr Allison (Tallahassee, FL)

Scarpone obtains summary judgment

Carr Allison attorney Kayla Scarpone in its Tallahassee, Florida, office recently obtained summary judgment in favor of a not-for-profit corporate client in federal court. Plaintiff asserted age discrimination and retaliation claims under both the Age Discrimination in Employment Act and Florida Civil Rights Act based on her termination during a reduction in force, which was necessitated by an extensive budget cut. Judgment in favor of Defendant on all claims was entered.

Jones, Skelton & Hochuli, P.C. (Phoenix, AZ)

Russ Skelton & Anne Holmgren obtain unanimous defense verdict in wrongful death case

In May 2022, Jones, Skelton & Hochuli partners Russ Skelton and Anne Holmgren obtained a defense verdict in Keller v. Brownsberger, et al. – a wrongful death lawsuit. The decedent was a chronic pain patient who was referred by his primary care physician to the defendant pain management facility where he established care with the defendant doctor. Decedent had been treating with the doctor for more than a year and a half when he was found dead in his home due to drug toxicity overdose. Decedent's wife filed a wrongful death action in Holbrook, Arizona, against multiple providers alleging defendants' medical negligence cause decedent's death. Plaintiff alleged that the defendant doctor breached the standard of care by neglecting to assess the decedent's medical history, improperly prescribing opioids, neglecting to follow office policies related to urine drug screens, and failing to properly wean decedent from opioids. Skelton and Holmgren represented the defendant doctor in this lawsuit. The parties called nine witnesses over the course of a two-week long trial, including multiple standard of care and causation experts. During the trial, the defense was able to educate the jury on the practice of pain management, the applicable standards of care, and why the defendants did not cause the decedent's death. At the close, plaintiff requested the jury award $2,000,000 in damages. Following deliberations, the jury returned a unanimous defense verdict in favor of the defendant doctor as to all of plaintiff's claims. The defense sought and was awarded a total of $21,261.11 for costs with statutory interest accruing.

MehaffyWeber (Houston, TX)

MehaffyWeber earns complete defense verdict win

After a two-week in-person jury trial in Kleberg County (Kingsville, Texas), Mike Magee and Brian Armstrong, MehaffyWeber shareholders received a complete defense verdict in a negligence/death case for their client, Hunter Industries, Ltd. ("Hunter"). In February 2017, two young men were driving together on a clear afternoon in Refugio County on US 77 when their vehicle ran off the road and vaulted into the San Antonio River. Tragically, both young men drowned. The families of the driver and passenger both filed suit against

successful RECENT USLAW LAW FIRM VERDICTS & TRANSACTIONS

(Continued)

Hunter (and sub-contractor, Roadsafe Traffic Systems), which was accused of not timely installing pavement markings on a stretch of newly resurfaced asphalt road where the accident occurred and thereby causing the accident. This was a significant win.
Plaintiffs argued that had a white edge line been present on US 77, the accident would not have occurred. Further, they argued that Hunter improperly installed the adjacent pavement edge backfill.

Hunter/Roadsafe argued Oloba fell asleep while operating the Chevy Cruze.

After a two-week in-person trial, the jury assigned no negligence to Hunter and Roadsafe, finding Oloba negligent with his conduct and the sole cause of the accident.
Plaintiffs argued for approximately $450 million. Result: Zero Recovery.

Murchison & Cumming LLP (Los Angeles, CA)

Six years of litigation results in dismissal with prejudice for firm's client

After six years of litigation and a week in trial, a dismissal with prejudice was entered for defendant Louisville Ladder Company due to impeachment evidence against plaintiff Richard Skinner. Friedrich W. Seitz and Kelsey L. Maxwell represented the defendant.

The case began on May 6, 2016, when the plaintiff sued Louisville Ladder Company because of a fall from a ladder on May 18, 2014, which shattered his left calcaneus. On the eve of trial, the court granted the defendant's motion to dismiss based on the plaintiff's lack of standing; he had filed for bankruptcy without revealing this lawsuit, which had become an asset of the bankrupt estate. The bankruptcy trustee filed a case in 2018. The case was set go to trial on March 20, 2020, and was re-set for April 28, 2022.

The plaintiff testified that since the accident he is in excruciating pain, cannot walk more than 10-14 steps, has extreme pain walking uphill, downhill, cannot walk from the parking lot to the store, which is the reason he has a disabled parking placard. He testified his pain and limitations have been consistent and have kept him from working. He denied participating in post-accident activities, specifically any hiking. Louisville's investigator discovered a photograph of the plaintiff on top of the 8,000-foot Half Dome in Yosemite, five years after the accident, and a permit issued to him to access Half Dome. He was confronted with a photograph of the permit and additional photographs were shown of different stations up the mountain, including the last pitch, a 45-degree bare granite surface requiring the use of cables. After Skinner admitted the hike to the top and back took 18 hours, the court stopped the trial, excused the jury, and advised the plaintiff of his 5th Amendment rights. Before the jury returned, the plaintiff agreed to a dismissal with prejudice for a waiver of costs.

Pierce Couch Hendrickson Baysinger & Green, LLP (Tulsa, OK)

Pipinich prevailed in a declaratory judgment action

Jake Pipinich of Pierce Couch Hendrickson Baysinger & Green, LLP prevailed in a declaratory judgment action in Ottawa County before Judge Denney on June 27, 2022, wherein plaintiffs' counsel was seeking to hold 85A O.S. Section 43 unconstitutional as a violation of Article 23 Section 7 of the Oklahoma Constitution. Plaintiff's husband was killed in an accident and plaintiff's wife made a substantial recovery against a third-party tortfeasor and brought a companion workers' compensation case for death benefits before the workers' compensation commission. Pipinich represented the workers' compensation carrier and was able to convince Judge Denney that the statute was not unconstitutional, and that the workers' compensation carrier should be entitled to a "pro tanto recoupment" or credit in the workers' compensation case against the recovery in the wrongful death case for the amount of the workers' compensation subrogation lien claim. Many district courts, including Judge Denney himself, had previously found 85A O.S. Section 43 unconstitutional with regards to death cases brought in district court. The client's potential substantial exposure for death benefits was effectively reduced to zero, if the ruling holds on appeal.

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(Continued)

Pion, Nerone, Girman, Winslow & Smith, P.C. (Pittsburgh, PA)

Pion Law obtains defense verdict in pedestrian strike case

Pion Law attorneys John Pion, Jim Girman and Jordan Hettrich recently obtained a defense verdict following a week-long trial in Federal Court in Erie, Pennsylvania. The case, Robert Repa and Jean Repa v. Frank Napierkowski and Hilltrux Tank Lines, Inc., stemmed from a May 2, 2018, incident.

Plaintiffs alleged that, Frank Napierkowski, a driver for Hilltrux, struck Robert Repa, a fire police officer, as Mr. Repa directed Mr. Napierkowski to make a turn, causing Mr. Repa to suffer serious injuries to both of his legs. Plaintiffs argued that Mr. Napierkowski should be held to a heightened standard of care based on their position that the accident occurred in an emergency response area. The Court ultimately agreed with the defense's argument that no heightened standard was warranted.

Plaintiffs claimed that Mr. Repa's injuries resulted in medical expenses in excess of $620,000, and that Mr. Repa would need ongoing medical care for the remainder of his life, at an estimated cost of $1.3 million.

The defense maintained that Mr. Napierkowski bore no responsibility for the accident, as he was simply following directions provided to him by Mr. Repa, who failed to move out of the way and/or walked into the path of Mr. Napierkowski's rear trailer tires. The defense also highlighted numerous inconsistencies by Mr. Repa, who initially claimed that he was thrown over a guardrail and into a ravine during the accident, something Mr. Repa's own attorney acknowledged did not occur.

The defense also argued that Mr. Repa's injuries were worsened by his decision to continue smoking, despite repeated warnings from his doctors that tobacco use would prevent his wound from healing.

Following three hours of deliberations over two days, the jury agreed returned a unanimous verdict finding that Mr. Napierkowski was not negligent, resulting in the entry of judgment in favor of Mr. Napierkowski and Hilltrux.

Rivkin Radler LLP (Uniondale, NY)

Murphy, Mann and Feld receive half-million-dollar award against professional boxer

Casey Murphy, Greg Mann, and Brian Feld of Rivkin Radler LLP in Uniondale, New York, obtained a summary judgment award in the Southern District of New York of over half a million dollars for the firm's client. The case was brought on behalf of a high-end jeweler against the professional boxer, Gervonta Davis, for failure to pay for three pieces of merchandise.

In December 2019, Rivkin Radler's client delivered a diamond-encrusted charm with Davis' nickname, "Tank," accompanied by dollar signs, a diamond tennis chain, and a Richard Mille RM-11 diamond-encrusted watch to Davis' exact specifications. Davis lodged no objection to either the invoice or workmanship of the jewelry until September 2020. Instead, Davis personally signed a check for the invoice amount and handed it to the firm's client. Subsequently, the check bounced, and Davis refused to pay for the jewelry for years.

The court found that no rational jury would find that Davis had timely objected to the quality of the jewelry and that, in fact, Davis' belated complaints were contradicted by his repeated assurances of payment to the firm's client. The court granted Rivkin Radler's client summary judgment on an account-stated theory for the full invoice amount, plus pre-judgment interest going back to the date of the invoice.

Sweeney & Sheehan, P.C. (Philadelphia, PA)

Kunsch earns unanimous defense verdict in product liability case

On July 15, 2022, Sweeney & Sheehan Partner Michael Kunsch won a unanimous defense verdict in a product liability case following a 4-day jury trial in the Eastern District of Pennsylvania. The plaintiff sustained injuries after falling from a steel rolling tower scaffold in the course of his employment as a union carpenter. In a significant pretrial ruling, District Judge Mark Kearney predicted that the Pennsylvania Supreme Court will overrule its longstanding categorical preclusion of evidence of compliance with industry standards in cases where a plaintiff pursues a risk-utility theory of defect. In light of the Court's ruling, plaintiff elected prior to trial to proceed solely under a consumer expectation theory of defect against the distributor of the scaffold.

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RECENT USLAW LAW FIRM VERDICTS & TRANSACTIONS

(Continued)

Traub Lieberman (Hawthorne, NY)

Traub Lieberman Partner Colleen Hastie and Associate Peter Iannace obtain motion for summary judgment in favor of skilled nursing facility

In a case brought against multiple healthcare facilities before the Supreme Court of the State of New York, County of Westchester, Traub Lieberman Partner Colleen E. Hastie and Associate Peter Iannace won a motion for summary judgment in favor of a skilled nursing facility (the "SNF"). This medical malpractice/negligence case was brought against multiple health care facilities and organizations by decedent's estate, whom alleges decedent's death was the result of the actions or inactions of defendants. Specifically, decedent alleges SNF failed to properly treat decedent's decubitus ulcers and timely diagnosis an infection.

The Traub Lieberman team filed motion for summary judgment in this negligence/medical malpractice case seeking to dismiss the claims against SNF of medical malpractice, negligence, wrongful death, punitive damages and violation of Public Health Law §§ 2801(d) and 2803(c). The Court granted summary judgment dismissing plaintiff's claim for punitive damages as a result of the plaintiff's failure to address this claim substantially with their expert witness. The expert's testimony did not provide adequate information or evidence to establish a basis for punitive damages. Similarly, the court dismissed all claims arising out of the Public Health Law, as the plaintiff's expert once again did not provide adequate information or evidence to support any violation of regulations. The expert failed to mention any specific regulations that were allegedly violated, what rights the decedent was owed that they did not receive, and specifically how the facility failed to provide adequate and appropriate medical care.

Further, the SNF expert established that the decedent did not contract any infection while a resident of the SNF, nor did decedent's condition worsen. The medical records further confirm SNF's staff conducted regular and skilled assessments, and provided timely and appropriate treatment to decedent. Plaintiff, in opposition, failed to submit any proof that the SNF deviated from any standard of care and/or violated any Public Health Laws or statutes, and summary judgment was granted in favor of the SNF.

Wicker Smith (Jacksonville, FL)

Ramsey, Glišić receive summary judgment for insurance agency client

Wicker Smith partner Rick Ramsey and associate Nataša Glišić received a summary judgement in a recent case in northern Florida. Plaintiff, an engineering company, asserted claims for breach of fiduciary duty and negligent procurement of insurance against defendant insurance agency after its defense and indemnity claim, stemming from a vessel collision, was denied. Plaintiff alleged it relied on defendant's representations that the offered CGL insurance coverage was sufficient to meet all of the contractual obligations with one of plaintiff's subcontractors. The summary judgment motion argued that Wicker Smith's insurance agency client was entitled to judgment as a matter of law on the entirety of the plaintiff's professional malpractice claims, notably, (1) it was barred by judicial estoppel; (2) plaintiff did not sustain legally cognizable damages and lacked standing; (3) insurance agency liability cannot be imposed when coverage was unattainable at the time it was requested; and (4) defendant insurance agency procured the requested coverage based on the exact requirements provided by the plaintiff. The Fourth Judicial Circuit Court agreed with defendant's position and entered summary judgment on all counts asserted against the firm's client.

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RECENT USLAW LAW FIRM VERDICTS & TRANSACTIONS

TRANSACTIONS

Barclay Damon LLP (Buffalo, NY)

The national publication Bond Buyer named Buffalo Sewer Authority, a Barclay Damon client, as the winner of the Bond Buyer 2021 Deal of the Year Award in the Small Issuer Financing category, and now the firm's client has scored a second honor for the same deal. It has been named Green Bond of the Year—US Muni Bond by Environmental Finance. Barclay Damon represented Buffalo Sewer Authority in the award-winning $49.2 million issuance of sewer system environmental impact revenue bonds. Proceeds are implementing green infrastructure projects to reduce the runoff of sewage, suspended solids, nitrogen, and phosphorus into the adjacent Niagara River and Lake Erie. Sharon Brown, co-leader of the firm's Public Finance Practice Area, and former partner Tim Cashmore, now retired from Barclay Damon, co-led Barclay Damon's team to represent the authority in this transaction.

Barclay Damon LLP (Buffalo, NY)

Barclay Damon partner David Luzon was successful in assisting client Eastern Niagara Hospital with a charitable fund whose purpose was restricted by the donor and could no longer be fulfilled. Luzon worked with the client and negotiated with the assistant attorney general in charge of charities in Western New York to change the use of the fund and lift the investment restrictions. The client identified a different organization, Niagara County Community College Foundation, that is able to serve the donor's original intent. The New York Supreme Court issued an order directing the balance of the fund be paid to the new organization's endowment fund for scholarships for its registered nurse degree program.

Flaherty Sensabaugh Bonasso PLLC (Charleston, WV)

Louisville, Kentucky-based ScionHealth has entered into a definitive agreement to acquire Dallas-based Cornerstone Healthcare Group, an organization with 16 locations of specialty hospitals, senior living facilities, and a behavioral health facility. Flaherty attorney Bob Coffield is managing certificate of need and regulatory approvals for their Huntington, West Virginia, location. The deal is expected to be completed in the second half of this year.

DIVERSITY, EQUITY AND INCLUSION

Lewis Roca recognized Juneteenth 2022 with a special lunchtime program featuring **Adrian Miller, the Soul Food Scholar**, and The James Beard Foundation winning author, food writer, attorney and certified barbecue judge. Miller discussed his passion for history and food while also providing an overview of the various Emancipation celebrations that emerged in the 19th century and what they meant to African Americans. His talk explored how Juneteenth began in Galveston, Texas, spread across the U.S., became a federal holiday, and the social justice challenges that remain for our society. The food traditions associated with this holiday were also explored in depth, as attendees were treated to food from primarily Black-owned businesses across Lewis Roca's nine offices while they learned about the cultural significance of Juneteenth.

Arleen Milian, director of client relations and diversity & inclusion practice leader at **Murchison & Cumming LLP** in Los Angeles, will be a featured speaker at the upcoming San Diego Paralegal Association's inaugural Diversity, Equity, Inclusion, and Belonging (DEIB) Educational Conference. The conference will provide attendees with valuable takeaways from diverse legal professionals who work in law with a specific focus on DEIB issues, including cultural competence and diversity initiatives, workplace culture, disability, neurodiversity, and other relevant topics.

Barclay Damon LLP was a bronze sponsor and attorney **Dena DeFazio** (pictured) volunteered in support of the Albany, New York, 518 Capital Pride events, in June.

In support of the LGBTQI+ community, **Modrall Sperling** attorneys, staff, family, and friends celebrated Pride Month by marching in the annual **Albuquerque Pride Parade** on Saturday, June 11. Modrall Sperling's first participation in this annual event was co-sponsored by the firm's Diversity, Equity, and Inclusion Committee and its Social Committee. The firm also participated in the **Santa Fe Pride Parade.**

Jones, Skelton & Hochuli in Arizona sponsored the Diversity, Equality, and Inclusion programming at the 2022 Arizona State Bar Convention.

Murchison & Cumming LLP in Los Angeles launched a women's initiative for the firm's women administrative professionals. They held its first virtual luncheon where they focused on teamwork, one of the firm's core values. The mission is to create connection, inclusion and collaboration, and the firm's intention is that as they embark on this journey, they create a workplace in which people can thrive and deliver their full potential while respecting and valuing the contributions of others.

Rivkin Radler joins Diversity & Flexibility Alliance

Rivkin Radler Managing Partner **Evan H. Krinick** recently announced that the firm has joined the Diversity & Flexibility Alliance as a Champion Member.

"We have long recognized that the strength of our firm relies, in part, on its diversity," Krinick said.

Rivkin Radler's Diversity, Development & Inclusion (DD&I) Committee over the past decade has been instrumental in increasing the diversity among the firm's attorneys and staff members.

"Our clients have told us they would like their law firms to reflect the diversity of their own organizations," said Tracey McIntyre, director of legal talent and head of the DD&I Committee. "Through in-house trainings, affinity group recruiting and diversity-awareness events, we continue to work toward a more diverse culture."

The Diversity and Flexibility Alliance is a think tank dedicated to creating work environments centered on diversity, equity and inclusion, and helping to prepare organizations for the future of the workplace.

Hanson Bridgett receives two national awards

Hanson Bridgett LLP in San Francisco has been honored with two national awards for its diversity, equity, and inclusion efforts. For the 13th consecutive year, the firm ranked as a Best Law Firm for Women by Seramount, now part of EAB. In addition, the firm climbed to the sixth spot on The American Lawyer's annual Diversity Scorecard listing, up from 37th last year.

"I'm proud that Hanson Bridgett continues to take meaningful steps to support women and diverse attorneys," said **Jennifer Martinez**, the firm's chief diversity, equity and inclusion officer (CDEIO). "Since 2018, overall hiring of diverse attorneys has increased, specifically women by 10% and persons of color by 5%. I will continue to collaborate with the recruiting and professional development teams, among others, to innovate and expand upon the solid foundation the firm has built over its 60+ year history."

HansonBridgett

Hanson Bridgett recognized by NLJ's Women in Law, LGBTQ Scorecards

USLAW member firm Hanson Bridgett LLP in California (7) was recognized by The National Law Journal's Women in Law Scorecard, which ranks the largest U.S. law firms by representation of women attorneys. The rankings are calculated by adding each firm's percentage of total women lawyers with the percentage of women partners. The firm was also included in the 2022 LGBTQ Scorecard with 5.6% of attorneys self-identifying as LGBTQ.

2022 Virtual Job Fair for Diverse Law School Students

USLAW NETWORK conducted a virtual job fair for diverse law school students on August 3, 2022. Collectively, 28 USLAW NETWORK member firms conducted 294 individual connections and conversations with diverse law students representing 55 law schools across 24 states. Students from three of the five Historically Black Law Schools participated in this expansive event and 63% of all candidates were 2Ls and 34% were 3Ls. USLAW member firms and American Bar Association-accredited U.S. law schools interested in learning more should contact cheryl@uslaw.org.

DIVERSITY, EQUITY AND INCLUSION

RECIPIENTS OF THE USLAW NETWORK LAW SCHOOL DIVERSITY SCHOLARSHIP PROGRAM

The USLAW NETWORK Foundation is pleased to share the inaugural recipients of the USLAW NETWORK Law School Diversity Scholarship program. Scholarships were awarded to 10 outstanding law school students from ABA-accredited law schools across the country. Each scholarship recipient received $5,000 towards their law school tuition and was invited to the Fall 2022 USLAW NETWORK Client Conference scheduled for September 15 – 17 in Austin. Nine out of 10 plan to attend.

"We are extremely proud to recognize the 10 standout students who are the recipients of our inaugural USLAW NETWORK Foundation Law School Diversity Scholarships," said Noble F. Allen from Hinckley Allen in Connecticut and Chair of the USLAW Diversity Council. "We had a difficult task selecting this group from an outstanding slate of candidates. The selection of these students reflects our commitment to USLAW's diversity, equity and inclusion initiatives, which we hope will continue to provide opportunities for qualified diverse law students in the future. We are excited to help provide some financial support to these law school students as they navigate and further their legal education. It is our hope that this pipeline initiative, along with our other DEI initiatives, will create additional and expanded opportunities to enable these outstanding students to make professional connections with our USLAW member firms."

About the scholarship program

The scholarship program launched in 2022 and is part of the NETWORK's commitment to helping eligible, diverse law students, who need financial assistance, achieve their academic and professional dreams. Each recipient was selected based on academic achievements and demonstrated commitment to diversity, equity, inclusion, or social justice in their communities or within their academic career.

Leaders in the classroom and the community

The majority of the recipients are first-generation college graduates and law students who are fluent in several languages, have earned scholarships and worked their way through higher education, but that's not all they have in common. Most recipients share a common goal of serving as a role model and mentor for others to see someone who looks like them and demonstrate the opportunities available to eliminate the racial wealth gap. And although they are still in school, their passion and accomplishments thus far leave us with no doubt they will overachieve this goal. Collectively, this group has already demonstrated the powerful force behind their passion.

Meet the 2022 USLAW NETWORK Law School Diversity Scholarship Program Recipients

ISABELLA ANG

- *Brigham Young University, J. Reuben Clark Law School – Murray, Utah*
- *Expected Graduation: May 2024*
- *Hometown: Salt Lake City, Utah/Singapore*
- *B.S., summa cum laude, Writing and Rhetoric; Minor in Sociology from the University of Utah*

Bella Ang was a victim of police racial brutality and due to her personal experience, is extremely passionate and committed to assisting minorities gain access to assistance with justice issues. Bella was a fellow with the Paper Prisons Initiative in Santa Clara, California, where she researched state expungement laws and coordinated with state government offices to collect data for policy reports analyzing individuals needing expungement. She also is co-authoring a law review article on Asian Americans in the criminal justice system and presented findings at the inaugural Asian American Women in the Legal Academy Conference at Penn State University in August 2021. Bella speaks fluent Mandarin Chinese and is currently the president of the Minority Law Students Association and co-president of the Asian Pacific American Law Students Association. She is currently working on a program at the multicultural center at the main campus of BYU to assist minority students with access to resources and assistance in applying for law school.

"There is a severe lack of representation of people of color in the legal field. Despite all the community involvement I have done and continue to do, I know that positive change starts with changes to the justice system. I want to use the tools that I acquired during my time in law school to positively impact those that fall victim to the harmful and racist stereotypes which often lead them behind bars. Most importantly, I want to use my skills as an attorney to do what I can to change the harmful rhetoric that exists surrounding POCs."

TATIANA BARRAZA

- *University of Washington School of Law Mercer Island, Washington*
- *Expected Graduation: June 2023*
- *Hometown: Dallas, Texas/Mexico*
- *B.A., Psychology, Minor in Near Eastern Studies, minor in Crime Prisons, Education & Justice; CET Study Abroad Program, Arabic, Middle Eastern Affairs at University of Jordan*

Tatiana Barraza grew up in an Arab-founded city in northern Mexico. She spoke Spanish at home but grew up listening to Arab music with her grandfather and eating maftoul at family dinners. Her family moved to the United States when she was 14 years old, but it took her until college to perceive her diversity as an asset rather than a confused sense of identity and obstacle.

Following her semester in Jordan, improving her Arabic language skills and studying Middle Eastern politics, she earned a spot at the Cornell Language House, an environment designed to promote intercultural dialogue among diverse students. She also serves on the board of the Latino/a Law Student Association and the Middle East and Southeast Asian Law Student Association boards. Tatiana was also one of three student liaisons to the University of Washington Law's faculty diversity committee, working to update and expand the school's Diversity, Equity, and Inclusion plan.

"The most important contribution I hope to make to the legal profession is to become a mentor for others similarly situated as myself. One day, I hope to open the doors of the legal community to third-culture individuals either raised in a different culture from their parents or raised in multiple different environments. Given my background, I fully identify with both versions of this identity and recognize the obstacles of navigating new settings with little to no guidance."

RONESHA BRAXTON

- *University of Alabama School of Law Tuscaloosa, Alabama*
- *Expected Graduation: May 2023*
- *Hometown: New Orleans, Louisiana*
- *B.A., summa cum laude, Criminal Justice from Southern Louisiana University*

Raised by a single mother of three, Ronnie Braxton devoted significant effort to researching and earning numerous scholarships to attend college and law school. She serves as an executive board member of the Black Law Students Association and a managing board member for the Alabama Civil Rights & Civil Liberties Law Review. Ronnie is a national scholar of the Diverse Attorney Pipeline Program (D.A.P.P.). She is also passionate about providing oppor-

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tunities for underprivileged women and volunteers as a student attorney at the Domestic Violence Legal Clinic in Tuscaloosa. Ronnie is also a certified personal fitness trainer.

"As a child, I was unaware of the different possibilities available to women of color; I decided long ago that such ignorance ends with me. I have a passion for not only nurturing young girls of disadvantaged statuses but also for helping them to recognize their full potential by being the example that some, including myself, never had. I am committed to bridging the gap that has existed for far too long between brilliant, young professionals and well-deserved opportunities. This represents the true objective of my career and how I will utilize my degree."

EBONY CORMIER

- *Southern University Law Center Baton Rouge, Louisiana*
- *Expected Graduation: May 2023*
- *Hometown: Ennis, Texas*
- *MBA, University of Phoenix*
- *B.S., Criminal Justice from University of North Texas; University of Phoenix*

Ebony Cormier always wanted to be an attorney but didn't know how to make it happen until she completed her MBA and was a working adult. She made a sacrifice and left her husband and four children in Dallas to move to Baton Rouge, Louisiana, for law school. Ebony is the junior editor for the Journal of Race, Gender, and Poverty and authored "Cash Bail: Profit, Poverty, and People of Color", in ELIMINATING SYSTEMIC RACISM IN THE LEGAL SYSTEM: A COLLECTION OF LEGAL ADVOCACY PAPERS by the LexisNexis African Ancestry Network. She serves as the director of corporate engagement for the National Black Law Students Association and an executive board member of the Trial Advocacy Board. She is also a parliamentarian/judicial committee chair of the Student Bar Association and attended the Senate judicial hearing for Judge Ketanji Brown Jackson.

"During the summer of 2020, where I was the only Black person in the entire legal operations department at NetApp, Inc., we had candid conversations about diversity. In the wake of the racial injustice and outcry after the murder of George Floyd, I became the go-to person for several of my colleagues who wanted to talk about it. Usually, work is not a place where we can openly discuss social injustice but people found comfort in speaking with me and hearing my perspective. I aim to teach and to encourage all to continue to learn and be engaged in the process, and I will do the same."

BRANDON DEROJAS

- *Tulane Law School – Belle Chasse, Louisiana*
- *Expected Graduation: May 2024*
- *Hometown: Belle Chasse, Louisiana*
- *B.S., summa cum laude, Finance from Louisiana State University*

Brandon DeRojas' father and family came to the United States from Cuba, but he didn't understand and embrace being a part of that culture until he was a teenager. In high school, he joined the National Spanish Honor Society, helped tutor students struggling to learn Spanish and organized events celebrating Spanish culture. In law school, Brandon is an active member of the Latinx Law Student Association, Hispanic National Bar Association, Business Law Society and the Sports Law Society. He provided 120 hours of pro bono work to the United States Bankruptcy Court for the Eastern District of Louisiana this summer.

"While diversity initiatives are growing in the legal field, I want to find new ways to show younger diverse generations that there is a growing place for them in the legal field. I want to make a change where young people will not be discouraged from joining our prestigious community because they think they will be affected by their minority status. I want to pave the way using my own diversity so that future generations of people with diverse backgrounds will have an easier path to success."

GOLDIA EZEKWERE

- *South Texas College of Law – Houston, Texas*
- *Expected Graduation: December 2023*
- *Hometown: Houston, Texas*
- *B.S., Business Administration Business Management from Texas Southern University*
- *Associates of Arts, Economics from Houston Community College*

Goldia Ezekwere is the proud mother of three children under the age of five and spends significant time advocating for diversity, equity and inclusion throughout the community. She is a Presidential Fellow in the International Legal Honor Society of Phi Delta Phi and is also part of top legal communities such as the Black Law Student Association, Houston Bar Association and the Houston Young Lawyers Association. Goldia is a law school career counselor and has participated in a DEI podcast interview with the Houston Lawyer Magazine and other guest speaker appearances throughout the South Texas College of Law.

"I was asked to be a guest speaker on a Diversity, Equity and Inclusion panel for the incoming 1L at South Texas College of Law. I greatly appreciate assisting my community by enlightening them about my experience with the hopes of encouragement; however, in my opinion, it was a bold ask to the universe because my current surroundings did not reflect opportunities that would lead to progress. My tenacity and belief in a better life are why I successfully made the dean's list my first semester of law school with a newborn baby. My refusal to be labeled a statical product of the poverty-stricken community I grew up in is the reason I choose mindful gratitude every day."

JADA HAYNES

- *Southern University Law Center Baton Rouge, Louisiana*
- *Expected Graduation: May 2025*
- *Hometown: Athens, Georgia*
- *Master of Public Administration from North Carolina Central University*
- *B.A., English from Johnson C. Smith University*

Jada Haynes takes pride in and is passionate about being a black woman and a triple HBCU student. She is a change agent committed to taking action against inequitable practices and injustices in her community. Jada has served as an intern for the Southern Coalition for Social Justice and worked directly with convicted felons and people who were caught in legal trouble. She worked at AmeriCorps VISTA at The Collaborative NC, a nonprofit with the mission to close the wealth gap for people of color and with disabilities. Jada is an active member of the Black Law Students Association and was among a select group chosen to attend the Have Her Back Day of Action in Washington, D.C., to support Senate Justice candidate Judge Ketanji Brown Jackson.

"As a double Historically Black College and University graduate currently pursuing my third HBCU degree, I have the unique experience and skill set to provide others with the perspective of students who are systemically underrepresented in legal and corporate spaces. Additionally, my

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HBCU background allows me to provide pertinent insight when discussing complex ideas and solutions to legal issues."

TATIYANA LEWIS

- *University of Tennessee College of Law Knoxville, Tennessee*
- *Expected Graduation: May 2024*
- *Hometown: Augusta, Georgia*
- *B.A., summa cum laude, Legal Communications from Howard University*

Tatiyana Lewis turned the awkward experiences of being one of only a few minorities into an opportunity to advocate for and educate others. She was inspired to write a self-published book, "The Guidebook to Senior Year" (2018), detailing the path a high school senior could take to get into the colleges of their dreams because many students of color face financial hardships that make it almost impossible to attend college. During her undergrad at Howard, she researched and published her senior thesis on "Where My Coins At? Lack of Generational Wealth Within the Black Community." Her thesis explored the effects of slavery, the role of the Federal Housing Agency and the racial banking system on building generational wealth in the Black community. Tatiyana is a member of the Black Law Student Association and volunteers her time with the Homeless Clinic (Knox Area Rescue Ministries), where she will be the project leader for the 2022-2023 school year. She is currently creating a diversity workshop that features topics explaining terminology that is appropriate and inappropriate when discussing people of color and members of the LGBTQ community, as well as controversial topics such as 'Black Lives Matter' or microaggressions frequently stated in the workplace.

"It was so hard coming to law school and finding that I was one of eight black students in my year. As a Diversity and Inclusion Fellow at my law school, I use this platform to not only create more inclusive spaces for people of color, but I am able to educate others on the various issues that plague people of color within the legal field."

MATTHEW MAYERS

- *Syracuse University College of Law Syracuse, New York*
- *Expected Graduation: May 2023*
- *Hometown: Port Jefferson Station, New York*
- *Master of Arts in Political Science from Syracuse University Maxwell School of Citizenship & Public Affairs*
- *Master of Public Administration from Cornell University*
- *B.S., Human Development, Human Neuroscience Concentration from Cornell University*

Matt Mayers is passionate and committed to addressing and advocating for health disparities for disenfranchised communities through law and policy. Matt devotes a significant time as a pro bono scholar. He also serves on the Stonewall Convictions Project at the LGBT Bar Association (LeGaL) of Greater New York and is involved in drafting legislation to address LGBT discrimination. He also serves as a team leader for the Closure Letter Project at the Cold Case Justice Initiative, is an active member and tutor with the Black Law Students Association and is a pro bono scholar. Matt also serves as senior articles editor for the Journal of Global Rights and Organizations (JGRO) and wrote "The Absence of Health Monitoring Systems in Prisons: Evolving Understandings of The Eighth Amendment."

"Nearly a decade ago, I left my hometown in Long Island, New York, to attend college in rural Upstate New York. Culturally, the transition was a significant shock for me in terms of size and population density. I witnessed firsthand that residents from rural communities faced serious challenges when seeking health care and social services. I developed a desire to resolve some of these issues of distance and quality of services in rural areas. This led me to seek admission to a law school in rural New York with programs aligned with my interests in public interest through the lens of disability, elder care, and healthcare law."

VICTOR QIU

- *University of California, Hastings College of the Law – San Francisco, California*
- *Expected Graduation: May 2024*
- *Hometown: San Francisco*
- *Master of Public Administration from the University of Southern California*
- *B.A., cum laude, Political Science from the University of Southern California*

Victor grew up in a low-income area on the west side of San Francisco with four people living in a one-bedroom rent-controlled apartment. His parents immigrated to the United States and instilled in him to follow his dreams. Victor found his way to scholarships and opportunities to achieve his goals. He shares these experiences as a dedicated member of the UC Hastings Legal Education Opportunity Program (LEOP) as a mentor for first-generation, low-income, minority, and underrepresented law students – all communities of which he is a part. He currently holds leadership positions with the Asian Pacific Law Student Association.

"With no more than a high school education, my parents instilled in me the fundamentals of hard work and grit and the belief that our socioeconomic background was no barrier to success. My awareness of the community and background I grew up in has only strengthened my commitment to diversity, equity, and inclusion in the legal profession. I hope to strengthen pipeline programs into the legal field for first-generation, low-income, minority, and underrepresented students."

USLAW NETWORK, INC®

pro bono
SPOTLIGHT

Hanson Bridgett joins Bay Area legal alliance coalition

Hanson Bridgett LLP in San Francisco signed on to be part of the Legal Alliance for Reproductive Rights, a coalition of San Francisco Bay Area law firms offering free legal services to those affected by the Dobbs decision.

Boisen, Kirsch recognized for pro bono services

Caryn Boisen and **Steve Kirsch** of Larson King LLP in Minnesota were named 2021 North Star Lawyers by the Minnesota State Bar Association for providing over 50 hours of pro bono legal services to low-income people last year, at no fee, and without expectation of a fee.

Murchison & Cumming LLP

Julie Esposito of Murchison & Cumming LLP in Los Angeles has joined the board of directors of a non-partisan civil liberties organization called The Rutherford Institute and has handled cases on behalf of the organization.

Anthony Ross of Murchison & Cumming LLP in Los Angeles provides pro bono legal advice through the Beverly Hills Bar Association's free legal clinic, mentored a Pepperdine Law School 2nd year law student and is also the president of the Beverly Hills Bar Association Board.

about USLAW NETWORK

2001. The Start of Something Better.

Mega-firms...big, impersonal bastions of legal tradition, encumbered by bureaucracy and often slow to react. The need for an alternative was obvious. A vision of a network of smaller, regionally based, independent firms with the capability to respond quickly, efficiently and economically to client needs from Atlantic City to Pacific Grove was born. In its infancy, it was little more than a possibility, discussed around a small table and dreamed about by a handful of visionaries. But the idea proved too good to leave on the drawing board. Instead, with the support of some of the country's brightest legal minds, USLAW NETWORK became a reality.

Fast forward to today.

The commitment remains the same as originally envisioned. To provide the highest quality legal representation and seamless cross-jurisdictional service to major corporations, insurance carriers, and to both large and small businesses alike, through a network of professional, innovative law firms dedicated to their client's legal success. Now as a diverse network with more than 6,000 attorneys from nearly 100 independent, full practice firms across the U.S., Canada, Latin America and Asia, and with affiliations with TELFA in Europe, USLAW NETWORK remains a responsive, agile legal alternative to the mega-firms.

Home Field Advantage.

USLAW NETWORK offers what it calls The Home Field Advantage which comes from knowing and understanding the venue in a way that allows a competitive advantage – a truism in both sports and business. Jurisdictional awareness is a key ingredient to successfully operating throughout the United States and abroad. Knowing the local rules, the judge, and the local business and legal environment provides our firms' clients this advantage. The strength and power of an international presence combined with the understanding of a respected local firm makes for a winning line-up.

A Legal Network for Purchasers of Legal Services.

USLAW NETWORK firms go way beyond providing quality legal services to their clients. Unlike other legal networks, USLAW is organized around client expectations, not around the member law firms. Clients receive ongoing educational opportunities, online resources, including webinars, jurisdictional updates, and resource libraries. We also provide *USLAW Magazine*, compendia of law, as well as an annual membership directory. To ensure our goals are the same as the clients our member firms serve, our Client Leadership Council and Practice Group Client Advisors are directly involved in the development of our programs and services. This communication pipeline is vital to our success and allows us to better monitor and meet client needs and expectations.

USLAW IN EUROPE.

Just as legal issues seldom follow state borders, they often extend beyond U.S. boundaries as well. In 2007, USLAW established a relationship with the Trans-European Law Firms Alliance (TELFA), a network of more than 20 independent law firms representing more than 1,000 lawyers through Europe to further our service and reach.

How USLAW NETWORK Membership is Determined.

Firms are admitted to the NETWORK by invitation only and only after they are fully vetted through a rigorous review process. Many firms have been reviewed over the years, but only a small percentage were eventually invited to join. The search for quality member firms is a continuous and ongoing effort. Firms admitted must possess broad commercial legal capabilities and have substantial litigation and trial experience. In addition, USLAW NETWORK members must subscribe to a high level of service standards and are continuously evaluated to ensure these standards of quality and expertise are met.

USLAW in Review.

- All vetted firms with demonstrated, robust practices and specialties
- Organized around client expectations
- Efficient use of legal budgets, providing maximum return on legal services investments
- Seamless, cross-jurisdictional service
- Responsive and flexible
- Multitude of educational opportunities and online resources
- Team approach to legal services

The USLAW Success Story.

The reality of our success is simple: we succeed because our member firms' clients succeed. Our member firms provide high-quality legal results through the efficient use of legal budgets. We provide cross-jurisdictional services eliminating the time and expense of securing adequate representation in different regions. We provide trusted and experienced specialists quickly.

When a difficult legal matter emerges – whether it's in a single jurisdiction, nationwide or internationally – USLAW is there.

For more information, please contact Roger M. Yaffe, USLAW CEO, at (800) 231-9110 or roger@uslaw.org

USLAW NETWORK, INC®

2022 MEMBERSHIP ROSTER

ALABAMA | BIRMINGHAM
Carr Allison
Charles F. Carr ..... (251) 626-9340
ccarr@carrallison.com

ARIZONA | PHOENIX
Jones, Skelton & Hochuli, P.L.C.
Phillip H. Stanfield..... (602) 263-1745
pstanfield@jshfirm.com

ARKANSAS | LITTLE ROCK
Quattlebaum, Grooms & Tull PLLC
John E. Tull, III ..... (501) 379-1705
jtull@qgtlaw.com

CALIFORNIA | LOS ANGELES
Murchison & Cumming LLP
Dan L. Longo..... (714) 953-2244
dlongo@murchisonlaw.com

CALIFORNIA | SAN DIEGO
Klinedinst PC
John D. Klinedinst..... (619) 239-8131
jklinedinst@klinedinstlaw.com

CALIFORNIA | SAN FRANCISCO
Hanson Bridgett LLP
Mert A. Howard..... (415) 995-5033
mhoward@hansonbridgett.com

CALIFORNIA | SANTA BARBARA
Snyder Burnett Egerer, LLP
Barry Clifford Snyder..... (805) 683-7750
bsnyder@sbelaw.com

COLORADO | DENVER
Lewis Roca
Jessica L. Fuller ..... (303) 628-9527
jfuller@lewisroca.com

CONNECTICUT | HARTFORD
Hinckley Allen
Noble F. Allen ..... (860) 725-6237
nallen@hinckleyallen.com

DELAWARE | WILMINGTON
Cooch and Taylor P.A.
C. Scott Reese..... (302) 984-3811
sreese@coochtaylor.com

FLORIDA | CENTRAL FLORIDA
Wicker Smith
Richards H. Ford ..... (407) 843-3939
rford@wickersmith.com

FLORIDA | SOUTH FLORIDA
Wicker Smith
Nicholas E. Christin..... (305) 448-3939
nchristin@wickersmith.com

FLORIDA | TALLAHASSEE
Carr Allison
Christopher Barkas..... (850) 222-2107
cbarkas@carrallison.com

HAWAII | HONOLULU
Goodsill Anderson Quinn & Stifel LLP
Edmund K. Saffery..... (808) 547-5736
esaffery@goodsill.com

IDAHO | BOISE
Duke Evett, PLLC
Keely E. Duke ..... (208) 342-3310
ked@dukeevett.com

ILLINOIS | CHICAGO
SmithAmundsen LLC
Lew R.C. Bricker..... (312) 894-3224
lbricker@salawus.com

IOWA | CEDAR RAPIDS
Simmons Perrine Moyer Bergman PLC
Kevin J. Visser..... (319) 366-7641
kvisser@spmblaw.com

KANSAS/WESTERN MISSOURI | KANSAS CITY
Dysart Taylor Cotter McMonigle & Brumitt, PC
Patrick K. McMonigle ..... (816) 714-3039
pmcmonigle@dysarttaylor.com

KENTUCKY | LOUISVILLE
Middleton Reutlinger
Elisabeth S. Gray..... (502) 625-2848
EGray@MiddletonLaw.com

LOUISIANA | NEW ORLEANS
McCranie, Sistrunk, Anzelmo, Hardy McDaniel & Welch LLC
Michael R. Sistrunk..... (504) 846-8338
msistrunk@mcsalaw.com

MAINE | PORTLAND
Richardson, Whitman, Large & Badger
Elizabeth G. Stouder..... (207) 774-7474
estouder@rwlb.com

MARYLAND | BALTIMORE
Franklin & Prokopik, PC
Albert B. Randall, Jr..... (410) 230-3622
arandall@fandpnet.com

MASSACHUSETTS | BOSTON
Rubin and Rudman LLP
John J. McGivney..... (617) 330-7000
jmcgivney@rubinrudman.com

MINNESOTA | ST. PAUL
Larson • King, LLP
Mark A. Solheim..... (651) 312-6503
msolheim@larsonking.com

MISSISSIPPI | GULFPORT
Carr Allison
Douglas Bagwell ..... (228) 864-1060
dbagwell@carrallison.com

MISSISSIPPI | RIDGELAND
Copeland, Cook, Taylor & Bush, P.A.
James R. Moore, Jr..... (601) 427-1301
jmoore@cctb.com

MISSOURI | ST. LOUIS
Lashly & Baer, P.C.
Stephen L. Beimdiek ..... (314) 436-8303
sbeim@lashlybaer.com

MONTANA | GREAT FALLS
Davis, Hatley, Haffeman & Tighe, P.C.
Maxon R. Davis ..... (406) 761-5243
max.davis@dhhtlaw.com

NEBRASKA | OMAHA
Baird Holm LLP
Jennifer D. Tricker..... (402) 636-8348
jtricker@bairdholm.com

NEVADA | LAS VEGAS
Thorndal Armstrong Delk Balkenbush & Eisinger
Brian K. Terry ..... (702) 366-0622
bkt@thorndal.com

NEW JERSEY | ROSELAND
Connell Foley LLP
Kevin R. Gardner..... (973) 840-2415
kgardner@connellfoley.com

NEW MEXICO | ALBUQUERQUE
Modrall Sperling
Jennifer G. Anderson ..... (505) 848-1809
Jennifer.Anderson@modrall.com

NEW YORK | BUFFALO
Barclay Damon LLP
Peter S. Marlette .....(716) 858-3763
pmarlette@barclaydamon.com

NEW YORK | HAWTHORNE
Traub Lieberman
Stephen D. Straus..... (914) 586-7005
sstraus@tlsslaw.com

NEW YORK | UNIONDALE
Rivkin Radler LLP
David S. Wilck ..... (516) 357-3347
David.Wilck@rivkin.com

NORTH CAROLINA | RALEIGH
Poyner Spruill LLP
Deborah E. Sperati..... (252) 972-7095
dsperati@poynerspruill.com

NORTH DAKOTA | DICKINSON
Ebeltoft . Sickler . Lawyers PLLC
Randall N. Sickler..... (701) 225-5297
rsickler@ndlaw.com

OHIO | CLEVELAND
Roetzel & Andress
Bradley A. Wright ..... (330) 849-6629
bwright@ralaw.com

OKLAHOMA | OKLAHOMA CITY
Pierce Couch Hendrickson Baysinger & Green, L.L.P.
Gerald P. Green..... (405) 552-5271
jgreen@piercecouch.com

OREGON | PORTLAND
Williams Kastner
Thomas A. Ped ..... (503) 944-6988
tped@williamskastner.com

PENNSYLVANIA | PHILADELPHIA
Sweeney & Sheehan, P.C.
J. Michael Kunsch ..... (215) 963-2481
michael.kunsch@sweeneyfirm.com

PENNSYLVANIA | PITTSBURGH
Pion, Nerone, Girman, Winslow & Smith, P.C.
John T. Pion ..... (412) 281-2288
jpion@pionlaw.com

RHODE ISLAND | PROVIDENCE
Adler Pollock & Sheehan P.C.
Richard R. Beretta, Jr. ..... (401) 427-6228
rberetta@apslaw.com

SOUTH CAROLINA | COLUMBIA
Sweeny, Wingate & Barrow, P.A.
Mark S. Barrow..... (803) 256-2233
msb@swblaw.com

SOUTH DAKOTA | PIERRE
Riter Rogers, LLP
Robert C. Riter..... (605) 224-5825
r.riter@riterlaw.com

TENNESSEE | MEMPHIS
Martin, Tate, Morrow & Marston, P.C.
Lee L. Piovarcy ..... (901) 522-9000
lpiovarcy@martintate.com

TEXAS | DALLAS
Fee, Smith & Sharp, L.L.P.
Michael P. Sharp..... (972) 980-3255
msharp@feesmith.com

TEXAS | HOUSTON
MehaffyWeber
Barbara J. Barron ..... (713) 655-1200
BarbaraBarron@mehaffyweber.com

UTAH | SALT LAKE CITY
Strong & Hanni, PC
Stephen J. Trayner..... (801) 323-2011
strayner@strongandhanni.com

WASHINGTON | SEATTLE
Williams Kastner
Rodney L. Umberger ..... (206) 628-2421
rumberger@williamskastner.com

WEST VIRGINIA | CHARLESTON
Flaherty Sensabaugh Bonasso PLLC
Michael Bonasso..... (304) 347-4259
mbonasso@flahertylegal.com

WISCONSIN | MILWAUKEE
Laffey, Leitner & Goode LLC
Jack Laffey ..... (414) 312-7105
jlaffey@llgmke.com

WYOMING | CASPER
Williams, Porter, Day and Neville PC
Scott E. Ortiz ..... (307) 265-0700
sortiz@wpdn.net

USLAW INTERNATIONAL

ARGENTINA | BUENOS AIRES
Barreiro, Olivas, De Luca, Jaca & Nicastro
Nicolás Jaca Otaño..... (54 11) 4814-1746
njaca@bodlegal.com

BRAZIL | SÃO PAULO
Mundie e Advogados
Rodolpho Protasio ..... (55 11) 3040-2923
rofp@mundie.com

CANADA | **ALBERTA** CALGARY & EDMONTON
Parlee McLaws LLP
Connor Glynn ..... (780) 423-8639
cglynn@parlee.com

CANADA | **ONTARIO** | OTTAWA
Kelly Santini
Lisa Langevin ..... (613) 238-6321 ext 276
llangevin@kellysantini.com

CANADA | **QUEBEC** | BROSSARD
Therrien Couture JoliCoeur
Douglas W. Clarke..... (450) 462-8555
douglas.clarke@groupetcj.ca

CHINA | SHANGHAI
Duan&Duan
George Wang 8621 6219 1103
george@duanduan.com

MEXICO | MEXICO CITY
EC Rubio
René Mauricio Alva ..... +52 55 5251 5023
ralva@ecrubio.com

TELFA

AUSTRIA
PHH Rechtsanwälte
Rainer Kaspar..... +43 1 714 24 40
kaspar@phh.at

BELGIUM
CEW & Partners
Charles Price ..... (+32 2) 534 20 20
Charles.price@cew-law.be

CZECH REPUBLIC
Vyskocil, Kroslak & spol., Advocates and Patent Attorneys
Jiri Spousta ..... (00 420) 224 819 133
spousta@akvk.cz

DENMARK
Lund Elmer Sandager
Jacob Roesen.....(+45 33 300 268)
jro@les.dk

ENGLAND
Wedlake Bell LLP
Richard Isham.....+44(0)20 7395 3000
risham@wedlakebell.com

ESTONIA • LATVIA • LITHUANIA
LEXTAL Tallinn|Riga|Vilnius
Lina Siksniute-Vaitiekuniene .....(+370) 5 210 27 33
lina@lextal.lt

FINLAND
Lexia Attorneys Ltd.
Markus Myhrberg..... +358 10 4244200
markus.myhrberg@lexia.fi

FRANCE
Delsol Avocats
Emmanuel Kaeppelin..... +33(0)4 72 10 20 30
ekaeppelin@delsolavocats.com

GERMANY
Buse
Jasper Hagenberg ..... +49 30 327942 0
hagenberg@buse.de

GREECE
Corina Fassouli-Grafanaki & Associates Law Firm
Korina Fassouli-Grafanaki .....(+30) 210-3628512
korina.grafanaki@lawofmf.gr

HUNGARY
Bihary Balassa & Partners Attorneys at Law
Phone..... +36 1 391 44 91

IRELAND
Kane Tuohy Solicitors
Sarah Reynolds .....(+353) 1 6722233
sreynolds@kanetuohy.ie

ITALY
LEGALITAX Studio Legale e Tributario
Alessandro Polettini ..... +39 049 877 58 11
alessandro.polettini@legalitax.it

LUXEMBOURG
Tabery & Wauthier
Véronique Wauthier ..... (00352) 251 51 51
avocats@tabery.eu

MALTA
EMD
Dr. Italo Ellul ..... +356 2123 3005
iellul@emd.com.mt

NETHERLANDS
Dirkzwager
Karen A. Verkerk..... +31 26 365 55 57
Verkerk@dirkzwager.nl

NORWAY
Advokatfirmaet Sverdrup DA
Tom Eivind Haug .....+47 90653609
haug@sverdruplaw.no

POLAND
GWW
Aldona Leszczyńska-Mikulska..... +48 22 212 00 00
warszawa@gww.pl

PORTUGAL
Carvalho, Matias & Associados
Antonio Alfaia de Carvalho .....(351) 21 8855440
acarvalho@cmasa.pt

SLOVAKIA
Alianciaadvokátov
Gerta Sámelová Flassiková .....+421 2 57101313
flassikova@aliancia.sk

SPAIN
Adarve Abogados SLP
Juan José García .....+34 91 591 30 60
Juanjose.garcia@adarve.com

SWEDEN
Wesslau Söderqvist Advokatbyrå
Phone..... +46 8 407 88 00

SWITZERLAND
Meyerlustenberger Lachenal
Nadine von Büren-Maier.....+41 22 737 10 00
nadine.vonburen-maier@mll-legal.com

TURKEY
Cukur & Yilmaz
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the complete USLAW SOURCEBOOK

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USLAW is continually seeking to ensure that your legal outcomes are successful and seamless. We hope that these resources can assist you. Please don't hesitate to send us input on your experience with any of the USLAW client resources products or services listed as well as ideas for the future that would benefit you and your colleagues.

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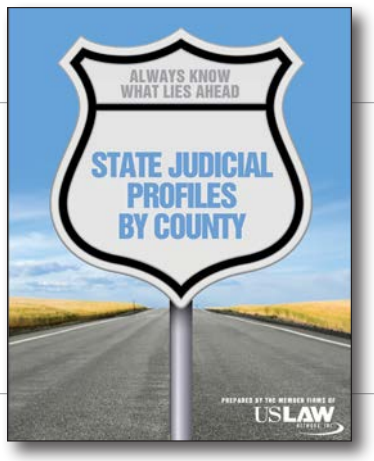

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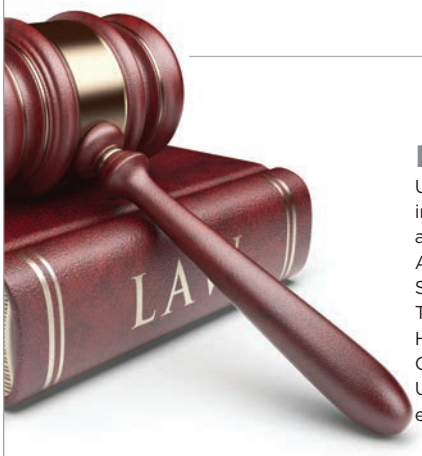

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Fax: (614) 885-8014

Chris Torrens
Vice President
795 Cromwell Park Drive, Suite N
Glen Burnie, MD 21061
Phone: (800) 635-9507
Email: ctorrens@SEAlimited.com

Ami Dwyer, Esq.
General Counsel
795 Cromwell Park Drive, Suite N
Glen Burnie, MD 12061
Phone: (800) 635-9507
Email: adwyer@SEAlimited.com

Dick Basom
Manager, Regional Business Development
7001 Buffalo Parkway
Columbus, Ohio 43229
Phone: (800) 782-6851
Email: rbasom@SEAlimited.com

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Michael Funk
Director of Business Development
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Email: mfunk@americanlegalrecords.com

Jeff Bygrave
Account Executive
Phone: (610) 848-4350
Email: jbygrave@americanlegalrecords.com

Kelly McCann
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12894 Parkridge Drive, Suite 100
Shelby Township, MI 48315
Phone: 586.932.2111
Email: rgrant@teamarcadia.com

Your USLAW structured settlements consultants are:
Brian Annandono, CSSC • Cleveland, OH
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Merrie Jo Pitera, Ph.D.
Senior Director of Jury Consulting
Phone: 913.339.6468
Email: mjpitera@expertservices.com

Adam Bloomberg
Client Services Advisor
Phone: 214.395.7584
Email: abloomberg@expertservices.com

Jill Leibold, Ph.D.
Director of Jury Research
Phone: 310.809.8651
Email: jleibold@expertservices.com

Christina Marinakis, J.D., Psy.D.
Director of Jury Research
Phone: 443.742.6130
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www.mi-pi.com
401 Devon Ave.
Park Ridge, IL 60068
Phone: (855) 350-6474 (MIPI)
Fax: (847) 993-2039

Doug Marshall
President
Email: dmarshall@mi-pi.com

Adam M. Kabarec
Vice President
Email: akabarec@mi-pi.com

Matt Mills
Vice President of Business Development
Email: mmills@mi-pi.com

Thom Kramer
Director of Internet Investigations
Email: tkramer@mi-pi.com

Amie Norton
Business Development Manager
Email: anorton@mi-pi.com

Valentina Benjamin
SIU Manager
Email: vbenjamin@mi-pi.com

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www.mdd.com
11600 Sunrise Valley Drive, Suite 450
Reston, VA 20191
Phone: (703) 796-2200
Fax: (703) 796-0729

David Elmore, CPA, CVA, MAFF
11600 Sunrise Valley Drive, Suite 450
Reston, VA 20191
Phone: (703) 796-2200
Fax: (703) 796-0729
Email: delmore@mdd.com

Kevin Flaherty, CPA, CVA
10 High Street, Suite 1000
Boston, MA 02110
Phone: (617) 426-1551
Fax: (617) 426-6023
Email: kflaherty@mdd.com

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