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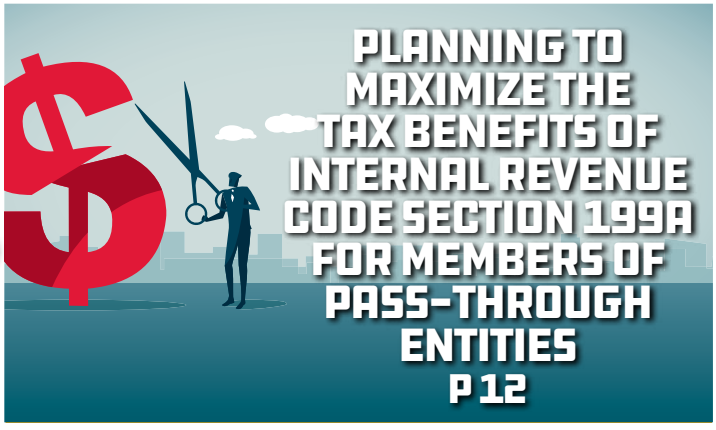

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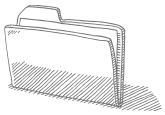

from the CHAIR'S DESK

Welcome to the spring 2025 issue of *USLAW Magazine*. As you flip the pages, you will find some of the latest insights around IP, AI, labor laws, CT scanning in product testing, tax benefits, quality of care considerations, how the pandemic reshaped jury deliberations and much more. We also shine a light on our members and their achievements in and out of the courtroom and in their respective communities.

We are also pleased to share information about one of our newest initiatives, USLAW Remote. This exciting project is powered by an enhanced and expanded effort to virtually connect with clients and member attorneys through both live and on-demand programming to share information about specific topics within various practice groups. Stay tuned for more information about upcoming programs, and let us know if we can find ways to collaborate with you to craft remote opportunities that would be of value and interest to your company.

The USLAW Board is also enhancing our USLAW Strategic Playbook, which includes our full-court press to support your legal needs and provide you with the legal information and services you need in order to be successful in your jobs; that is what we are here to help you to do.

Enjoy this latest edition of USLAW Magazine. Please reach out if you have feedback on USLAW or how we can help you. Thank you for your continued support of USLAW and our members.

Sincerely,

Kenneth B. Wingate
Chair, USLAW NETWORK
Sweeny, Wingate & Barrow, P.A. | Columbia, SC

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PREGNANCY DISCRIMINATION CASES ARE ON THE RISE

Are You Ready?

Julie Proscia and **Kevin Kleine** Amundsen Davis, LLC

Pregnancy discrimination claims have increased significantly at the federal and state levels over the past decade. Every year, more states adopt legislation that places additional requirements on employers. Employee relations specialists and legal teams need to develop sound strategies to prevent and mitigate exposure to potential discrimination, harassment, or retaliation claims.

CURRENT FEDERAL AND STATE LAWS

Since the federal Pregnant Workers Fairness Act (PWFA) went into effect in June 2023, employers nationwide have had to carefully navigate an ever-changing world of employment law with respect to accommodating employees who are or may become pregnant. Under the PWFA, private and public sector employers with 15 or more employees are required to accommodate a qualified employee or applicant's known limitations affected by or related to pregnancy, childbirth, or related medical conditions.

The days of providing maternity leave only to expectant mothers are long gone. State and federal pregnancy discrimination laws mirror—and oftentimes go beyond—federal disability discrimination and accommodation laws.

A number of states impose greater requirements on employers and provide more protections to employees than what is required under federal law. Not surprisingly, California's Pregnancy Disability Leave (PDL) law is the most expansive state pregnancy accommodation law, which provides eligible employees with up to four months of unpaid leave per pregnancy if they are unable to work due to pregnancy, childbirth, or related medical conditions. PDL applies to all employers with five or more employees, regardless of the employee's tenure or hours worked. During leave, employees are entitled to job protection, and employers must continue health insurance benefits if they normally provide them. California, like many other states, has a number of other local and state laws that impact employers with respect to pregnancy, including the California Family Rights Act.

This type of law is not unique to California. New York recently became the first state to require employers to provide up to 20 hours of paid prenatal leave each year in addition to any paid sick leave required under state law. The leave can be used to attend prenatal medical appointments and procedures. Multiple states, including Massachusetts, Connecticut, Hawaii, Wisconsin, Rhode Island, and Louisiana, have specific pregnancy disability or leave laws that provide protections for employees who are unable to work due to pregnancy, childbirth, or related medical conditions. These laws vary in terms of eligibility requirements, duration, and benefits provided.

HOW EMPLOYERS CAN NAVIGATE MULTI-JURISDICTIONAL COMPLIANCE

With the multitude of laws on various levels, an employer's first line of defense is to ensure that it has written policies in place that comply with all applicable local, state, and federal laws related to and impacting pregnancy and expecting parents. Employers operating in multiple states should have policies covering all state and local laws in the states in which they operate.

When it comes to accommodating and responding to the needs of a pregnant worker under local, state, and federal law, there's no one-size-fits-all answer. The issues must be addressed and determined on a case-by-case basis depending upon the employee's needs and the employer's operations. This process usually involves consideration of overlapping state and federal laws, such as under the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act, as well as state and local discrimination, accommoda-

tion, and leave laws.

Federal law generally requires that if or when a qualified employee or applicant requests accommodation(s) related to pregnancy, childbirth, or any medical or common conditions related to pregnancy or childbirth, covered employers engage them in an interactive process to determine what accommodations, if any, they require that will enable them to perform the essential functions of their job. Importantly, employers need to anticipate that an employee requesting pregnancy-related accommodations will likely require such accommodations for the duration of their pregnancy and even after childbirth (e.g., the employee has return-to-work restrictions that need to be accommodated when they return). Therefore, employers should expect that employees may require pregnancy-related accommodations for extended periods of time that could last for months, if not longer.

Employers also have to accommodate the known limitations of a pregnant worker. Accommodating an employee's known limitations related to pregnancy requires more than just providing maternity, parental, or bonding leave or permitting employees to miss work to attend doctor's appointments. Generally, this means an employer must accommodate an employee's known physical limitations due to pregnancy, childbirth, or related medical conditions (e.g., if an employee can't lift over a certain weight before or after childbirth or requires additional breaks to use the restroom). Qualified employees may need to be placed on restrictive or light duty temporarily. In 2015, the U.S. Supreme Court held that an employer's light duty program that excludes workers with pregnancy limitations could violate federal pregnancy discrimination laws.

Although an employer can deny an employee's request for accommodation(s) if the request is not reasonable or providing the accommodation would impose an undue burden or hardship on the employer or the employer's operations, it should consult a labor and employment attorney before doing so. Unless the accommodation is truly burdensome to the employer, the requested accommodation should be provided to avoid any discrimination, failure to accommodate, or retaliation claims. The bottom line is that the requested accommodation must be reasonable. By way of examples, accommodating an employee in the form of temporarily reducing their hours, allowing an employee to temporarily work from home, or even providing unpaid leave outside of an employee's FMLA entitlements for a short time (one to two months) are generally considered reasonable accommodations.

Employers should be consistent when requiring employees to provide and submit medical documentation completed by the employee's healthcare provider to support the need for any requested accommodations or leave. But be careful—some states do not allow an employer to do so for common pregnancy-related accommodations. Under the Illinois Pregnancy Accommodation Act (part of the Illinois Human Rights Act), employers must provide reasonable accommodations to employees affected by pregnancy, childbirth, or related conditions, regardless of whether the employee provides a doctor's note. Accommodations that typically do not require medical documentation include frequent or longer breaks, seating accommodations, assistance with manual labor, modified work schedules, temporary transfer, and access to private spaces (e.g., providing a private, non-bathroom space for expressing breast milk).

While employers do not have to provide the specific accommodation requested by the employee, they can provide an alternative accommodation as long as it's reasonable. Keep in mind that the PWFA prohibits employers from requiring an employee to take leave if another reasonable accommodation can be provided that would let the employee keep working. Ultimately, employers must determine whether or not their organization can provide the requested accommodation(s) or accommodate the employee's known limitations or restrictions without undue hardship on the employer or its operations.

Employers who fail to adhere to their obligations under applicable local, state, and federal pregnancy discrimination and disability laws risk discrimination, harassment, failure to accommodate, and retaliation claims. To mitigate risk, employers should document everything related to an employee's request for pregnancy-related accommodations or leave and save all records for at least two years after such requests are made. This includes memorializing any conversations held with employees related to such requests in writing and saving all written communications in the employee's personnel file. It's good practice for employers to have and use standardized forms for employees to complete when requesting pregnancy accommodation or leave.

Lastly, employers need to be mindful of their obligations to employees after childbirth. Under the federal Providing Urgent Maternal Protections for Nursing Mothers Act, which went into effect in December 2022, and certain state laws, employers are required to provide covered employees with reasonable break time and space to pump breast milk. Specifically, employers must provide covered employees with a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk. While not required under the law, employers should consider providing a separate refrigerator for employees to store breast milk or require employees to clearly label containers with breast milk stored in employee-accessible refrigerators.

CONCLUSION

With the increasingly complex requirements involved in multi-jurisdictional compliance, including hyper-localized laws, it is difficult to remain abreast of the latest legislation, much less the latest trends. However, when examining pregnancy-related accommodation, disability, and discrimination laws, it is safe to say that the legislative trends in this area will only continue to increase and impact the way employers do business. Working with legal counsel to review and implement your pregnancy accommodation and discrimination policies and practices upfront can save you from a multi-state lawsuit later on. It's also critical for employers to consult and work with legal counsel during the accommodation process after receiving an employee's request for pregnancy-related accommodations to avoid any potential discrimination, harassment, or retaliation claims.

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Company Websites & Internet Ads - Avoiding Personal Jurisdiction in Non-Business States

William J. Aubel Flaherty Sensabaugh Bonasso PLLC

In today's internet age, it is almost unheard of for a business, no matter how large or how small, to not maintain some form of an online presence, such as a company website, social media profile, or search engine optimization listing. A consumer may access any company's website or social media profile at the touch of a button from their computers or smartphones anywhere in the world. However, does a consumer's unprecedented access to a business's information create unforeseen legal consequences for small companies? Specifically, does a small business's website, social media profile or internet advertising activities expose it to being sued and subject to personal jurisdiction in states where the company seemingly has no connection? The answer to this question hinges on the type of website a company maintains and the scope of advertising that a company engages in.

COMPANY WEBSITE AS THE BASIS FOR PERSONAL JURISDICTION

The manner in which a small company maintains its website and describes its business on its website may confer personal jurisdiction on the business in an unintended and unwanted state. Multiple courts have found that the operation of an interactive website, such as one on which consumers can order a company's goods or services, may subject that company to the

exercise of personal jurisdiction. *See e.g. Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 170-171 (2d Cir. 2010) (finding personal jurisdiction in New York where an Alabama-and-California-based defendant used a "highly interactive" website to serve a nationwide market but also sent items physically into New York).

Alternatively, multiple courts have rejected personal jurisdiction on nonresident defendants who have operated passive websites that only provide general information about a company and its products and services. *See e.g. Jennings v. AC Hydraulics A/S*, 383 F.3d 546 (7th Cir. 2004) (holding that a defendant's maintenance of a passive website does not support the exercise of personal jurisdiction over that defendant in a particular forum just because the website can be accessed there). A passive website is one where an internet user may pass by or slow down and read in detail. However, a passive website does not enable the internet user to reach out through that website and connect with the website's owner. For example, in *Ackourey v. Sonellas Custom Tailors*, 573 Fed. Appx. 208 (3d Cir. 2014), the Third Circuit found that an apparel business's website listed a travel schedule and only allowed potential customers to email requests for appointments. It did not permit customers to place orders, make payments, or engage in any business transactions. This low degree of commercial activity rendered the apparel business's website passive and was not grounds for exercising personal jurisdiction.

To avoid being hauled into court in an unforeseen jurisdiction, small companies should operate passive websites that merely provide information about the company and its products. The exercise of personal jurisdiction based on maintaining a passive website is impermissible because the company is not directing its business activities toward consumers in the forum state. Therefore, if a company's website does little more than generally advertise its business online to anyone searching for its products or services, it should not compose the necessary contacts with the forum state to exercise personal jurisdiction over the company. Suppose a company's website permits customers to place orders, make payments, or engage in any business transaction. In that case, the company should not be surprised if it is subject to personal jurisdiction in the state from where the customer engaged with the company's website.

INTERNET ADVERTISING AS THE BASIS FOR PERSONAL JURISDICTION

A small company's advertising activities may subject it to personal jurisdiction in states where it does not transact business. Advertising activities include social media posts, search engine optimization listings, or even highway billboards. However, courts have found such advertising contacts irrelevant in conferring specific personal jurisdiction on corporate defendants as long as the advertising is general in scope and not targeted at specific locations. For example, in *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cnty.*, 137 S. Ct. 1773 (U.S. 2017), a group of California plaintiffs brought suit against pharmaceutical giant, Bristol-Myers Squibb Co. ("BMS"), alleging that the group was injured by Plavix, a drug manufactured by BMS. Some of the plaintiffs had purchased Plavix from BMS's distribution chain in California, but others were nonresidents who received the drug outside of California. The United States Supreme Court held that California courts could not exercise specific personal jurisdiction over the nonresident plaintiffs' product liability and misleading advertising claims. The Supreme Court reached its conclusion even though BMS had five California research and laboratory facilities that employed around 160 employees. BMS also employed about 250 sales representatives in California and maintained a small state-government advocacy office in Sacramento. Additionally, BMS's marketing for Plavix was national in scope. BMS conducted a single nationwide advertising campaign for Plavix, using television, magazine, and internet ads to broadcast its message. BMS also sold almost 187 million Plavix pills in California and took in more than $900 million from those sales. BMS had even contracted with a California company to distribute Plavix nationwide.

Despite all of these contacts, the United States Supreme Court held that BMS's contacts with California were irrelevant as to specific personal jurisdiction. BMS did not develop Plavix in California, did not create a marketing strategy for Plavix in California, and did not manufacture, label, package, or work on the regulatory approval of the product in California. Further, the mere fact that other plaintiffs obtained the same product in California and sustained the same injuries as the nonresidents did not allow the state to assert specific jurisdiction over the nonresidents' claims. That is, the United States Supreme Court made clear that the specific jurisdiction analysis focuses on the specific claims at issue and where the defendant sold the specific product that harmed the specific plaintiff, even if the defendant sold identical products to other consumers in the forum state.

The United States Supreme Court's decision in *Bristol-Myers Squibb Co.* makes clear that a company's advertising campaign that is "national in scope," without a clear marketing strategy for a specific state, will not establish specific jurisdiction. The fact that a potential plaintiff has connections to a forum state is insufficient to confer jurisdiction. Thus, a small company's website or social media profile that does not indicate that the company is targeting advertisements to the potential forum state is insufficient to confer jurisdiction on the company in that state. To avoid being sued in a state where it does not conduct business, a company should engage in general, not specific, advertising. For example, a company should pay Google, or any other search engine, to only show its advertisement to anyone conducting a search on the company or the type of business or service it performs. A business that employs targeted advertising to a specific city or state should expect to be subject to personal jurisdiction in the forum that it targets. Further, if a company has a brick-and-mortar location where it offers products or services to a customer, the company's website should not contain directions on how to get to its location from any specific location where it does not want to be subject to jurisdiction. Though seemingly innocuous, these directions may be construed as targeting potential customers in a particular forum.

CONCLUSION

There are multiple reasons why a court will find that a company's website or internet advertising activities will subject a company to personal jurisdiction in an unwanted venue. However, depending on the circumstances, small companies may benefit from proceeding with caution in how exactly they maintain their websites on the internet in terms of interactivity and how specifically they target their advertising campaigns. Maintaining a highly interactive website or engaging in a specifically targeted advertising campaign may open a company up to being sued in unfriendly and unintended states.

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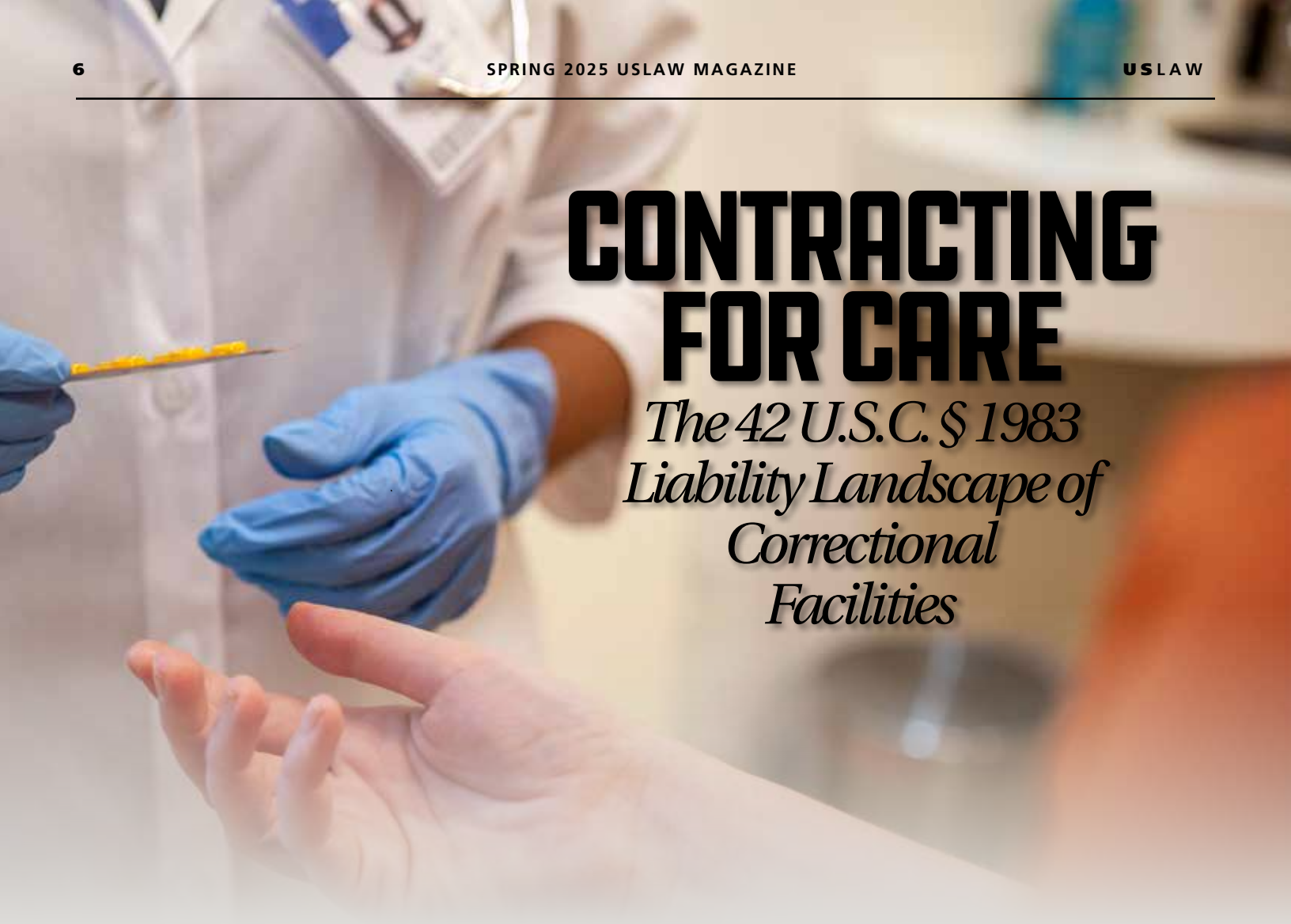

CONTRACTING FOR CARE

The 42 U.S.C. § 1983 Liability Landscape of Correctional Facilities

Jessica L. Dark and **W. Riley Nester** Pierce Couch

Pursuant to the Eighth Amendment's cruel and unusual punishment clause, jail and prison officials must ensure that inmates receive adequate medical care. Local governments commonly contract with private entities to provide medical care/services in jails and detention centers. Yet, this outsourcing does not eliminate a municipality's constitutional obligation to ensure detainees receive adequate medical treatment.

The U.S. Supreme Court in *West v. Atkins*, 487 U.S. 42 (1988), held that contracting out prison medical care does not relieve the state of its constitutional duty to provide adequate medical treatment to those in its custody. Plaintiffs' attorneys generally rely on *West* in bringing actions against the municipality under 42 U.S.C. § 1983 alleging deliberate indifference to inmates' serious medical needs even when a private contractor is responsible for medical services.

This article provides an overview of the core legal principles, examines how circuit courts are approaching the issue, and offers pre-emptive considerations for municipalities.

THE BASICS

Under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), a municipality cannot be held liable for any constitutional violations of its agents or employees under a theory of *respondeat superior*. Instead, a municipality may be held liable under 42 U.S.C. § 1983 only for (1) actions taken by municipality employees acting pursuant to an official policy or custom or (2) actions of a final policymaker for the municipality, such that the conduct may be viewed as the "official policy" of the municipality. In other words, plaintiffs must tie the violation of their constitutional rights to a policy, practice, or final policymaker's decision of the municipality.

When inmates allege a failure to provide adequate medical care, courts apply the "deliberate indifference" test, established in *Estelle v. Gamble*, 429 U.S. 97 (1976), and expanded upon in *Farmer v. Brennan*, 511 U.S. 825 (1994). This analysis has two prongs—an objective prong requiring that the deprivation be "sufficiently serious" and a subjective prong requiring that the municipality, through its policymakers, knew of and disregarded an excessive risk to inmate health or safety.

In the independent medical contractor context, plaintiffs often argue that the municipality "knew or should have known" about the contractor's deficiencies yet chose to proceed (or to ignore red flags) with the contract and, thus, acted with deliberate indifference.

CIRCUIT APPROACHES

The circuit courts have applied different approaches—if not in their outcomes, then certainly in the factors they emphasize when evaluating municipal liability in the context of private contractors providing medical care.

For example, the Seventh and Eleventh Circuits expressly treat private contractors as the functional equivalent of the municipality, meaning the private entity's own policies can trigger direct liability to the municipality under § 1983, while the Eighth Circuit and District of Columbia Circuit have plainly found that private contractors are considered state actors for the purposes of § 1983 claims, as they are performing municipal functions with municipal authority. The Fourth Circuit emphasizes that liability cannot be imposed for a contractor's independent policies unless the municipality delegated final policymaking authority, effectively making the contractor's policies "those of the County."

The Second, Sixth, and Seventh Circuits have placed particular emphasis on proving a municipal custom or pattern through a "series of bad acts"—i.e., multiple instances of prior similar misconduct—from which it can be inferred that municipal officials were aware of, and tacitly approved, such conduct. This examination seeks to reveal whether these prior instances reflect a broader institutional tolerance and/or failure to correct known violations, revealing a pervasive environment of deliberate indifference, rather than isolated missteps.

Although other circuits also rely on evidence of repeated wrongdoing, certain circuits—namely the Ninth and Tenth—require additional factual development showing sufficient state involvement to treat the relevant conduct as state action. These circuits carefully scrutinize the extent to which the municipality exercised control, oversight, or delegated governmental functions to the independent contractor, ensuring that liability attaches only where there is a clear nexus between the contractor's actions and the public entity's authority. This approach places greater emphasis on the subjective prong of the deliberate indifference test, requiring clear evidence that the municipality was actually "on notice" that contracting with the independent contractor would almost certainly result in a constitutional violation. By focusing on the municipality's knowledge and the foreseeability of the harm, these circuits seek to hold governments accountable when they knowingly disregarded a substantial risk of constitutional injury, differentiating inadvertent failures from willful neglect.

Given the varying judicial approaches, municipalities and their counsel must remain particularly vigilant in assessing their exposure to liability when partnering with private medical providers. While courts invariably conclude that outsourcing does not absolve municipalities of their constitutional obligations, each circuit's nuances demand careful attention. Against this legal backdrop, municipalities and their counsel should prepare robust strategies—both at the contracting stage and once litigation ensues—to preempt or rebut claims of deliberate indifference.

MUNICIPALITY CONSIDERATIONS

In preempting claims alleging deliberate indifference to inmates' medical needs, municipalities and their counsel should place a particular focus on certain major tenets within this area of the law, including contractual safeguards, municipal oversight and monitoring, and demonstrable measures of good faith.

With regard to contractual safeguards, contracts between municipalities and private medical providers should explicitly outline the scope of services, staffing requirements, training obligations, and applicable clinical standards. Where the provider's policies and procedures govern day-to-day care, the municipality should consider incorporating language reflecting its ongoing right to review and approve those protocols and, notably, follow through on those policies.

As to municipal oversight, municipalities that perform routine audits to verify staffing levels, credentialing, and adherence to clinical standards are best equipped to preempt, or defend against, claims of deliberate indifference. Documentation of such audits can provide compelling evidence of the municipality's diligence. Moreover, the best-equipped municipalities are those that implement robust systems to measure provider performance—be it inmate grievances, medical request response times, follow-up compliance, etc. Consistent reporting and follow-through help to demonstrate proactive monitoring, rather than a "blind handoff" to the private contractor. Lastly, where feasible, municipalities that establish joint committees and/or review boards comprising municipal and contractor representatives can best address emerging concerns before they escalate to systemic failures. As with any policy or practice, consistent compliance should be observed.

Because municipal liability under *Monell* largely hinges on the municipality's subjective knowledge of a substantial risk of constitutional violations, municipalities that can demonstrate consistent, good-faith practices in their staffing and oversight processes are far more likely to avoid—or successfully defend against—claims of deliberate indifference. These good-faith practices could include periodic training for both municipal staff and contractor personnel on constitutional requirements, proper documentation, and escalation procedures—which could help establish that the municipality took all reasonable steps in safeguarding inmates' rights. Further, promptly updating or correcting policies in light of identified shortcomings (e.g., new or amended regulations, accreditation standards, court rulings) can reflect a municipality's ongoing commitment to meeting constitutional mandates. And, because courts regularly scrutinize the efficacy of municipal officials' communication with private medical providers once on notice of potential deficiencies, demonstrating timely, good-faith outreach and/or corrective measures can significantly undermine an inference of "deliberate" disregard.

CONCLUSION

In sum, municipalities remain constitutionally accountable for the adequacy of inmate medical care, regardless of whether they have contracted with private providers to actually provide the care. Federal circuit courts uniformly emphasize that local governments cannot sidestep liability by outsourcing their Eighth Amendment duties; what differs across jurisdictions are the factors courts highlight in assessing Monell liability. Nonetheless, the practical takeaways remain consistent: municipalities must proactively monitor and oversee private medical contractors, employ robust contractual safeguards, and document good-faith efforts to address or remedy potential shortcomings. By closely supervising providers, regularly reviewing policies, and taking prompt corrective action when deficiencies arise, municipalities reduce the likelihood of claims of deliberate indifference and fortify their defenses should litigation ensue.

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Planning to Maximize the Tax Benefits of Internal Revenue Code Section 199A for Members of Pass-Through Entities

Robin Pipkin Poyner Spruill LLP

With the tax filing season upon us, many business owners are gathering needed tax return documents and researching applicable deductions and credits. Owners of pass-through entities can see significant savings on taxes by taking advantage of the deductions described in Section 199A of the Internal Revenue Code.

THE LAW

The Tax Cuts and Jobs Act enacted into law by Congress in 2017 was designed to stimulate the economy and create jobs by lowering taxes on individuals and businesses. The law provides significant deductions for pass-through entities such as S corporations and limited liability companies ("LLCs"). The deductions, described in Section 199A of the Internal Revenue Code ("Code"), can result in large tax savings for the entities' owners. While S corporations and business partnerships are usually not subject to income taxes, the owners must pay taxes on their portions of the partnerships' income. Each year, owners use data from the Internal Revenue Service Schedules K-1 tax forms to report income or loss on the owners' income tax returns. These tax benefits of Section 199A are not available to shareholders of C corporations.

Section 199A provides that an owner of a pass-through entity can deduct up to 20% of qualified business income ("QBI") from its taxes. The deduction is available regardless of whether the person itemizes deductions on the 1040 form or uses the standard deduction. Depending upon several factors, a taxpayer may deduct 20% of QBI, a lesser amount or no amount. For specified service trades or businesses, including accounting firms, brokerage firms, physicians' offices and law firms, the qualified business income deduction is limited or eliminated if income reaches a certain amount. If a taxpayer has ownership inter-

ests in more than one pass-through entity, the taxpayer must calculate QBI for each entity and summarize to determine the taxpayer's QBI for the particular tax year. However, the deduction is not only limited by a pass-through entity's type of business, but also the owner's allocable parts of the entity's unadjusted basis of assets and W-2 wages. Many of the benefits of the Tax Cuts and Jobs Act, including the Section 199A deductions, will expire at the end of 2025 if no further congressional action is taken.

EXAMPLE

The advantages of Section 199A deductions are easier to comprehend through a real-world example. For illustrative purposes, assume that a four-member LLC owns multiple commercial income-producing properties. The LLC pays independent contractors to repair and maintain its properties. The following are its 2024 income and expenses:

Gross income	$2,000,000
W-2 wages (clerical)	(80,000)
Repairs and maintenance	(300,000)
Other operating expenses	(100,000)
Property taxes	(24,000)
Mortgage interest	(112,500)
Insurance	(8,800)
Cleaning fees	(6,300)
Taxable Income	$1,368,400

Section 199A(b)(3) limits the (QBI) deduction based on W-2 wages. Assume that other income puts the LLC's members over the taxable income limitation. A member's deduction is limited to its allowable share of $40,000, or half of the total W-2 wages. Without this limitation, the deduction would be much higher.

Section 199A includes many intricacies, such as a further limitation that is based on the pass-through entity's unadjusted basis of assets. Without going into the particulars for this example, let's assume that the potential deduction of $273,680 is limited to half of the W-2 wages, i.e., $40,000.

Multi-member LLCs are taxed as partnerships for federal income purposes. Their members (who are "partners" for federal income tax purposes) are not classified as employees. Therefore, they cannot be paid W-2 wages. The LLC's members cannot reclassify distributions to themselves as wages for the limited purpose of increasing the Section 199A deduction. Since the amounts paid to the LLC's members are not deductible as W-2 wages, the deduction benefit is negated if there are no non-partners who are employees.

HOW TO OBTAIN THE DEDUCTION

After understanding the tax benefits of Section 199A, business owners need to decide the best way for them to obtain the deduction. The LLC could elect S corporation status that would permit payments of W-2 wages. However, this choice would eliminate many flexibilities. For instance, some LLC operating agreements provide for one or more of the following:

1. Preferential returns to some members
2. Different classes of interests that own different commercial properties
3. Multiple classes of members that own the same properties
4. Disproportionate distribution of funds relative to members' ownership interests

By operating the business as an S corporation, those options would be eliminated. The S corporation status does not permit these choices. There must be only one class of stock and distributions must be made in accordance with ownership interests.

A BETTER WAY TO OBTAIN THE DEDUCTION

There is another way for partners to avoid the limitation of the prohibited payments of W-2 wages. An LLC's owners can form an S corporation to be the manager of the LLC, with the LLC paying the S corporation a management fee. The S corporation then pays its owners W-2 wages for their work, thereby enabling a significant Section 199A deduction. However, the amounts paid by the S corporation to its members must be "reasonable compensation" as set forth in the Code. This guideline prevents the S corporation from increasing W-2 wages to an amount that may be needed to obtain the Section 199A deduction.

While the amount paid is important, the Internal Revenue Service ("Service") challenges to reasonable compensation often involve the character of the payments rather than the amount. This consideration is a concern for the above facts since the taxpayers—the S corporation, LLC, and individuals—are related taxpayers. In the case of an audit, the Service could attempt to reallocate part of the W-2 wages as distributions from the LLC. This change would reduce the amount available for the Section 199A deduction. To determine reasonableness, the Service considers what the S corporation would have to pay an unrelated third party for the same services, the member-employee's experience, the time that is devoted to providing the services and the amount others in the same or similar businesses earn and whether members are related. Although the S corporation may not be able to pay its shareholders or employees sufficient W-2 wages to maximize the Section 199A deduction, in most cases, the restructuring described above can provide significant tax benefits.

To further illustrate this point, let's return to the previous example of the four-member LLC that owns multiple commercial income-producing properties. If the members were each paid $100,000 by the S corporation, the total W-2 wages would be $400,000. This structure would result in a significant Section 199A deduction for each LLC member.

Generally, such planning would work primarily when there is a need for W-2 wages to support a Section 199A deduction. The LLC's members would have to aggregate their ownerships with those of their S corporation ownerships to obtain the deduction.

SUMMARY

In some cases, forming an S corporation in addition to an LLC can result in significant tax benefits that otherwise would be lost if an LLC were the only entity. Owners of LLCs that desire to maximize the Section 199A deduction should consult with a tax professional to determine if the formation of an S corporation is practical and is worth the cost to obtain the deduction. The LLC's managers should consider the above factors and others to determine if the formation of an S corporation to obtain Code section 199A's benefits would be legitimate and could withstand scrutiny by the Internal Revenue Service.

While the current law sunsets at the end of 2025, there is still time to obtain the tax benefit for 2025 by acting now. Moreover, some parts, if not all of the 2017 tax law, could very well be extended by Congressional action this year.

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Joost Becker, Mats Emonts, Christel Jeunink and **Dennis Nijssen** Dirkzwager

INTRODUCTION

Technological advancement and globalization have dramatically changed the world economy. These developments continue to have a material impact on value chains, also substantially increasing the relevance and contribution of intangible assets like technology, know-how and brand names to the commercial companies' overall market value. Although this has clearly contributed to economic growth, it also poses significant legal and tax challenges. Rules and regulations governing the development, ownership and exploitation of Intellectual Property (IP) make up a complex and very dynamic area of law. In this article, we will highlight legal and tax aspects of the development, ownership and exploitation of IP in the Netherlands and the broader EU.

LEGAL ASPECTS

Protection of IP

In the EU, technology and know-how – often the result of research and development (R&D) activities – are mainly protected by patent rights and trade secrets. The importance of both is also acknowledged in the TRIPS Agreement (*Trade Related Aspects of Intellectual Property Rights*). Patents can be registered to protect new and innovative technologies and provide patent holders with a temporary monopoly to recoup their investments. In principle, after the protection period of 20 years, the patented technology enters the public domain. Trade secrets, by their nature, will remain secret and allow businesses to apply their confidential information and know-how on an exclusive basis for themselves. The EU has adopted the *Directive on the Protection of Trade Secrets*, which has been implemented into legislation by EU member states. In doing so, owners of trade secrets are granted extensive protection for a long(er) period of time, provided that the trade secrets are actually secret, have commercial value and sufficient measures are in place to maintain the secrecy of the trade secrets.

Other important IP rights relevant for the protection of products and services are trademark rights (for brand names) and copyright (for works such as software and product design). These areas of IP law continue to be a subject of EU harmonization, with effects in all member states, including the Netherlands.

Ownership and Transfer of IP

IP rights are generally territorial in nature, meaning they only apply within the jurisdiction where they are protected. For example, a European patent, trademark or copyright provides protection within the EU (or specific European countries if the rights are granted through national systems). When exploiting IP rights across borders (e.g., from the U.S. to Europe or vice versa), businesses must ensure that their rights are safeguarded within the respective territories.

A European Patent or EU Trademark can be registered through the European Patent Office (EPO) or the European Union Intellectual Property Office (EUIPO), respectively. It is important that the registration processes are aligned with the business's global strategy, as obtaining protection in multiple regions requires time, investments and resources.

Transfer of IP rights is subject to different legal requirements as outlined in the law that governs the transfer agreement (which can be agreed upon by the transferring parties). Based on the Dutch Civil Code (DCC), for instance, the transfer of IP rights must meet three conditions: a valid title, a transfer action, and the transferor's authority to dispose of the rights.

1. **Valid Title:** The transfer can occur in exchange for payment, for instance, through a sale.
2. **Transfer Action:** The transfer must be done in writing, typically through a contract. A notarial deed is not required. Although registration of the transfer is not a requirement for the transfer as such, the registration in the relevant IP

register (such as for patents or trademarks) is crucial for the transfer to have effect against third parties, as the transfer can only be invoked against third parties once it has been recorded in the register. This requires proper drafting and execution of such a contract.

3. **Authority to Dispose:** The transferor must be the owner of the IP rights and authorized to transfer them. This requires adequate due diligence research on IP ownership.

Exploitation of IP

The abovementioned IP rights also offer ample opportunities for licensing and royalty contracts. If a U.S. company seeks to exploit its IP in Europe, it may consider licensing and royalty agreements with and through European entities or partnerships. In that case, it's crucial to address the following in such agreements:

- Licensing terms should be clear about territorial restrictions, royalty payments and the duration of the agreement.
- Ensure compliance with both U.S. and European regulations (e.g., competition law, data protection).

IP Enforcement and Litigation

Enforcement of IP rights is also harmonized to a great extent within the EU, although legal measures may differ across countries within Europe. While the EU has established mechanisms like the European Court of Justice (ECJ), it is important to be aware of the specific enforcement options available in the country where the infringement occurs in case of enforcement and litigation in the relevant jurisdiction.

TAX ASPECTS

Development - Tax incentives

The Netherlands offers attractive R&D tax incentives to foster innovation and support businesses investing in research and development.

The first important fiscal subsidy is an R&D wage tax credit, the so-called WBSO. This can compensate up to 36% of the qualifying costs for an R&D project (and even 50% in the first three years of application). This benefit is available for a broad range of projects, including software development, product innovation, and process improvements.

A second key incentive for R&D activities is the so-called innovation box, which provides a significantly reduced corporate income tax rate of 9% (instead of the standard rate of 25.8%) on qualifying income derived from IP. Application for this regime requires that a wage tax credit under the aforementioned WBSO was obtained for the development of the underlying IP. Depending on the taxpayer's worldwide net turnover or profits from IP, additional qualifying conditions may apply, such as the availability of a registered patent or another qualifying entry ticket.

Where the WBSO and innovation box focus primarily on technical innovation, a third incentive is applicable in a broader sense. Dutch tax law allows for IP development costs to be depreciated at once for corporate tax and income tax purposes, a deviation from the standard depreciation rules. This can offer a substantial cash flow benefit for companies engaging in the development of IP.

Ownership – Substance over Form

When it comes to ownership and exploitation of IP within a multinational group, it depends on the applied transfer pricing rules in which jurisdiction costs are deductible and profits are taxed. The Netherlands, like the U.S., generally follows the OECD guidance on this matter. As such, legal ownership is not decisive for the entitlement to IP proceeds. Instead, there is a more substance-over-form based approach, under which group companies should receive an arm's length remuneration for the critical functions that they perform in relation to IP. This includes specific activities related to the development, enhancement, maintenance, protection, and exploitation of intangibles, collectively referred to as the DEMPE functions.

When it comes to setting transfer prices for transactions involving IP or to the valuation of so-called hard-to-value intangibles, the Dutch tax authorities also adhere to the OECD's transfer pricing guidelines. Therefore, case law from jurisdictions with leading economies clarifying the application of those guidelines can be relevant in a Dutch context. It is for that reason, for instance, that Dutch tax practitioners are closely monitoring the pending U.S. transfer pricing cases, such as the Medtronic case (U.S. Tax Court, 9 June 2016, *'Medtronic, Inc. and Consolidated Subsidiaries v. Commissioner of Internal Revenue'*, No: 6944-11) and the Coca Cola case (U.S. Tax Court, 18 November 2020, *'The Coca-Cola Company & Subsidiaries v. Commissioner of Internal Revenue'*, No: 31183-15).

Exploitation – Withholding Taxes

In respect of the exploitation by licensing IP, either within the group or to third parties, it should be noted that royalty payments are, in principle, tax deductible to the payor and taxable for the payee. In addition, two other factors are important to consider with respect to withholding taxes:

1. The *EU Interest and Royalty Directive*, established to further promote EU single market integration, allows for a full exemption of withholding taxes on interest and royalty payments made between associated companies in different EU member states. This reduces the tax burden on cross-border transactions involving IP, facilitating easier and more efficient management of IP assets across the single market.
2. In an effort to counter international tax avoidance, since January 1, 2021, the Netherlands has imposed a 25.8% conditional withholding tax on royalty payments to recipients located in a low tax jurisdiction and in certain abusive situations.

CONCLUSION

The successful exploitation of IP rights between the U.S. and Europe requires an understanding of the territorial protection of IP, navigating licensing and enforcement strategies, and addressing tax and other legal considerations. IP contracting and coordination of legal and tax aspects are crucial for protecting and exploiting IP effectively across borders. The Netherlands provides an attractive environment for innovation-driven companies, encouraging investment in cutting-edge technologies and allowing businesses to significantly enhance their R&D capabilities.

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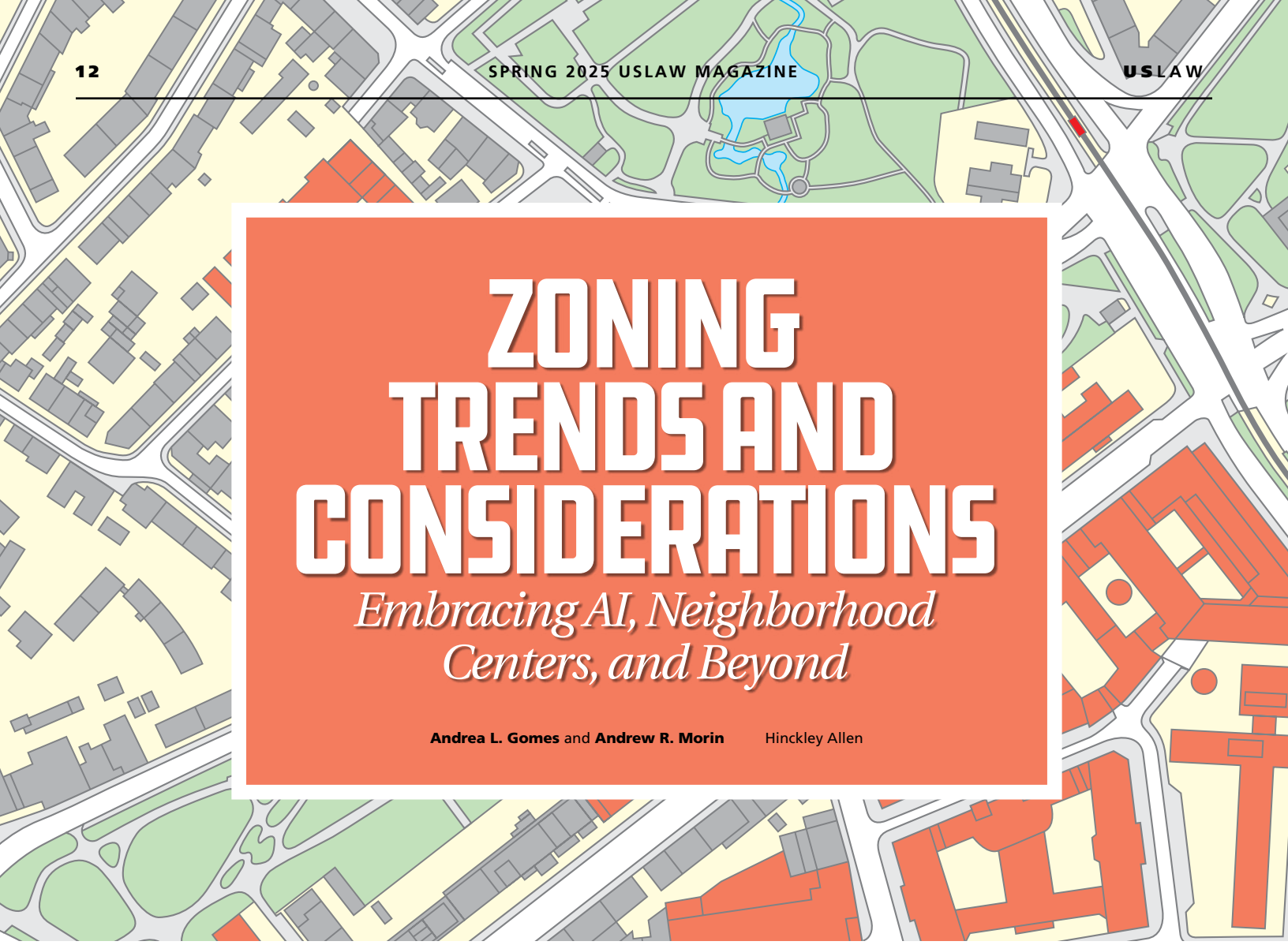

ZONING TRENDS AND CONSIDERATIONS

Embracing AI, Neighborhood Centers, and Beyond

Andrea L. Gomes and **Andrew R. Morin** Hinckley Allen

In our last article, we explored zoning standards that come into play when retrofitting retail buildings to address the growing demands of online shopping, including features like curbside pickup. While retrofitting can be a solution, many retailers, driven by rising demand for high-quality retail spaces amid limited inventory, may opt for new construction instead. For those pursuing new builds, staying attuned to current land use trends is crucial, as these will shape site selection and design and then, ultimately, compatibility with applicable zoning regulations. Conducting this analysis early on can save retailers significant time, money, and effort.

Here, we examine some of those zoning trends and highlight how they may impact a retailer's approach to developing a new site.

ARTIFICIAL INTELLIGENCE (AI)

AI-driven technology is here to stay, and it will continue to impact most if not all sectors, including real estate. Indeed, AI already is part of the retail industry, helping retailers manage inventory and supply chain demands, predicting consumer behavior patterns, and recommending products to consumers based on purchase histories. Generative AI, or Gen AI, which can create content with text (like ChatGPT), code, audio, image, video and 3D imagery, can also be used in a variety of ways during the zoning approvals process. For example, Gen AI can create realistic renderings of retail-focused neighborhood centers, architectural elevations, and floor plans in a matter of minutes, when historically, the process took weeks or even months. Gen AI may even be able to assist with the drafting of zoning regulations, assembling suggested planting lists, and answering legal questions that arise. These advances will impact not only how retailers operate day to day but may expedite the land use permitting process. Retailers should continue to explore the use of Gen AI to increase productivity and improve business. However, Gen AI is not ironclad, and retailers should review AI work product at every step, ensuring the accuracy of design documents, proposed zoning regulations, planning materials, and the like. Trust but verify.

CLIMATE CHANGE CHALLENGES

In 2022, *nearly 33 million people* were displaced globally due to natural disasters, including floods and droughts. *2023 was the warmest year* since global records began in 1850. Concerns with water supply, water and air quality, stormwater management in the face of unprecedented rains, and other climate-related issues will continue to directly impact development for the foreseeable future.

In addition to heightened development standards, regulations, and policies, retailers should expect to be put to task on these issues when designing new sites. Low-impact development, or LID, as well as green energy features, will be highly recommended, if not required.

Retailers can save time by recognizing these concerns at the beginning of the design stage and incorporating green features into their development plans. LID, which reduces flooding and stormwater runoff, thereby improving water quality, among other things, can include rain gardens, green roofs and permeable pavements. Green energy features can

include the use of renewable energy like solar; the incorporation of high-efficiency building materials, including windows and insulation; and the enhancement of indoor environmental quality measures, such as incorporating air purifiers and ensuring adequate ventilation. Working with consultants well-versed in these design features will be key.

NEIGHBORHOOD CENTERS AND TRANSIT-ORIENTED DEVELOPMENT

Mixed-use spaces are not new, but they've had a recent surge in popularity given the push for "live, work, play" communities. These developments, which combine residential, commercial, and other recreational uses, are reshaping how many shop, work, and interact with one another. Another popular trend in land development is the creation of transit-oriented development (TOD) areas that emphasize the integration of residential, commercial, and recreational spaces around public transportation hubs, such as bus or train stations. These areas are typically comprised of walkable communities that encourage the use of public transit and reduce reliance on cars.

Because mixed-use and TOD areas facilitate walkable communities and, thus, increased foot traffic, it is no surprise that they are appealing to retailers. Retail tenants are often willing to pay higher rents in these areas given the increased consumer traffic. This makes sense given that consumers living in these areas are able to lower their transportation costs and then redistribute that income into the retail and entertainment uses nearby. A win-win, so to speak.

While mixed-use/TOD nodes are desirable, retailers may face obstacles securing and developing retail spaces in those areas. One very real challenge is the lack of inventory, which creates competition and increases costs. The dearth of available space may be due in part to restrictive zoning, which often favors low-density developments, particularly in suburban communities. For example, zoning regulations may prohibit more than one principal use on a single parcel or restrict multifamily housing altogether, essentially preventing the very mixed-use/TOD developments retailers and municipalities alike are seeking to create. Restrictions like these result in communities that are more spread out and less connected, making them less attractive to retail development.

Fear not, though, because change is possible. The focus on neighborhood centers has forced many municipalities to take a hard look at how to revitalize their downtowns, including how to zone those areas to attract new development. Retailers would be well-served in focusing on those towns and cities first in hopes that change would be welcomed with open arms. Effectuating that change can be done in myriad ways. For example, in Milford, Connecticut, *one developer* was able to secure land use approvals to redevelop a mostly-vacant, 47-acre office park into a thriving mixed-use community by, among other things, revising the zoning regulations to permit the intended uses, thereby opening the door to the other approvals needed for the site. Sometimes, these applications can be done simultaneously.

Another viable option is the creation of a floating zone, which is a zone that does not have a predetermined location on the zoning map but can "land" on a particular parcel by zoning commission approval. This approach can help accommodate new developments that might not fit neatly into existing zoning categories. Farmington, Connecticut, successfully used a floating zone to create, maintain, and incentivize the expansion of a bio-medical corridor, which now includes multifamily housing, at least one restaurant, and other "live, work, play"-related uses.

Given the desirability of mixed-use and TOD areas, partnership with the municipality itself, and even other existing retailers in the area, may be possible. Retailers should leverage local connections to determine if such a partnership would be worthwhile.

PARKING – IS LESS REALLY MORE?

While every builder has been told at one time – or many – that they have not provided enough parking, the reality is that America is grossly over-parked. This demand for parking, regardless of whether or not it is actually needed to serve a proposed use, has had devastating *environmental impacts*, altered the architectural integrity of neighborhoods, and stymied development altogether when often arbitrary parking requirements could not be met. With four parking spaces for every one car in the U.S., some cities are finally looking to reduce surface parking, which retailers can and should capitalize on.

Hartford, Connecticut, for example, was one of the first cities in the country to eliminate minimum parking requirements, implementing instead *maximum* parking requirements and minimum bicycle parking requirements. According to *one article*, this regulatory structure shift is helping the city "reposition…itself for a future with less dependence on the automobile." *Buffalo, New York* also eliminated its outdated minimum parking requirements, noting that the prior zoning code allowed stores to be built on oversized lots, with no pedestrian access, instead of incentivizing walkable neighborhoods.

Retailers should take a hard look at local parking requirements and see if there is an opportunity for change. If zoning regulations require excessive parking spaces, approach municipal officials with the volumes of data available on over-parking and be ready to "substitute" parking with other improvements, including public transportation improvements, such as bus shelters; pedestrian improvements, like crosswalks and signal timing changes; and non-vehicle transportation-related amenities, like bike racks.

Ultimately, the future of zoning is not just about adapting to changes; it is about seizing opportunities to shape more resilient, efficient, and vibrant communities. Retailers who embrace innovation—whether through AI, sustainable design, or strategic partnerships—will not merely respond to trends; they will help set them, playing a crucial role in redefining how we live, work, and shop. By actively engaging with these zoning trends, retailers will have the power to influence and co-create the urban landscapes of tomorrow. Working with experienced land use counsel is the best way for retailers to chart a feasible and efficient path to approval.

Andrea Gomes, a real estate partner, specializes in land use, environmental, and municipal law. Andrea regularly represents clients before local and state agencies and in state court. She has assisted with obtaining municipal approvals for clients and has counseled municipal agencies with various land use permitting and litigation matters and is a certified green building professional through the National Association of Home Builders. She can be reach via 860-331-2619 and agomes@hinckleyallen.com.

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Changes in New Jersey Employment Law in 2025
WHAT EMPLOYERS ACROSS THE COUNTRY NEED TO KNOW

Michael A. Shadiack Connell Foley LLP

Often at the forefront of the evolution of employment law, the state of New Jersey has recently adopted several changes that promote transparency and equal rights in the workplace. Businesses that have employees in the Garden State should heed these changes and determine if they need to comply even if they do not have a physical presence in New Jersey.

THE PAY TRANSPARENCY ACT

On November 18, 2024, Governor Philip D. Murphy signed into law the Pay Transparency Act (the "Act"). The Act requires New Jersey employers to identify wage and benefit information for all promotional opportunities and employment listings. The law will go into effect on June 1, 2025.

The Act defines an employer as any person, company, corporation, firm, labor organization, or association that has at least 10 employees over 20 calendar weeks and does business in New Jersey and employs people within New Jersey or takes applications for employment within New Jersey. Job placement, referral agencies, and other employment agencies are included in the definition of employer if they meet the above requirements. However, the Act does not require temporary-help service firms and consulting firms that are registered with the Division of Consumer Affairs to include compensation ranges in their job postings. Such organizations are, however, required to disclose that information during interviews for a position or when they offer a job to a particular candidate.

Covered employers that advertise a promotion, new job, or transfer opportunity must disclose the hourly wage or salary (or the salary range) for the position and a general description of all benefits and other compensation programs for which the successful applicant would be eligible. When making an offer of employment to an applicant, employers may offer the applicant higher wages or compensation or greater benefits than what they listed in the job posting.

Further, if a covered employer advertises a position (internally or externally) that would qualify as a promotion for an existing employee, the employer must make "reasonable efforts" to announce, post, or otherwise make known the promotion opportunity to all current employees in the affected department(s) prior to making any promotion decision. Promotions that are based on years of experience or performance are excluded from this provision. Employers are also exempt from these requirements if they make a promotion decision on an "emergent basis due to an unforeseen event."

The Act broadly defines a promotion as "a change in job title and an increase in compensation." The Act does not, however, define what constitutes a reasonable effort, an emergent basis, or an unforeseen event. New Jersey has not yet issued guidance on these questions and employers should be aware that guidance may be forthcoming.

The Act does not establish a private right of action by an employee, but the New Jersey Commissioner of Labor and Workforce Development has enforcement authority. Employers that violate the Act will be subject to a civil penalty of up to $300 for the first violation and up to $600 for each subsequent violation. An employer's failure to comply with the Act for one job opening or promotional opportunity constitutes one violation, even if the employer posts the opening on multiple sites and forums.

While this law is applicable to covered New Jersey employers only, pay transparency laws are quickly being enacted across the country. Currently, 15 states and the District of Columbia have wage transparency laws. Wage transparency laws in the following five of those 15 states go into effect

in 2025: Illinois, Massachusetts, Minnesota, New Jersey, and Vermont. Another 12 states have considered wage transparency laws in the past few years. Moreover, several cities have adopted wage transparency ordinances. This is notable because the New Jersey wage transparency law does not supersede local ordinances, which are often more restrictive. For example, Jersey City previously enacted a pay transparency ordinance that requires employers with five or more workers (including employees and independent contractors) to include in job postings the salary range for the position, as well as the benefits it offers. Employers that fail to comply with that ordinance can incur a fine of up to $2,000.

Employers that do business in New Jersey, employ people within New Jersey, or take applications for employment within New Jersey must comply with the Act by June 1, 2025. Employers should review and update internal job posting procedures—including those that apply to internal promotion opportunities—to ensure compliance with the new requirements. Employers should establish salary ranges for all positions and train human resources and recruitment teams on how to comply with the Act. Employers that conduct business in multiple states must understand the pay transparency requirements in each of those states (and any local ordinances that are in effect in the municipality where they operate) to ensure compliance.

THE NEW JERSEY LAW AGAINST DISCRIMINATION MAY APPLY TO OUT-OF-STATE EMPLOYERS

The New Jersey Law Against Discrimination ("NJLAD") prohibits discrimination and harassment in the workplace based on actual or perceived sexual orientation, gender, gender identity, gender expression, age, race, color, national origin, ancestry, religion, disability, pregnancy, breastfeeding and other protected characteristics. The New Jersey Division of Civil Rights ("DCR") recently clarified that the compliance requirements of the NJLAD are not limited to New Jersey-based employers because the NJLAD provides that "all persons shall have the opportunity to obtain employment . . . without discrimination," and the statute does not contain a geographic restriction on its scope.

In an effort to provide transparency as to how the DCR, the New Jersey Office of the Attorney General and state courts apply the NJLAD, the guidance cautions that the NJLAD's protections may, based on the facts and circumstances, extend to an employee who works for out-of-state employer if there is an established "nexus between their employer and New Jersey." As an example, the DCR referenced *Calabotta v. Phibro Animal Health Corp.*, 460 N.J. Super. 38 (App. Div. 2019), in which the Appellate Division of New Jersey's Superior Court found that an employee who lived in Illinois and worked for an Illinois subsidiary of a New Jersey employer could bring a claim under the NJLAD for discrimination based on the employer's alleged failure to consider him for a promotion to a position in New Jersey. The Appellate Division held that the Legislature "has expressed an intention to allow certain nonresident plaintiffs to receive the benefits and protections of the NJLAD." Accordingly, employers that maintain operations in New Jersey or have employees who work there need to be mindful of the potential applicability of the NJLAD and ensure appropriate compliance policies, procedures, and training are implemented.

LIMITATION OF NON-DISPARAGEMENT CLAUSES IN SETTLEMENT AGREEMENTS

In 2024, the New Jersey Supreme Court ruled that a non-disparagement clause in a settlement agreement resolving a claim of discrimination, harassment and/or retaliation against a former employer is unenforceable if it has the effect of concealing details related to such claims, supporting a trend against such clauses nationwide.

In *Savage v. Township of Neptune*, 257 N.J. 204 (2024), the plaintiff, Christine Savage, was a police officer employed with the Neptune Police Department. In December 2013, she sued her employer for sexual harassment, sex discrimination and retaliation in violation of the NJLAD. The case was settled in 2014, but Ms. Savage filed a second complaint against the Neptune Police Department in 2016, alleging violations of the settlement agreement and retaliation. The second case was settled in July 2020.

The July 2020 settlement agreement contained a broad non-disparagement clause prohibiting the parties from making statements "regarding the past behavior of the parties" that would "tend to disparage or impugn the reputation of any party." This non-disparagement clause specifically included "statements, written or verbal, including but not limited to, the news media, radio, television,…government offices or police departments or members of the public."

After signing the July 2020 settlement agreement, Ms. Savage gave a television interview that included a segment in which she made comments about her employer and the details underlying her NJLAD claims. The Neptune Police Department sought to enforce the agreement and contended that Ms. Savage had violated the non-disparagement clause during the interview.

The trial court granted Defendant's motion to dismiss, finding that the NJLAD barred only non-disclosure and confidentiality provisions and that Ms. Savage had instead violated the non-disparagement clause. The Appellate Division affirmed in part and reversed in part, concluding that the non-disparagement clause in issue was enforceable but that Ms. Savage had not violated it.

The New Jersey Supreme Court reversed and concluded that because "[t]he effect of this non-disparagement clause … is to conceal details relating to claims of discrimination, retaliation, and harassment, which is directly contrary to the LAD," the clause was against public policy and unenforceable. The Supreme Court found that all clauses (whether labeled a non-disclosure or a non-disparagement provision) that bar speech the NJLAD protects (i.e., "details relating to a claim of discrimination, retaliation, or harassment") cannot be used in settlement agreements because they silence the victim and hinder transparency. An employer settling a claim of discrimination, retaliation, or harassment arising under New Jersey law should consult with legal counsel to ensure any non-disparagement provision in the settlement agreement is narrowly drafted. In theory, parties can still agree not to disparage one another in writing or orally so long as the non-disparagement clause has nothing to do with the "details relating to… claim(s) of discrimination, retaliation, or harassment."

In 2025, transparency in the workplace is expected to continue to be a focus of the New Jersey Legislature, administrative agencies, and the courts. Organizations with a nexus to New Jersey need to ensure their policies, procedures, and agreements comply with New Jersey employment laws and regulations, and that their managers are trained accordingly.

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FROM VIRUS TO VERDICT

HOW THE PANDEMIC RESHAPED JURY DELIBERATIONS

Christina Marinakis, J.D., Psy.D. and **Juliana Manrique, M.A.** Immersion Legal Jury

The COVID-19 pandemic left no aspect of life untouched, and the legal system was certainly no exception. Just a few days before offices and courts began to close in March 2020, a federal judge allowed a juror who fell ill to deliberate via FaceTime. From that point forward, our concept of a courtroom was forever changed.

Clients, litigators, and jury consultants quickly adapted to the new world order. Whether it meant conducting depositions, mediations, and hearings through virtual platforms, delivering voir dire from behind masks and plexiglass, or discussing cause challenges with the judge and adversaries through wireless headsets, we all found a way to connect while remaining distant. At the same time that judges, lawyers, and clients adapted, something less tangible was happening as well: group dynamics among jurors were evolving. Jurors not only distanced themselves from one another physically, but their ideologies grew distant as well.

Before the pandemic, jury consultants at Immersion Legal saw only two hung juries between 2015 and 2020. Within the first two years of returning to jury trials in late 2020, these same consultants were involved in 12 trials that resulted in hung juries and subsequent mistrials. Beyond this striking disparity, Immersion Legal experienced three additional juries who were only able to reach a verdict after receiving the court's Dynamite Instruction or Allen Charge, and we all noticed that juries seemed to be deliberating much longer than in years past. Now, nearly half a decade later, we still haven't seen a return to the status quo, which suggests a trend that extends much deeper than avoiding the virus. This left us wondering what could be driving these outcomes.

To better understand these trends, we studied the shifting attitudes among the venire members in focus groups and community attitude surveys, and we observed how deliberations unfolded in mock jury trials – both virtual and in person. What we observed was an increased polarization of ideas and opinions. It wasn't that jurors

grew more or less anti-corporate following the pandemic; rather, they grew further apart. Among the topics we saw a greater divide were attitudes toward government regulations, opinions on personal responsibility, attitudes on employment issues and corporations, and numerous other factors that could influence case outcome.

Within the greater social context, this emerging trend is known as the tribal effect. Traditional tribalism refers to a social phenomenon in which people identify strongly with a particular group, often based on a shared cultural or ethnic identity. While this can cultivate a sense of belonging and support, it can also lead to conflict and the exclusion of non-group members. Among juries, this bond is not necessarily rooted in a shared cultural or ethnic background but rather in strongly held beliefs or ideological factors.

Many of us experienced how the pandemic exacerbated a divide within our communities on fundamental issues such as race, public health, human rights, employment practices, and politics. To be sure, this was not the first time we've seen divisiveness within the U.S., but for the first time in history, citizens had a public platform to spout these views – one that did not even require them to leave the couch: social media. Rather than going to work or school each day, taking the kids to sports practice and socializing with friends and family, we sat in front of TVs, cell phones and computers, watching celebrities, experts and politicians argue. And then we shared these things, showed our support with "likes" and commented about them on social media. It's no wonder we saw so many friendships, partnerships, and marriages fall apart during that time. It's also not surprising that this divide extended to the jury box.

Trial jurors and mock jurors alike hold strong opinions, but in recent years, rather than trying to see the other side's perspective or reach a compromise, jurors appear to be alienating themselves from those who think differently. The differences in political ideology among jurors have led some deliberations to devolve into personal attacks. For example, in two recent mock trials for cases unrelated to politics, the consultants at Immersion heard mock jurors make comments to each other in deliberations, such as, "You probably voted for Trump" and "Now I know why you're still wearing a mask."

The increased polarization and hostility have been too much for some jurors to bear. Within a single year, our clients saw three jurors in three separate trials ask to be excused from deliberations due to the stress caused by the contentiousness in the jury room. One juror we interviewed after the trial ended reported that the animosity he experienced during deliberations led him to switch his vote on one of the verdict questions from defense to plaintiff, but the stress of being pressured to abandon his principles led him to worry about his physical and mental health, and he ultimately asked to be excused before the jury reached a verdict.

Our divisive political climate plays a role in the fractious juries, but it is not the sole cause. While it is yet to be seen the extent to which the new administration may fan the flames of political divisiveness moving forward, social distancing played a role in the divisiveness seen to date. Prior to the pandemic, jurors frequently ate lunch together and spent sidebars and courtroom breaks making small talk. This made them more inclined to feel like "one tribe" during deliberations, encouraging jurors to respect others' perspectives. Sharing meals has historically played a crucial role in how people bond, and studies examining social interactions in a post-pandemic world have found that team members, like company employees, report feeling more connected to peers when they are able to share a meal instead of eating in an isolated environment. Beyond feelings of connectedness, the Allen Curve, a concept rooted in communication and organizational psychology, further highlights how physical proximity precipitates the likelihood that people will work together.

If proximity brings us together, it's only reasonable to assume that social distancing pushes us apart. This finding is supported by our own observations in both actual and mock trials. Jurors have largely kept their distance from one another even as mandated social distancing waned, and we aren't seeing the same sort of camaraderie among jurors as we had in past years. Further exacerbating the issue is the evolvement of the smart phone. Now, when judges announce a break or sidebar, the jurors all reach for their phones in concert, as if the judge had called for a "phone check break" instead. To be fair, there were always some jurors who dined solo or kept to themselves during breaks, but they tended to be the exception. Now, friendly conversations between jurors have been replaced by mindless scrolling and endless consumption of news. And the content that jurors view on their devices simply strengthens their pre-existing beliefs, thanks to the clever algorithms that tend to feed us more of what we've already consumed.

The more distant jurors are throughout the trial, the more difficult it is to reach consensus in deliberations. We have seen, unsurprisingly, that virtual mock trials, which minimize opportunities for social interaction, are more likely to result in hung juries than in-person exercises. In fact, because we typically see very little movement in how mock jurors evaluate the case before and after a remote deliberation, Immersion's jury consultants now recommend that online jury research be focused on obtaining focus group feedback from a large sample of individuals rather than trying to emulate deliberations to achieve a group verdict.

In real life, a hung jury can be seen as a "win" in some cases, but it is usually in a client's best interest for the jury to reach a resolution. There are ways to encourage basic juror interactions throughout the trial, such as asking the judge to exclude cell phones from the courtroom, for example. Another approach our teams have explored is providing lunch for the panel once they've been selected by either agreeing to split costs with opposing counsel or sponsoring it anonymously. Instead of stepping out to find a meal at the closest establishment and eating in isolation, jurors can share a meal where it is easier to build a bridge with a stranger. In short, although the COVID-19 pandemic appears to have driven a wedge between jurors, there are steps parties and courts can take to foster greater cooperation that will benefit the jurors themselves, the parties, and the overall civil justice system.

Christina Marinakis, J.D., Psy.D. is CEO of Immersion Legal Jury. She has over 20 years of experience in jury research, study, and applied practice in law and psychology. Clients have lauded Christina as an insightful, trusted advisor who is the "best in the business" at jury selection and developing pithy trial themes. Christina is inside the courtroom nearly every week assisting counsel with voir dire and has developed jury selection methods which have led to well over a hundred successful verdicts.

With over eight years of dedicated experience in litigation consulting, Juliana Manrique has assisted trial teams by facilitating mock jury trials and bench trials, performing qualitative and quantitative data analyses, and providing recommendations on case strategy and thematic framing. Juliana also assists litigators with jury selection by helping draft juror questionnaires and voir dire questions and providing in-court support.

Quality of Care Considerations in OIG's Nursing Facility Compliance Guidance

John Queenan, Mary Aperance, and **Jeff Ehrhardt** Rivkin Radler LLP

In November 2024, the U.S. Department of Health and Human Services' Office of the Inspector General ("OIG") published the long-awaited Industry Segment-Specific Compliance Program Guidance for Nursing Facilities ("Nursing Facility ICPG" or "ICPG"). Of the many compliance risk areas addressed in the ICPG, this article focuses on key takeaways and practical implications from the ICPG's discussion of quality of care as a compliance concern. The guidance, as written, is a voluntary, nonbinding tool to assist facilities in reducing risks related to fraud, waste, and abuse. Experience dictates that the Government may rely on the guidance as binding, and as a basis for investigations and enforcement actions, which underscores the need to understand the ICPG.

The Nursing Facility ICPG is especially important for the "Responsible Individuals" of a nursing facility. Responsible Individuals include governing bodies, their members, owners, operators, and executives. The ICPG emphasizes that investors, where applicable, are also considered Responsible Individuals. The Responsible Individuals of a nursing facility should be aware of the Government's focus on quality of care as a compliance concern and the associated risks under the False Claims Act. A facility's decision to self-report potentially substandard care under the False Claims Act is not as straightforward as the ICPG might suggest, and involvement by experienced counsel in these circumstances is critical.

Investors should especially note that there has been a focus on the "for-profit" impact on quality of care in nursing and other facilities. For example, in 2021, the Massachusetts Attorney General reached a $25 million settlement with private equity firms in a false claims matter based on services provided by unlicensed, unqualified, and improperly supervised staff.[1] More recently, on January 7, 2025, the U.S. Senate Budget Committee issued a scathing report concluding that certain private equity firms' involvement in health care led to poor outcomes and conditions.[2] We expect this to be a continuing area of focus.

It is important to note that the Nursing Facility ICPG is distinct from the Centers for Medicare and Medicaid Services' Requirements of Participation ("ROPs"), which are mandatory for nursing facilities to participate in the Medicare and Medicaid programs. The ICPG is meant to complement the ROPs and the ROPs are mentioned throughout the ICPG.

QUALITY OF CARE AND QUALITY OF LIFE

The ICPG addresses the following topics related to qualify of care: (1) staffing levels and competencies; (2) resident care plans and activities; (3) challenges presented by resident demographics, higher acuity levels, and behavioral health issues; (4) medication management and appropriate use of medications; and (5) resident safety.

Staffing Levels and Competencies

When staffing is so low or training is so deficient that it leads to "grossly" substandard care and poor clinical outcomes, the Government may bring an enforcement action. In recent years, OIG, the Department of Justice, and their state agency partners have focused on quality-of-care issues, including the provision of allegedly substandard or inappropriate care. The underlying theories include that the services rendered were "worthless" under the law or were not provided in compliance with laws applicable to nursing facilities.

Inadequately trained or supervised staff may also lead to allegations of substandard care. According to the ROPs, nursing facilities are required to provide the necessary care and services to attain or maintain the best possible physical, mental, and psychosocial wellbeing of each resident, including ensuring that residents receive treatment and care in accordance with professional standards of practice. The Government's flexibility in enforcing such a vague standard should be of concern to providers.

Related to staffing standards, on May 10, 2024, CMS published a Final Rule that requires each nursing facility to have certain minimum staffing levels to reduce the risk of substandard care. Local laws may require higher staffing levels. These regulations are much more concrete than the ICPG. However, while minimum standards are prescribed by these regulations, the ICPG makes clear that facilities are required to staff their resident population based on resident acuity and the skill of staff needed to care for those residents—which may require staffing hours that exceed those minimums. The ICPG encourages facilities to seek input from employees to help account for any gaps in skill or additional resources needed to appropriately care for residents. Where feasible, routinely assigning the same staff to particular residents may promote quality of resident life.

The ICPG also emphasizes the importance of proper recruitment and retention of nursing leadership, particularly directors of nursing. The guidance recommends that, to improve recruitment and retention efforts, facilities endeavor to offer competitive salary, bonus, and benefits packages, and routine recognition of staff members' outstanding performances. A satisfied workforce can also mitigate the likelihood of personnel issues contributing to lapses in quality care.

Appropriate Resident Care Plans and Resident Activities

The ICPG expresses concerns that nursing facilities are failing to develop, implement, and operationalize sufficient care plans. In addition, significant care plan deviations pose a compliance risk that providers should be aware of, especially where such deviations contribute to resident harm and may lead to substandard care, false claims, and enforcement actions. Continuous resident assessment by nursing staff, as well as physician involvement in and careful documentation of care plan meetings, are important strategies to minimize risk.

Nursing facilities are also required to have an activities program under the ROPs. Facilities should dedicate the necessary resources, including a qualified activities director, for an activities program that appeals to each resident.

Challenges Presented by Resident Demographics, Higher Acuity Levels, and Behavioral Health Issues

Nursing facilities are required by the ROPs to provide person-centered care—regardless of diagnoses or acuity level—for each resident, including residents with behavioral health issues. To help manage changing demographics, the ICPG recommends a system to evaluate the consistent application of internal policies and tools that determine resident admissions. Facilities must ensure they have the resources to provide appropriate services to any particular resident and should assess the current and foreseeable services a potential resident may need.

Medication Management and Appropriate Use of Medications

Medication-related adverse events can pose significant compliance risk, including unnecessary hospitalizations, life-sustaining interventions, and harm to residents. The overuse and off-label use of medications in nursing facilities is a particular concern to the Government and may be ripe for inquiry. Under the ROPs, nursing facilities are required to provide pharmaceutical services to meet the needs of each resident and ensure that residents not at risk of significant medication errors. To minimize medication-related risk, the guidance recommends consistent and comprehensive training by the facility's pharmacist to familiarize all staff involved in resident care with proper medication management practices and documentation requirements.

Facilities should develop a standard interdisciplinary approach to determine why a resident has been prescribed a medication, whether continued use is appropriate, whether the resident has experienced any behavioral changes or other side effects, and whether the resident has been prescribed the fewest number of medications as possible.[3] Human error in the face of standardized practices is a different and more manageable problem than having no practices.

COORDINATING COMPLIANCE AND QUALITY OF CARE FUNCTIONS

The Nursing Facility ICPG urges facilities to recruit compliance officers with experience in both compliance management and quality assurance—particularly in care, safety, and life quality standards. The guidance also suggests that a compliance committee should review instances when resident care falls below professionally recognized standards and consider "whether any failures in care trigger liability under the False Claims Act." While these are valid points of discussion during compliance committee meetings, consulting with counsel under these circumstances is critical, as a facility's decision to self-report potentially substandard care under the False Claims Act is not as straightforward as the ICPG might suggest.

The compliance committee is also encouraged to support collaboration and alignment between compliance and quality functions at nursing facilities. For example, the committee should review data related to care outcomes, staffing levels, resident satisfaction, hotline calls, staffing turnover, and state and federal surveys. The guidance emphasizes the importance of regular evaluations and "active questioning" by Responsible Individuals of the facility's compliance program, quality measures, and staff performance. The guidance, implicitly, and sometimes explicitly, advises that the skilled nursing industry is not a "passive investment." As such, Responsible Individuals must prioritize compliance and quality as much as they would financial performance. Additionally, the guidance recommends that the facility's compliance committee closely coordinate with the facility's Quality Assurance and Performance Improvement (QAPI) program. The guidance suggests that this collaboration may eliminate certain redundancies across compliance and quality initiatives and potentially yield other efficiencies for nursing facilities.

Facilities should strongly consider the Nursing Facility ICPG within the context of their operations and adapt it to their needs. In implementing the guidance's recommendations, facilities can strengthen their operations and mitigate the likelihood of regulatory risk. Providers should also anticipate the Government's over-reliance on the ICPG in forming the basis for regulatory enforcement actions—making early intervention by counsel paramount.

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1 *U.S. ex rel. Martino-Fleming v. South Bay Medical Health Centers, et al.* 15-13065.

2 *See* U.S. Senate Committee on the Budget, "Private Equity in Health Care Shown to Harm Patients, Degrade Care and Drive Hospital Closures", *available at* https://www.budget.senate.gov/ranking-member/newsroom/press/private-equity-in-health-care-shown-to-harm-patients-degrade-care-and-drive-hospital-closures#:~:text=Bipartisan%20Senate%20Budget%20Committee%20investigation,)%20and%20Sheldon%20Whitehouse%20(D%2DR

3 There are a number of compliance concerns around conflicts of interest with pharmacy services that are outside the scope of this article.

CALIFORNIA ISSUERS BEWARE

DFPI Settlements for Unintentional Securities Violations may constitute "Bad Acts'" under Regulation D

K. Bradley Rogerson Hanson Bridgett LLP

Since 2013, the federal exemption from securities registration provided under Regulation D has disqualified an issuer from utilizing the exemption if the issuer or certain "covered persons" become subject to one of several "bad acts" outlined in Rule 506(d) of Regulation D.[1] For many companies, including real estate companies, funds and investment sponsors that rely on Regulation D to raise capital for their investing activities, becoming subject to a disqualification event under Rule 506(d) could prove catastrophic for their businesses.

Many of the "bad acts" enumerated in Rule 506(d) relate to orders and actions taken by the Securities and Exchange Commission under federal law. One such "bad act," however, is the entry of a final order by a state securities commission that is based on a violation of any law or regulation that prohibits *fraudulent, manipulative, or deceptive conduct.*[2] Issuers may think there is no risk of disqualification based upon such a provision because they would never intentionally or knowingly defraud, manipulate or deceive their investors. At the federal level, this view may be justified because the anti-fraud provisions of Rule 10b-5 prohibiting the use of material misstatements or omissions in securities offerings require an element of scienter (i.e., an intentional or knowing violation of the law).

Issuers of securities in California, however, should be aware that the California Department of Financial Protection and Innovation ("Department" or "DFPI") is not required to find intentional fraud or a knowing violation of the law to allege violations of California's version of Rule 10b-5 – California Corporations Code Section 25401 ("Section 25401"). As a result, a California issuer can be cited for violating a California statute that "prohibits fraudulent, manipulative or deceptive conduct" for acts that are done unintentionally and with no knowledge that they represent a violation of California securities laws.

Unfortunately, this can, and does, occur even when an issuer finds itself subject to a routine DFPI examination that is not commenced due to investor losses or complaints. DFPI examiners often find what many practitioners would describe as technical violations or violations based upon unforeseen DFPI interpretations that are clearly not intentional but that are, nonetheless, characterized by the DFPI as violations for "fraud" under Section 25401. The provisions of Regulation D expressly provide the DFPI with the authority to exempt their orders from the disqualifying provisions of Rule 506(d); however, the DFPI has recently expressed a blanket policy against including language exempting Section 25401 allegations from Rule 506(d) in its settlement agreements or otherwise.

Issuers that rely on Regulation D for their operations and that become subject to DFPI review should therefore be mindful of the potential adverse effects of becoming subject to any order, including settlement orders, that are based upon any Section 25401 allegations. Such orders, whether or not based based upon intentional Section 25401 allegations, on their face, are orders based upon a California law prohibiting fraudulent and manipulative or deceptive conduct and could be deemed a "bad act" disqualifying any future use of Regulation D entirely.

PRIVATE PLACEMENT EXEMPTION IN CALIFORNIA

Regulation D is a safe harbor providing the conditions upon which an issuer of securities can offer and sell securities in a "private offering" exempt from federal registration under Section 4(a)(2) of the Securities Act of 1933 (Federal Act).[3] Unlike other common federal exemptions, by complying with Rule 506 of Regulation D, a company can offer securities in any amount to an unlimited number of "accredited investors" who can be residents of any state without registering the offering with the SEC. For these reasons, Rule 506 of Regulation D is the most commonly utilized federal exemption from federal registration. Its availability is critical to companies that regulatory utilize the exemption to raise capital without incurring the prohibitively high costs of SEC registration.

Securities offered and sold under Regulation D are also "covered securities" subject to the preemptive provisions of Section 18 of the Federal Act.[4] Consequently, state securities agencies are prohibited from imposing conditions for exempting Regulation D offerings from state qualification other than requiring a filing notice and payment of a filing fee.

In California, this exemption is set forth in Corporations Code Section 25102.1(d),

which exempts Regulation D offerings, provided the Form D filed with the SEC under Regulation D is also filed in California and the applicable filing fee is paid. The scope of federal preemption applicable to Regulation D offerings, however, does not completely insulate issuers from California oversight. The provisions of Section 18 of the Federal Act expressly preserve for the states the authority to investigate and bring enforcement actions with respect to securities and securities transactions *involving fraud or deceit.*[5]

DISQUALIFICATION FOR 'FRAUD' UNDER REGULATION D

The "bad actor" disqualification provisions of Regulation D are set forth in Rule 506(d) and disqualify any issuer from relying on Regulation D if the issuer or any predecessor, affiliated issuer, director, executive officer, general partner, managing member or any beneficial owner of 20% or more of the issuer's outstanding voting equity securities ("Restricted Affiliates") has been the subject of any action enumerated as "bad acts" in the rule. These "bad acts" generally include securities-related criminal convictions, securities industry license revocations, suspensions and limitations, and final judgements and orders related to fraudulent and manipulative securities related conduct.

With respect to DFPI orders, Rule 506(d)(1)(iii) is the most problematic of the "bad acts." This section disqualifies the use of Regulation D by an issuer (and its Restricted Affiliates) if they are "subject to a final order by a state securities commission … that constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct."[6]

The use of the words "fraudulent, manipulative or deceptive" to describe the violations necessary for a state order to constitute a "bad act" seems to suggest that some intentional violation of the law must be present. This language also mirrors the language in the anti-fraud provisions of Rule 10b-5 of the Securities and Exchange Act of 1934 ("Federal Exchange Act") for which scienter (i.e., an intent to deceive, manipulate or defraud) is an express element.

The problem is that Rule 506(d)(1)(iii) requires an examination of the state law provisions being enforced to determine whether they prohibit "fraudulent, manipulative or deceptive acts." Unlike Rule 10b-5, the California anti-fraud statute does not require the DFPI to show any fraudulent intent or knowing violation of the law to establish or allege a violation of the statute.

UNINTENTIONAL SECURITIES FRAUD IN CALIFORNIA

The California version of the anti-fraud provisions of Rule 10b-5 of the Exchange Act is California Corporations Code Section 25401, which makes it unlawful to offer or sell a security in California "by means of any written or oral communication that includes an untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading."[7]

While Section 25401 is based on the anti-fraud provisions of Rule 10b-5 and Rule 10b-5 of the Securities Act, which require an intent to deceive and defraud, the DFPI does not need to show any willful intent on the respondent's part with respect to fraud claims under Section 25401.[8] This results in alleged violations of Section 25401 in connection with statements or omissions the DFPI deem misleading, but that were made (or omitted) with no intent to mislead (or any belief by the issuer that anyone, in fact, was actually misled).

Section 25401 allegations arising from routine DFPI audits and not undertaken in response to some complaint often fall within that category. Without an aggrieved party that has been misled, determining what statements or omissions might reasonably be material to, and mislead, investors becomes a very subjective inquiry and the unilateral right of the DFPI to make these assessments can result in "fraud" allegations against respondents trying their best to comply with California's securities laws but unable to foresee how the DFPI will interpret a particular fact or circumstance.

STATE GUIDANCE UNDER REGULATION D

The terms of Rule 506(d) anticipate this issue and expressly allow state securities agencies like the DFPI to exempt their orders from the "bad act" provisions of Rule 506(d) in writing, either in the orders themselves or in a separate writing.[9] The inclusion of this exemption acknowledges that the state agencies, themselves are in the best position to assess the severity and intentionality of the actions that are the subject of a state order. It also allows agencies to exempt an order from Rule 506(d) where mitigating factors are present, including where violations do not involve the type of intentional fraud or malicious misconduct for which disqualification should be appropriate. The DFPI is, therefore, in the best position to assess the intentionality of the actions alleged in a DFPI action and to exempt a California order from the disqualification provisions of Rule 506(d) where appropriate.

Any unwillingness by the DFPI to provide statements with respect to its orders not only creates uncertainty for the affected respondents but also puts them at a significant disadvantage when defending their right to utilize Regulation D following the issuance of an order including Section 25401 allegations. These orders, on their face, appear to the SEC to be state orders based on 10b-5 like fraud (i.e., intentional fraud). Rule 506(d) allows the DFPI as the state securities agency to exempt the orders if it determines disqualification under Rule 506(b) should not apply. No exemption for settlement orders exists under Regulation D, and without a state exemption, the final order will be commonly viewed as based on intentional fraud. Under these circumstances, defending the exempt nature of the order under Rule 506(d) is problematic at best.

FUTURE SETTLEMENT CONSIDERATIONS

Issuers of securities in California that rely on Regulation D and become the subject of a DFPI review ("routine" or otherwise) may now need to become far more defensive. Trying to reach a quick settlement for non-fraud types of actions, with an exemption included in the order and a penalty payment far less than the cost of defending the matter often makes sense. A respondent's future operations are not imperiled.

Settlement orders without an exemption, however, significantly affect that calculation. The financial costs of settlement would then include not only the penalty payment that may be required but the potential costs of having the issuer and all its Restricted Affiliates disqualified from using Regulation D going forward. For many this cost will prove too great.

K. Bradley Rogerson represents clients in a wide range of real estate and real estate finance transactions, including joint ventures, equity and debt funds and other real estate related securities offerings and regulatory audits and accusations by the DFPI and the California Department of Real Estate.

1 15 U.S. Code §77d(a)(2); 17 CFR § 230.506(d).
2 17 CFR § 230.506(d)(2)(iii).
3 15 U.S. Code §77d(a)(2); 17 CFR § 230.506.
4 15 U.S. Code §77r
5 15 U.S. Code §77r(c).
6 15 U.S. Code §78j; 17 CFR §240.10b-5
7 17 CFR §240.10b-5; CA Cop. Code § 25401 (2023).
8 See, *People v. Simon*, (1995) 9 Cal. 4th 493, 515-516.
9 17 CFR § 230.506(d)(2)(iii).

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PRECISION IN EVERY PIXEL

The Power of CT Scanning in Product Testing, Evaluation, and Identification

Sanket Kadam, M.S., CFEI, Davis Trask, P.E., David Riegner, Ph.D., CFEI and **Benjamin Iverson, Ph.D., P.E.** S-E-A

FIGURE 1

FIGURE 2

FIGURE 3

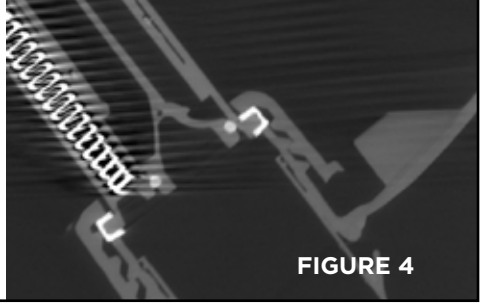

FIGURE 4

In today's consumer world of online purchasing through third-party sellers, peer-to-peer commerce, and the ever-evolving retail landscape, the market is filled with all manner of products. From consumer goods to manufacturing and industrial components, the products we use are everywhere, which means precision and reliability are paramount. When one of those items is alleged to have failed- causing injury or property damage, having the right tools can make all the difference when verifying authenticity, conducting failure analysis, or assessing material integrity.

Originally developed for medical diagnostics in the 1960s, CT (Computed Tomography) scanning is now a powerful tool used to non-destructively authenticate and evaluate original manufactured products. From the manufacturing floor to post-failure analysis, CT scanning provides a detailed view of the internal structure of a product in both 2D and 3D images, revealing a trail of breadcrumbs that an investigator can utilize in their analysis.

BATTERY ANALYSIS AND IDENTIFICATION

Battery design and performance rely heavily on precise internal structures, where even millimeter-scale differences can dictate whether a battery functions properly or fails prematurely. With evolving designs aiming to pack more energy into smaller spaces, the need for high-resolution inspection tools like CT scanners has become critical. This technology enables visualization of both macroscopic and microscopic details, including electrodes, separators, and current collectors. By comparing CT scan data from different battery designs, manufacturers and investigators can identify variations in internal structures, optimize component arrangements, and enhance safety and performance.

CT scanning can also be a useful tool for battery product identification, helping to differentiate cell types and potentially detect internal defects like cracks, voids, or delaminations. It may reveal manufacturing inconsistencies and monitor structural changes during charge/discharge cycles, offering insights into degradation and failure mechanisms. As a non-destructive technique, CT scanning can also help to assess whether battery cells and packs meet design, safety, and performance standards.

PRODUCT AUTHENTICITY

On the mechanical side of the equation, CT can be utilized to view the internal construction of anything from a complex hydraulic manifold to something as seemingly benign as a consumer water filter. The CT scanner can be used to identify assembly defects such as misalignment, cross threading, missing components, overtightening of fasteners or mating parts, and foreign object debris. They can also be used on a more granular level to analyze dimensions down to millimeter or micron resolution, depending on the calibration and experimental setup. Dimensions, layout, and fit are each key ingredients in the recipe used to identify and evaluate the theoretical performance of a product and can be further used to evaluate whether the product is genuine or counterfeit.

Consider the image of a counterfeit water filter (figure 1). This filter was marketed as a genuine name-brand product certified to multiple industry standards, with convincing labeling intended to deceive consumers. To the naked eye, it may look like a viable product. Peel back the curtain with the CT scanner, however, and the true quality of the counterfeit is revealed. Most notable is the deformation exhibited on the internal O-ring. The purpose of this internal O-ring is to seal the passageway between the filter media and the housing. The pictured condition of the O-ring (figure 2) would allow for water to bypass the filter media, negating the entire purpose of the water filter without the consumer having any idea.

In addition, when compared to a genuine filter, the CT scanner can be used to reveal key differences such as filter media

volume, housing wall thicknesses, internal flow paths, etc., all of which are able to be observed and measured without ever removing the filter from its original packaging. Each of these "design fingerprints" can be used to compare the differences between engineering drawings, known-genuine products, and suspected counterfeit products.

MATERIAL IDENTIFICATION

One signature that may distinguish a genuine component from a counterfeit can be the materials comprising the component itself. Different materials respond differently to X-rays at the atomic level, and these distinctions can be discerned from a CT scan. Consider a 5-gallon gas can with a threaded spout assembly. There are several individual components that make up the spout system. The way that these components fit together is essential to understanding how they will perform in service. Similarly, the interaction between the different materials within the assembly may also change the performance of the entire product.

Take a look at the regular image of a spring-loaded gas can (figure 3), and the CT image of that same gas can spout shown in (figure 4).

There are at least four distinct materials identifiable in the image. Just like the bright white bones of a medical X-ray, a bright white appearance is due to high X-ray absorbance, meaning less X-rays make it through the material. The high X-ray absorbance of the metal spring makes it quite obvious in the photograph. The circular cross section of an O-ring, designed to prevent leaks from the gas can, shows up as a light gray because it has a distinct X-ray absorbance compared to the materials surrounding it.

Another bright material is the "fluoropolymer" gasket. This material has the square C-shaped cross section as shown in (figure 4), where it fits over the end of the spout. This material contains fluorine, which interacts with X-rays to appear brightly. A rubber O-ring can be seen near the base of the spout that does not appear as brightly as the fluoropolymer. The difference in the material type and its chemical makeup has resulted in a different appearance in the CT. Using CT in conjunction with other materials analysis techniques like Fourier Transform Infrared Spectroscopy (FTIR) and materialography can lead to a precise determination of the specific materials being used in a product. Why settle for "plastic" when you can know it's high-density polyethylene?

Notice that the alignment of the threads between the gas can and the cap can be evaluated while the components are in place. Not only have the different materials been identified, but also the shape, compatibility, and location of the individual components.

CONSUMER MODIFICATIONS

While the previous examples focused on CT scans of off-the-shelf items, the same principles can be applied to products that have been altered during service or otherwise manipulated after use. One such item is a common material comprised of rubber, fabric, and metal: a tire. Rubber, steel, and fabric have very different responses when subjected to an X-ray source, which makes them distinguishable when combined in a tire and subjected to a CT scan.

In this particular case, the initial tire construction was not under question, but the tire had been previously repaired due to a puncture developed during service. According to recommended industry procedures, tire repairs should contain both a plug and a patch, should be implemented only in the tread or crown area that makes direct contact with the road, and should not be made if the damage extends into the shoulder/belt edge areas. Here, the observed plug appeared at the shoulder region of the tire and contained no discernable patch accompanying the plug. A CT scan of the repaired tire section was conducted to identify the location of the patch relative to the belt endings of the tire (figure 5).

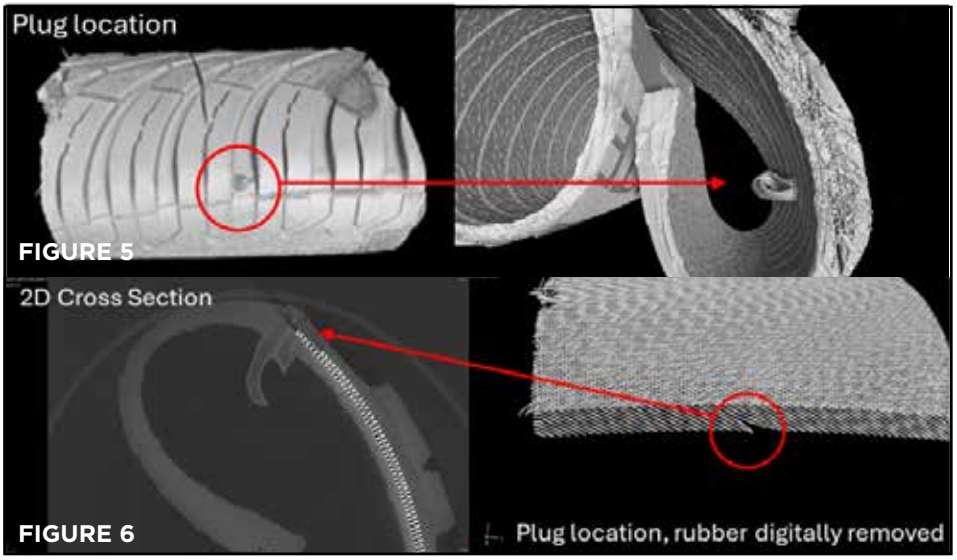

FIGURE 5

FIGURE 6

Figure 6 shows a cross section of the tire repair and the belt package of the tire with the tread digitally removed. The cross section of the tire highlights the exact location relative to the belt package of the tire. The plug was placed at the belt ending of the first belt which was further confirmed in the 3D reconstruction. The tread was digitally removed by changing the contrast of the 3D reconstruction to focus only on the higher-density metal components – the steel belts- The plug was not contained in the belts of the tire, as suspected, based on the initial observations of the plug location. While the initial observation of the plug location indicated a suspect repair, the CT scan highlighted how far from recommended practices this repair went. The repair contained no patch, was located in the shoulder of the tire, and was in the direct vicinity of the belt edges.

By leveraging CT scanning technology, engineers can non-destructively analyze internal structures, authenticate product integrity, and gain critical insights into material performance. Whether it's uncovering a counterfeit product or analyzing a patched tire, CT scanning provides an unparalleled advantage in engineering and investigations. As technology advances, so too will our ability to refine, improve, and innovate- ensuring safer, more reliable products for consumers worldwide.

S-E-A authors include (L-R) Sanket Kadam, M.S., CFEI consulting lead, battery & energy storage; Davis Trask, P.E., mechanical engineer; David Riegner, Ph.D., CFEI senior materials analyst; and Benjamin Iverson, Ph.D., P.E., materials analyst

FACES of USLAW

Art with a Heart gets a helping hand

Franklin & Prokopik's Baltimore volunteering group visited Art with a Heart, a non-profit dedicated to providing local schools with visual art classes and creating community art pieces throughout the city. Volunteers assisted in preparing materials for upcoming projects.

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Holiday Marketplace

Hanson Bridgett hosted one of its most beloved events in December, the annual Holiday Marketplace, sponsored by the Women's Impact Network (WIN). This festive event combined holiday cheer with purpose, featuring women- and minority-owned local businesses. Proceeds from the marketplace supported HealthRIGHT 360's Women's Hope program, which provides wraparound services such as parenting counseling, therapy, and substance use disorder support for women in need. The event not only raised funds but also reinforced the firm's commitment to supporting small businesses and uplifting communities.

Project Holiday Happiness 2024

Each year, Rivkin Radler collaborates with the Safe Center LI–a local nonprofit organization whose mission is to protect, assist, and empower victims of domestic violence and sexual assault and other local charities–to bring holiday cheer to the children and families within its care. Rivkin Radler's Poughkeepsie office participated in the firm's Project Holiday Happiness by partnering with My Barber (a local barber shop owned by Michael Williams) and members of the local community. Their combined efforts supported 57 children this holiday season in various schools throughout the area.

USLAW FACES

Honors & Distinctions from around the NETWORK

Hanson Bridgett

Bianca Ko of Hanson Bridgett in San Francisco was honored with the Atlas Award from the Leadership Council on Legal Diversity. Only 18% of the Pathfinder class received this designation.

Joe Moore of Hanson Bridgett in San Francisco was appointed by Stanford University's School of Civil & Environmental Engineering to teach a class on legal and ethical principles to engineering students.

HansonBridgett

Sweeney & Sheehan

Sweeney & Sheehan Partner Michael Kunsch was elected to the Federation of Defense & Corporate Counsel.

Sweeney & Sheehan Partner Elizabeth A. Dalberth has been invited to co-chair the Cannabis Law Committee within the Philadelphia Bar Association's Business Law Section for a one-year term.

Sweeney & Sheehan
Attorneys at Law

LCBA Citizenship Award

Darrel Morf of Simmons Perrine Moyer Bergman PLC in Iowa received the Linn County (Iowa) Bar Association's (LCBA) 2025 Citizenship Award, recognizing Morf's lifetime of legal service, civic service, and leadership in Linn County. For more than half a century, Morf has been a pillar of the community as he provided guidance and counsel on estate planning to thousands of families and individuals in Linn County and beyond. Beyond his dedication to his profession, Morf continues his decades-long service to numerous boards, nonprofits and civic organizations. Click here to learn more about Morf's extensive impact in Cedar Rapids and beyond.

SPMB Simmons Perrine Moyer Bergman PLC

Williams Kastner

Heidi Mandt of Williams Kastner in Oregon has been selected as a faculty member for the 2025 International Association of Defense Counsel (IADC) Trial Academy. Known as the "Crown Jewel" of the IADC, the Trial Academy is one of the oldest and most esteemed programs for honing defense trial advocacy skills.

WILLIAMS KASTNER

Quattlebaum, Grooms & Tull PLLC

Timothy W. Grooms of Quattlebaum, Grooms & Tull PLLC in Arkansas was honored with the Legend Award from the Commercial Real Estate Council of Metro Little Rock (CREC MLR) at the 7th Annual Commercial Real Estate Awards on February 25, 2025. This award recognizes Tim's outstanding legacy in commercial real estate and his lasting impact on the development of metro Little Rock. Tim's remarkable achievements have shaped the city's landscape, including his instrumental role in landmark projects such as Simmons Bank Arena, Heifer International World Headquarters, William Jefferson Clinton Presidential Park, Mann on Main, and the Arcade Building. His work has not only contributed to the growth of Little Rock but has also set a standard for excellence in the industry. This year's ceremony celebrated remarkable individuals and their enduring influence on the region's development and growth.

QG&T
QUATTLEBAUM, GROOMS & TULL PLLC

Immersion Legal Jury LLC, a nationally based jury consulting firm, has been named the official jury consulting partner of USLAW NETWORK.

The Lashly & Baer team, together with their families, partnered with Operation Food Search in St. Louis to pack weekend meal kits for local students facing food insecurity. This initiative aligns with the firm's mission to support children and strengthen the communities where they live and work.

Social Justice Partner

Hinckley Allen has selected the Jaylen D. Berry Foundation as the firm's 2025 Social Justice Partner. The Social Justice Partner Program underlines Hinckley Allen's commitment to supporting organizations with a proven mission of furthering social justice and racial equity. Recipients of the Social Justice Fund grant benefit from financial assistance and ongoing support from the firm to advance their organizational mission.

2025 Super Bowl Charity Challenge

In the spirit of friendly competition and teamwork as they cheered on their respective hometown teams competing in the 2025 Super Bowl, two USLAW NETWORK member firms - Sweeney & Sheehan, P.C. of Philadelphia and Dysart Taylor of Kansas City, Missouri – looked beyond the final score and joined forces to support two remarkable team-adjacent charities: Travis Kelce's '87 and Running and the Eagles Autism Foundation.

Honoring Black History Month

In honor of Black History Month, Rivkin Radler held the historical and legal discussion, "Black Labor in the USA," on February 18, led by Dr. Veronica Lippencott, director of the Africana Studies Program and associate director of the Center for Race, Culture, and Social Justice at Hofstra University. The event was moderated by Rivkin Radler's Andre Ogé, Jamie Milfort and Andrew Williams.

On Monday, January 20, 2025, Rivkin Radler Partner Tamika Hardy and Associates Jamie Milfort and Andre Ogé participated in the Martin Luther King Jr. Day of Service hosted by Amistad Long Island Black Bar Association.

Faces from around the USLAW 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.

Richard E. McLawhorn, Sweeny, Wingate & Barrow, P.A. (Columbia, SC); Bryan A. Yasinsac, Wicker Smith (Orlando, FL)

Anne M. Fishbeck, Amundsen Davis LLC (Chicago, IL); R. Eric Toney, Copeland, Cook, Taylor & Bush, P.A. (Ridgeland, MS)

Jamie S. Lane, Amundsen Davis LLC (Chicago, IL); Jack J. Laffey, Laffey, Leitner & Goode LLC (Milwaukee, WI); J. Michael Kunsch, Sweeney & Sheehan, P.C. (Philadelphia, PA)

William M. Davis, Bovis Kyle Burch & Medlin LLC (Atlanta, GA) and Patrick E. Foppe, Lashly & Baer, PC (St. Louis, MO)

Bryan A. Yasinsac, Wicker Smith (Orlando, FL); Tamara B. Goorevitz, Franklin & Prokopik, P.C. (Baltimore, MD); Jake G. Pipinich, Pierce Couch Hendrickson Baysinger & Green, L.L.P. (Tulsa, OK)

Earl W. Houston, II, Martin, Tate, Morrow & Marston, P.C. (Memphis, TN); John F. Wilcox, Jr., Dysart Taylor (Kansas City, MO); Peter T. DeMasters, Flaherty Sensabaugh Bonasso PLLC (Morgantown, WV)

USLAW

On the Road with USLAW

Once the sessions end, USLAW event attendees enjoy fun times and network together in various host cities, including an exclusive evening immersed in Nashville's rich musical heritage at the Country Music Hall of Fame, a walk to Nashville's trendy Gulch neighborhood and a pic at the iconic "WhatLiftsYou Wings" mural, an acoustic performance with #1 Billboard artist Meghan Linsey, tour of the Ryman Auditorium and much more.

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Black Marjieh & Sanford LLP (Elmsford, NY)

BM&S Partner Lisa J. Black and Senior Counsel Mark E. Jordan-Poinsette secure dismissal in construction accident case

Black Marjieh & Sanford LLP (BM&S) Partner Lisa J. Black and Senior Counsel Mark E. Jordan-Poinsette successfully secured the dismissal of all claims against their client, a subcontractor named in a construction accident lawsuit.

The court ruled in favor of the firm's client, agreeing that they were not a proper Labor Law defendant. BM&S presented clear evidence demonstrating that its client had no involvement in the project, did not perform work at the premises, and had no connection to the plaintiff's accident. Furthermore, the court found no basis for negligence claims.

A central issue in the case involved a disputed contract and questions of agency and apparent authority. The facts presented resulted in the court determining that an individual had misrepresented himself as a principal of the firm's client's company. However, BM&S successfully established through uncontroverted evidence that this individual lacked actual authority, and as a result, the contract was not binding on their client.

The court's decision to grant summary judgment resulted in the dismissal of all claims and crossclaims against their client, reaffirming important principles regarding subcontractor liability and contractual authority in construction litigation.

Franklin & Prokopik, P.C.. (Baltimore, MD)

D.C. Court of Appeals affirms summary judgment to One Parking in slip and fall case

A three-judge panel of the District of Columbia Court of Appeals affirmed the Superior Court of the District of Columbia's grant of summary judgment to One Parking 555, LLC ("One Parking"). One Parking was sued by a patron who allegedly tripped and fell on a single-step riser in a parking garage operated by One Parking. The patron contended that the single step was "improperly marked and inconspicuous," but there were handrails on either side of the step, the vertical edge of the step was highlighted in yellow, and the top of the landing was painted a darker gray than the floor of the garage. After the completion of discovery, One Parking moved for summary judgment because the patron did not adduce any evidence that a hazardous condition caused the fall. The Superior Court granted the motion and entered judgment in favor of One Parking. The patron appealed the grant of summary judgment. The Court of Appeals reviewed the matter de novo and affirmed the grant of summary judgment. The Court of Appeals concluded that "no reasonable factfinder could conclude that One Parking had constructive notice of a hazard" because the patron was unable to prove that a hazard existed in the first place. The Court of Appeals reasoned that the evidence by the patron and her family merely indicated that the patron did not perceive the step while she was walking and that such evidence did not prove that the step was hazardous or that One Parking knew or should have known about the alleged hazard. One Parking was represented by Ellen R. Stewart of Franklin & Prokopik throughout the proceedings. The case is Catherine Leach v. One Parking 555, LLC, 319 A.3d 415 (2024).

Hanson Bridgett LLP (San Francisco, CA)

Hanson Bridgett LLP sealed its victory for Australian artist Illma Gore against controversial rock musician Marilyn Manson in connection with his defamation and emotional distress suit against Gore and co-defendant Evan Rachel Wood.

Manson dropped his appeal of Gore's May 2023 anti-SLAPP victory and February 2024 attorney fee award, as well as the entirety of the underlying case, and paid Gore $130,000 in legal defense fees.

The firm defended Gore in her challenge to Manson's 2022 lawsuit, in which he claimed that she and Wood, Manson's ex-fiancée, orchestrated efforts to defame him and caused him emotional distress after Wood went public with sexual abuse and rape allegations against Manson, whose real name is Brian Warner.
In May 2023, a Los Angeles judge struck down many of Warner's claims, including his allegation that Wood and Gore inflicted emotional distress on him by recruiting women to speak out against him. Under California's anti-SLAPP law, which protects people who are wrongly sued for exercising their rights to free speech, Warner was ordered this year to pay both women's legal fees.

"Marilyn Manson's meritless claims against our client were a transparent publicity stunt launched ahead of the HBO documentary Phoenix Rising, which chronicled our client's work with Evan Rachel Wood to pass legislation in California to extend the

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statute of limitations for domestic violence survivors. We were proud to defend Ms. Gore against Manson's efforts to undermine and silence her, and to achieve a settlement dismissing all claims against her and securing Manson's payment of her attorneys' fees," said Hanson Bridgett partner Maggie A. Ziemianek, who represented Gore in her anti-SLAPP motion. "It was our pleasure to defend Ms. Gore against this completely frivolous action."

Gore said: "I feel vindicated and am grateful to put this chapter behind me. No one should be targeted for speaking out on behalf of women who have suffered sexual abuse."

Rivkin Radler LLP (Uniondale, NY)

Bruno and Biegel secure summary judgment in a disability discrimination case

Rivkin Radler Partner Jonathan Bruno and Associate Jason Biegel were granted summary judgment by Judge Paul Oetken of the Southern District of New York in an action against a Catholic school located in Riverdale, New York.

The plaintiffs, a recent graduate of the school and her father, alleged that the school inadequately addressed the bullying the student experienced from kindergarten through the eighth grade in violation of the Americans with Disabilities Act, the Rehabilitation Act, and New York State and New York City Human Rights Laws. Plaintiffs also brought claims for negligence; negligent hiring, retention and supervision; loss of services; and negligent infliction of emotional distress. Plaintiffs alleged that the school was informed of several bullying-related incidents that occurred both on and off school property where the plaintiff was subjected to bodily harm, name-calling, cat-fishing, and mean messages through social media. Plaintiffs further alleged that the school's failure to take action to stop the bullying resulted in the student trying to end her life while she was in the eighth grade. Plaintiffs claimed that the other students bullied her because of her learning disability.

The school moved for summary judgment, arguing that any bullying the plaintiff experienced did not rise to an actionable level and that the school's teachers and administrators were not deliberately indifferent to it. In his Opinion and Order, Judge Oetken agreed that the plaintiff failed to adequately meet the necessary burden set forth in Davis Next Friend LaShonda D. v. Monroe Cnty. Bd. Of Educ., 526 U.S. 629 (1999), which requires a plaintiff to sufficiently allege and prove that: (1) they were subject to harassment on the basis of a disability; (2) the harassment was so severe, pervasive, and objectively offensive that it altered their education; (3) the school had actual notice of the disability-based harassment; and (4) the school was deliberately indifferent to it.

More specifically, Judge Oekten ruled that the incidents the plaintiffs complained of were isolated and, with the exception of a single incident, not related to the student's disability. The court determined that even if such incidents were sufficiently related to the plaintiff's disability, the plaintiffs failed to demonstrate that the school did so little to safeguard the plaintiff so as to give rise to a reasonable inference that the private school intended for the bullying to continue.

Rivkin Radler LLP (Uniondale & Albany, NY)

Wilck & Wisher achieve dismissal of legal malpractice case

Rivkin Radler's Uniondale Partner David Wilck and Albany Associate Ben Wisher teamed up to defend an attorney against a legal malpractice action brought by the attorney's former client. The plaintiff alleged that, in August 2017, the attorney prepared a deed for the plaintiff and her since-deceased brother. The intention was for the title to the properties conveyed to be to joint tenants with survivorship rights. Allegedly, the deed was prepared and recorded, making the conveyance to "tenants by the entirety," a designation reserved for married couples.

When the plaintiff's brother passed in September 2021, litigation ensued between his estate and the plaintiff concerning ownership of the properties. In that action, the plaintiff was ultimately ordered to remit half of the value of the properties to the estate. The plaintiff commenced the legal malpractice action in September of this year, claiming that the attorney's error was the cause of the plaintiff's loss in the estate action. David and Ben identified at the outset that the legal malpractice claim appeared untimely, as it was brought over seven years after the attorney's alleged error.

Under New York law, legal malpractice claims are subject to a three-year statute of limitations, which accrues at the time of the alleged malpractice. David and Ben prepared and filed the motion and refuted the plaintiff's opposition that her legal malpractice claim accrued upon her brother's death (when she could, for the first time, not enforce her originally intended survivorship

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right in the properties). The Court issued its Decision and Order, granting the motion and dismissing the case with prejudice. The client was relieved. The carrier was happy, and this is the second favorable result that David and Ben have delivered to the carrier within a week. Ben was also quick to prepare and file the Notice of Entry to begin the plaintiff's time to appeal.

Sweeny, Wingate & Barrow, P.A. (Columbia, SC)

Barrow, McLawhorn, and Crain obtained defense verdict for a large national trucking company

Attorneys Mark Barrow, Richard McLawhorn, and Adam Crain recently obtained a defense verdict for a large national trucking company. It was alleged that a truck driver's striking of a guy wire connected to a power pole was the proximate cause of catastrophic injuries suffered by a man who volunteered to help the responding fire department direct traffic to alternate routes and who was then struck by an oncoming pick-up truck. The plaintiff provided evidence of over $3 million in past medical damages and presented the jury with evidence of over $10 million in future medical and homecare needs. At trial, the plaintiff asked the jury for over $50 million. The jury found that neither the truck driver nor the trucking company were the proximate cause of the plaintiff's injuries and returned a complete defense verdict.

Wicker Smith (Central Florida)

Wicker Smith obtains a defense verdict in a wrongful death case

Wicker Smith Naples Partners Ashley Withers, Lindsey Grossman, and Kevin Crews recently obtained a defense verdict in a wrongful death case in Collier County, Florida. They represented the hospital and a cardiothoracic surgeon in this case, in which the decedent underwent a coronary artery bypass graft (CABG). The CABG was successful, but the patient subsequently had a stroke and died. Plaintiff's counsel alleged that the client's doctor breached the standard of care by not consulting vascular surgery when carotid stenosis was discovered during the CABG workup and further alleged that this failure caused the decedent's death. The defense argued that the standard of care for asymptomatic, unilateral carotid stenosis did not require a vascular consult or any additional treatment modalities before CABG recovery was complete. After six days of trial, the plaintiff asked the jury for $10 million. The jury deliberated less than an hour before returning a complete defense verdict in favor of the hospital and the cardiothoracic surgeon.

Wicker Smith (South Florida)

Trio of Wicker Smith attorneys obtain a defense verdict in a trucking negligence case

Wicker Smith Miami Partners Erik Crep and T. Michael Kennedy and Associate Trenton Wasser obtained a defense verdict in a trucking negligence case in late February in Broward County, Florida. This case involved a low-hanging power line that was hit by their client's semi-trailer, causing a utility pole to break and hit the plaintiff's car. Both the phone company and the electric company settled out of the case prior to trial. Wicker Smith represented the trucking company and the defendant driver in the four-day trial. The jury deliberated for 90 minutes before returning a complete defense verdict. This was one of three defense verdicts obtained by Wicker Smith lawyers throughout the firm during the same week in February.

TRANSACTIONS

Rivkin Radler LLP (Uniondale & Albany, NY)

Sinensky and Wang lead corporate transaction

Rivkin Radler's client FCF Advisors LLC closed on its sale to Abacus Life, Inc. (NASDAQ: ABL), an asset manager specializing in longevity and actuarial technology. FCF is a New York-based asset manager and index provider with approximately $600 million in assets under management. The Rivkin team included Avi Sinensky and Jenson Wang.

INTRODUCING USLAW REMOTE

A COLLECTION OF VIRUTAL OPPORTUNITIES TO HELP YOU LEARN, CONNECT AND COLLABORATE

USLAW REMOTE is USLAW's virtual learning collection that offers an engaging and diverse catalog of virtual opportunities to learn, connect and collaborate with member attorneys (outside counsel), in-house legal leaders, and USLAW corporate partners from across the NETWORK. USLAW Remote offers a variety of delivery methods to suit your schedule, team and business needs *from the comfort of your computer or mobile device*.

USLAW REMOTE: *SHARE* features smaller industry and practice group-specific virtual roundtable discussions focused on complex legal issues. These invitation-only interactive sessions deliver collaborative discussions among USLAW members and industry leaders, including the sharing of experiences, best practices, and success stories. Ask questions, collaborate, and learn from others in these virtual interactive roundtables.

USLAW REMOTE: *LEARN* delivers a selection of virtual learning experiences tailored to legal decision-makers, risk professionals and other core business leaders in a cross-section of industries. Led by USLAW member attorneys representing different geographic jurisdictions and practice areas, these presentation-style webinars are offered live and on demand.

USLAW REMOTE: *LISTEN* spotlights USLAW Live, the official USLAW NETWORK podcast. Each episode provides lighthearted conversations and discussions about prominent legal issues. Join us as we get to know our members, discuss the legal and business issues keeping us up at night, and add some fun to your day!

USLAW REMOTE: *SOCIAL* combines the best of two worlds - learning and social - in one great virtual event. Each event will feature targeted legal programming combined with a virtual social component that delivers professional networking in a casual virtual setting with peers from a cross-section of industries.

USLAW REMOTE: *CUSTOM* is a fully personalized program featuring a select, virtual go-team of USLAW member attorneys addressing issues pertinent to you and your company only. You determine your company's participants and core topic needs, and USLAW will deliver a customized program.

pro bono SPOTLIGHT

AP&S delivers pro bono support for St. Mary's Center for Women & Children

In a significant act of community support, Jonathan M. Sachs and Stephen T. Connolly of Adler Pollock & Sheehan P.C. (AP&S) in Rhode Island provided legal counsel to St. Mary's Center for Women & Children in connection with securing a line of credit. This partnership was made possible through a collaboration with Eastern Bank and was carried out on a pro-bono basis. St. Mary's Center for Women and Children, a multi-service organization supporting women and families, believes shelter is not enough to erase the devastation of cyclical poverty and homelessness. AP&S recognizes the critical role that financial stability plays in the success of nonprofit organizations. By facilitating this line of credit, AP&S aims to provide St. Mary's Center for Women & Children with the financial flexibility needed to expand its services as the organization embarks on a transformative capital project that will double the number of families served. This pro-bono effort underscores the firm's dedication to giving back to the community and supporting organizations that make a difference.

Hanson Bridgett's Andrew Giacomini represents workers pro bono in a lawsuit against National Park Service to protect ranch workers' homes and jobs

Hanson Bridgett LLP has filed a federal lawsuit against the National Park Service to protect the homes and jobs of families who live and work on cattle and dairy ranches in the Point Reyes National Seashore.

The lawsuit filed Dec. 12 in U.S. District Court for the Northern District of California on behalf of 100 unnamed Latino workers and family members challenges a purported legal settlement that the NPS has negotiated in secret with environmental and ranching groups that would reverse a previous decision allowing the issuance of 20-year ranching leases on park-owned land in West Marin.

"The resulting ranch closures would deprive the agricultural workers of income and evict them from their homes, in violation of our clients' constitutional due process rights, the Fair Housing Act and the National Environmental Policy Act," said Hanson Bridgett partner Andrew G. Giacomini, who represents the workers pro bono. "Given the region's shortage of affordable housing, it's very likely that these workers will end up unhoused because of the National Park Service's actions."

The complaint alleges that the NPS is intentionally treating the Hispanic agricultural workers differently from the ranchers, excluding the former from lawsuit-related negotiations that will affect their livelihoods and housing, while the ranchers are allowed to represent their interests. The agricultural workers also claim that the NPS is planning to compensate the ranchers but not the workers.

The ongoing litigation stems from a 2022 lawsuit filed by three environmental organizations seeking to end agricultural activity within Point Reyes. The NPS had initially extended agricultural leases to 20-year terms under its new management plan, but the leases and ranching activities are now in jeopardy due to environmental concerns raised in the lawsuit.

"We believe that the NPS should not be allowed to settle the lawsuit with the environmentalists and that our clients should be able to remain in their homes in Point Reyes," said Giacomini, a West Marin native. "These hardworking farmworkers are longstanding community members and neighbors, and they deserve a say in any discussions that deeply affect their lives."

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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 more than 80 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 and programming opportunities – onsite and virtual – and online resources, including webinars, jurisdictional updates and *USLAW Magazine*. 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.

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the complete USLAW SOURCEBOOK

USLAW NETWORK offers legal decision-makers a variety of complimentary products and services to assist them with their day-to-day operation and management of legal issues. USLAW Client Resources provide information regarding each resource that is available. We encourage you to review these and take advantage of those that could benefit you and your company. For additional information, contact Roger M. Yaffe, USLAW CEO, at roger@uslaw.org or (800) 231-9110, ext. 1.

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.

VIRTUAL OFFERINGS

USLAW has many ways to help members virtually connect with their clients. From the USLAW Remote virtual learning collection and USLAW Panel Counsel Virtual Meetings to exclusive social and networking opportunities to small virtual roundtable events, industry leaders and legal decision-makers have direct access to attorneys across the NETWORK to support their various legal needs.

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It's no secret – USLAW can host a great event. We are very proud of the timely industry-leading interactive roundtable discussions at our annual client conference, forums and client exchanges. Reaching from national to more localized offerings, USLAW member attorneys and the clients they serve meet throughout the year at USLAW-hosted events and at many legal industry conferences. USLAW also offers industry and practice group-focused virtual programming. CLE accreditation is provided for most USLAW educational offerings.

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We are pleased to offer a completely customizable one-stop educational program that will deliver information on today's trending topics that are applicable and focused solely on your business. We focus on specific markets where you do business and utilize a team of attorneys to share relevant jurisdictional knowledge important to your business' success. Whether it is a one-hour lunch and learn, half-day intensive program or simply an informal meeting discussing a specific legal matter, USLAW will structure the opportunity to your requirements – all at no cost to your company.

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USLAW Remote offers an engaging and diverse catalog of virtual opportunities to learn, connect and collaborate with member attorneys (outside counsel), in-house legal leaders, and USLAW corporate partners from across the NETWORK. USLAW Remote includes USLAW Remote: Share, USLAW Remote: Learn, USLAW Remote: Listen, USLAW Remote: Social and USLAW Remote: Custom. USLAW Remote offers a variety of delivery methods to suit your schedule, team, and business needs from the comfort of your computer or mobile device..

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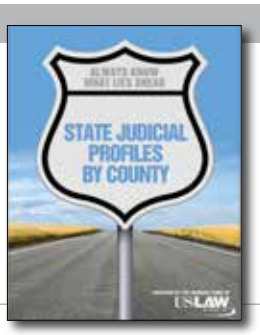

STATE JUDICIAL PROFILES BY COUNTY

Jurisdictional awareness of the court and juries on a county-by-county basis is a key ingredient to successfully navigating legal challenges throughout the United States. Knowing the local rules, the judge, and the local business and legal environment provides a unique competitive advantage. In order to best serve clients, USLAW NETWORK offers a judicial profile that identifies counties as Conservative, Moderate or Liberal and thus provides you an important Home Field Advantage.

USLAW MAGAZINE

USLAW Magazine is an in-depth publication produced and designed to address legal and business issues facing today's corporate leaders and legal decision-makers. Recent topics have covered cyber-security & data privacy, artificial intelligence, medical marijuana & employer drug policies, management liability issues in the face of a cyberattack, defending motor carriers performing oversized load & heavy haul operations, nuclear verdicts, employee wellness programs, social media & the law, effects of electronic healthcare records, allocating risk by contract and much more.

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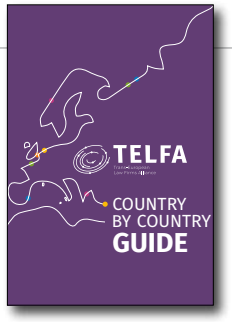
In today's digital world there are many ways to connect, share, communicate, engage, interact and collaborate. Through any one of our various communication channels, sign on, ask a question, offer insight, share comments, and collaborate with others connected to USLAW. Please connect with us via LinkedIn, Instagram, Facebook and X.

TELFA CORPORATE PRACTICE GROUP COUNTRY-BY-COUNTRY GUIDE

The Trans European Law Firms Alliance (TELFA) Corporate Practice Group Country-by-Country Guide provides legal decision-makers with relevant info for creating corporate structures in jurisdictions across Europe. The corporate structure guide is intended to:

- Provide an overview of the different corporate structures and requirements in the EU.
- Inform about directors' liabilities.
- Supplement company law aspects by always considering issues of tax.

To view and download the TELFA Country-by-Country Guide, visit the Client Toolkit section of uslaw.org.



PRACTICE GROUPS

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Take advantage of the knowledge of your peers. USLAW NETWORK's Client Leadership Council (CLC) and Practice Group Client Advisors are hand-selected, groups of prestigious USLAW firm clients who provide expertise and advice to ensure the organization and its law firms meet the expectations of the client community. In addition to the valuable insights they provide, CLC members and Practice Group Client Advisors also serve as USLAW ambassadors, utilizing their stature within their various industries to promote the many benefits of USLAW NETWORK.

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MEMBER SINCE 2023 Coleman Chavez & Associates, LLP is a 65+ attorney law firm focused on the defense of workers' compensation claims and related litigation in California. Coleman Chavez & Associates was established in 2008, and we recently celebrated our 15th anniversary.

Coleman Chavez & Associates represents a variety of clients, including employers, insurance carriers and third-party administrators. We take pride in the quality of our work, and we are committed to providing thorough and effective representation to our clients. We believe that we can achieve the best results by staying well informed on the law, being thoroughly prepared, negotiating assertively and effectively, and keeping an open line of communication with our clients.

From our offices throughout the state, we service all Northern California and Southern California WCAB District Offices. The attorneys at Coleman Chavez & Associates look forward to working with you and your team members.

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Recognized as an AmLaw 200 Firm, Hinckley Allen offers pragmatic legal counsel, strategic thinking, and tireless advocacy to a diverse clientele. Our clients include regional, national, and international privately held and public companies and emerging businesses in a wide range of industries. Leading utilities, financial institutions, manufacturing companies, educational institutions, academic medical centers, health care institutions, hospitals, real estate developers, and construction companies depend on us for counsel. We have been a vital force in businesses, government, and our communities since 1906.

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MEMBER SINCE 2023 Bovis, Kyle, Burch & Medlin, LLC was founded over 50 years ago, when John Bovis joined the firm's predecessor started by federal Senior Judge William C. O'Kelley. Encouraged by our clients' needs, the firm has grown to include attorneys dedicated to a wide variety of practice areas. In 2008, that growth spurred the firm's move to a larger main office that includes state-of-the-art mediation space and advanced technology, helping us to better serve our clients' needs. Bovis, Kyle, Burch & Medlin, LLC is a multi-practice firm with its main office located in the growing Perimeter Center area, north of downtown Atlanta, Georgia.

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MEMBER SINCE 2004 With more than 50 attorneys located in downtown Honolulu, Goodsill offers knowledge and experience in all aspects of civil law, including business and securities law, banking, real estate, tax, trusts and estates, public utilities, immigration, international transactions and civil litigation. In addition to representing clients in alternative dispute resolution, a number of our trial lawyers are trained mediators and are retained to resolve disputes. Goodsill's litigation department also handles appeals in both state and federal courts.

Goodsill attorneys provide innovative, solutions-oriented legal and general business counsel to an impressive list of domestic and international clients. We work closely with each client to identify and deploy the right mix of legal and business expertise, talented support staff and technology.

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MEMBER SINCE 2012 Success. Excellence. Experience. Dedication. These values form the foundation of our firm. At Duke Scanlan & Hall, we are dedicated to representing corporate, insurance, and healthcare clients through litigation, trials, and appeals all across Idaho and Eastern Oregon. We offer the experience and dedication of seasoned trial attorneys who insist on excellence in the pursuit of success for our clients. Our clients know that we not only consistently win, but that we keep them informed of case strategy and developments, while helping them manage the costs of litigation. In handling each case, we employ the following key strategies to help us effectively and efficiently fight for our clients: early and continued case evaluation and budgeting; consistent and timely communication with our clients; efficient staffing; and the use of advanced legal technology both in and out of the courtroom. While we bring experience and dedication to each of our cases, we are also proud of our profession and feel strongly that we – and the profession – can positively impact the lives of others. As part of our commitment, we support enhancing diversity in the legal field, working to improve our profession, and helping our community.

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MEMBER SINCE 2014 Dysart Taylor was founded in 1934. It is a highly respected Midwestern law firm with broad expertise to support its clients' growth and success in a myriad of industries. It is also touted as one of the nation's leading transportation law firms. Six members of the firm have served as Presidents of the Transportation Lawyers Association, the leading bar association for attorneys in the transportation industry.

Our attorneys are active in the community and have held governing positions in local and state bar associations and community organizations. Our AV-rated law firm is proud of its reputation for zealous advocacy, high ethical standards, and outstanding results. We are equally proud of the trust our local and national clients place in us.

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MEMBER SINCE 2005 Headquartered in Baltimore City, Franklin & Prokopik is a regional law firm comprised of over 70 experienced attorneys. Our mission of providing the highest quality personal service enables us to grow, as we attract and develop other likeminded attorneys to serve our clients. From twenty-four hour emergency services to complex litigation, we listen carefully to our clients and tailor our services to meet their outcome goals. Franklin & Prokopik provides a broad spectrum of legal services and represents corporate and business entities of all sizes, from small "mom and pops" to Fortune 500 companies across a wide range of industries.

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CCTB has built a reputation for strong client relationships as a result of its lawyers' skills in communication and counseling. If litigation cannot be avoided, our seasoned litigation group is prepared to aggressively defend the interests of our clients in state and federal courts. While Mississippi can be a challenging jurisdiction, the record of CCTB clients speaks well for the quality of our representation.

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Since 1912 our simple philosophy has never changed: at the core of every case is the client. The client's goals become our goals, and our firm works tirelessly to find the most efficient and cost-effective solution to each legal issue.

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MEMBER SINCE 2007 Davis, Hatley, Haffeman & Tighe, P.C., is a business and litigation law firm located in Great Falls, Montana. It has been in continuous existence since 1912. Originally the firm focused on insurance defense work. While the defense of insureds and insurers remains a primary component of DHHT's practice, the firm's work has expanded over the years to include business litigation, representation of national and multi-national corporations in class actions, products liability, employment, environmental, toxic tort and commercial litigation, and the defense of public entities, including the State of Montana and numerous cities and counties, as well as a wide range of transactional work, running the gamut of business formations, farm and ranch sales, commercial leasing, oil and gas, and business consulting. There is also an active estate planning and probate practice. The firm carries on a state-wide trial practice. The lawyers at DHHT are proud of their reputation in the Montana legal community as attorneys who are always willing to go the distance for their clients. Since 2007, DHHT lawyers tried cases to verdict in federal and state courts all over Montana, including Great Falls, Billings, Missoula, Helena, Bozeman, Kalispell, Lewistown, Glasgow, Deer Lodge and Shelby. That reputation assures clients of experienced representation through all phases of litigation and instant creditability with the Montana bench & bar.

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MEMBER SINCE 2007 Baird Holm LLP's integrated team of 97 attorneys, licensed in 22 states, is committed to connecting each of its valued clients to the positive outcomes they seek. With extensive and diverse expertise, we leverage one another's skills to respond efficiently to our clients' local, regional, national and international legal needs. We are proud to represent public and private companies, individuals, private funds and other investors, financial institutions, governmental entities and nonprofit organizations.

Rooted by the promise to constantly evolve in anticipation of our clients' changing needs, Baird Holm has enjoyed steady and measured growth since its founding in 1873. We are proud of our strong tradition of uncompromising quality, dedication to clients, personal and professional integrity, and service to the profession and the community.

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MEMBER SINCE 2007 Thorndal Armstrong has enjoyed a strong Nevada presence since 1971. Founded in Las Vegas, the firm has grown from two lawyers to just under thirty. It expanded its statewide services in 1986 with the opening of the northern Nevada office in Reno. An additional office was opened in Elko in 1996 to further satisfy client demand in the northeastern portion of the state.

With a strong emphasis in civil defense litigation for insureds and self-insureds, including expertise in complex litigation, general business, commercial law, and industrial insurance defense, Thorndal, Armstrong, Delk, Balkenbush & Eisinger is committed to providing thorough, efficient and effective legal services to its clients. Its experienced attorneys, combined with a highly capable professional support staff, allow the firm to represent clients on a competitive, cost-efficient basis.

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MEMBER SINCE 2005 A leading full-service regional law firm headquartered in New Jersey, Connell Foley LLP has more than 140 attorneys across seven offices. We take a hands-on approach to provide outstanding legal services while maintaining a firm culture predicated on service and teamwork. Our clients range from Fortune 500 corporations, to government entities, middle market and start-up businesses, and entrepreneurs. With experience in the various industries in which our clients operate, we offer innovative and cost-effective solutions. Connell Foley is recognized as a leader in numerous areas of law, including: banking and finance, bankruptcy and restructuring, commercial litigation, construction, corporate law, cybersecurity, environmental, immigration, insurance, labor and employment, product liability, professional liability, real estate, zoning and land use, transportation, trusts and estates, and white collar criminal defense.

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MEMBER SINCE 2004 Modrall Sperling provides high quality legal services on a range of issues and subjects important to businesses and individuals in New Mexico. Our clients include financial institutions, state and local governmental bodies, insurance companies, small and family businesses, national and multi-national corporations, energy and natural resource companies, educational institutions, private foundations, farmers, ranchers, and other individuals.With offices in Albuquerque and Santa Fe, the firm provides innovative legal solutions and is prepared to meet both the basic and sophisticated demands of business and individual clients in a challenging economy. Since its founding in 1937, Modrall Sperling has been recognized for excellence in a variety of practice areas and many of our lawyers have been consistently ranked among the best and brightest by peer review, as conducted by legal ranking organizations including Best Lawyers in America®, Chambers USA, Southwest Super Lawyers®, Martindale-Hubbell, and Benchmark Litigation. Several of our lawyers have also been recognized on a regional and national level.

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MEMBER SINCE 2024 Teamwork for forward-thinking client solutions. We are a team of seasoned attorneys who act as tireless advocates for our clients. Our decades of combined experience and knowledge inform strategies that drive successful outcomes. With a results-focused, cost-conscious approach, we are dedicated to creating meaningful and long-term client partnerships. At Black Marjieh & Sanford LLP, our guiding principle is to foster an inclusive, rewarding and collaborative work environment that inspires excellence, passion and innovation. It's our people who drive us forward as a firm and on behalf of our clients.

We are nationally certified as a Woman Business Enterprise (WBE). In addition, we are certified as a Great Place to Work for 2022-2023, with 100% of our team reporting they are proud to tell others they work at Black Marjieh. Black Marjieh & Sanford was also selected as the 2019 winner of the WWBA Family Friendly Employer Award and recognized as one of Fortune's Best 50 Small Workplaces for 2018. We were especially proud to be the only law firm on this list. Seven BM&S attorneys have been recognized by Super Lawyers® for 2023 honors.

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MEMBER SINCE 2004 Poyner Spruill LLP is a large, multidisciplinary North Carolina law firm, providing a comprehensive range of business and litigation legal services. The firm has a reputation for professional excellence and client service throughout the Southeast. Poyner Spruill has approximately 100 attorneys with offices in Charlotte, Raleigh, Rocky Mount, Southern Pines and Wilmington, from which we cover all federal and state courts. Approximately one-half of the firm attorneys practice litigation including a broad range of general commercial litigation, bank litigation and defense work in various types of liability cases. Many of our practice groups send up-to-the-minute legal developments on a myriad of issues pertinent to our clients' business needs. Our periodic mailings are distributed via e-mail and posted to our web site's publications page. We invite you and your clients to take advantage of this complimentary news service by signing up through our web site.

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Our success is achieved without compromising the ideals which define the best in our profession: integrity, loyalty and expertise. We constantly enhance our firm to meet the expectations of our clients. Committed to these principles, we have a reputation as skillful and effective litigators in a broad range of practice areas, providing the talent and experience of larger firms while maintaining flexibility to deliver personalized, cost-effective quality service.

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MEMBER SINCE 2011 Pion, Nerone, Girman & Smith, P.C. is a civil litigation firm with offices in Pittsburgh and Harrisburg.

Our practice areas include transportation, railroad, asbestos, premises liability, products liability, family law, estate, Medicare Set-Aside, workers' compensation, and general liability. In addition to trial representation, catastrophic response and business consulting, the firm has an appellate and complex research group. The Partners of the firm have more than 150 years of collective experience.

Most of our lawyers and staff were born and raised in Pennsylvania and we are proud to be part of the distinguished Pittsburgh and Harrisburg legal communities. The emergency response telephone number (412-600-0217) is answered by a lawyer 24/7 and allows us to provide high quality service to our clients. We urge our clients to utilize this number should the need arise.

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MEMBER SINCE 2008 Since 1960, Adler Pollock & Sheehan P.C. has delivered client-focused business law services designed to achieve cost-effective solutions for today's complex challenges. Based in Providence, the firm is a full-service regional law firm featuring a sophisticated corporate practice and a nationally renowned litigation practice. The firm successfully combines the depth and breadth of expertise of a large law firm with the advantages of responsive and direct personal service by partners found in smaller firms.

We are proud of our demonstrated record of achievement, which is sustained by a genuine and deep-rooted commitment to the ideals of the legal profession. The core of the AP&S approach is our focus on the client, which is evident in the personal high-level attention each client receives.

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MEMBER SINCE 2002 Sweeny, Wingate & Barrow, P.A. is a litigation and consulting law firm serving the needs of individuals, businesses and insurance companies throughout South Carolina. We are committed to a philosophy of excellence, integrity, and service.

Cooperation, selflessness, and diligence are essential to providing high-quality service to every client. At Sweeny, Wingate and Barrow, we are committed to providing excellent representation to our clients in helping achieve their legal goals. Our relationships with our clients are honest, open, and fair.

Our practice covers many legal issues in two distinct areas. As a business and tort litigation defense firm, we provide defense representation to corporations and individuals in trucking litigation, construction defect litigation, product liability cases, medical malpractice cases, and insurance coverage matters, including opinion letters and defense of accident claims, professional liability, construction defect, and product liability defense.

The other section of our practice includes the transactions and litigation situations that arise in connection with business planning, estate planning, probate administration, and probate litigation. We handle contract drafting, incorporations, startups, wills, trusts, probate matters, and countless other business needs for our clients.

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The firm has a wide and varied practice, particularly in central South Dakota, but also maintains a statewide litigation practice, regularly appears before State boards and commissions, and serves as legislative counsel for numerous associations and cooperatives.

Firm members have spent considerable time representing insurance companies in defense of casualty suits, products liability claims and similar matters.

The firm handles substantial regulatory law matters, and also does much work relating to banking, contracts, real estate, title work and probate and estate planning.

All members of the firm are active in professional activities and civic and fraternal organizations.

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MEMBER SINCE 2002 Martin Tate was endowed by its founder, Judge John D. Martin, Sr., over 100 years ago, with a solid tradition of service to clients, the profession and the Memphis Community. Because of its long-term commitment to the Memphis community, Martin Tate projects a unique perspective in delivering legal services for Memphis businesses and national clients. The firm combines quality legal services with innovative legal thinking to create practical solutions that provide clients a competitive edge. The firm's areas of significant practice are business and commercial transactions; litigation in state and federal courts; trusts and estates; and commercial real estate. The firm's attorneys counsel clients in M&As, banking, IPOs, partnership matters, PILOT transactions, bankruptcy reorganizations and creditor's rights. Attorneys regularly deal with matters involving contracts, transportation law, insurance, products liability, and employment rights. Attorneys in the real estate section are involved in transactions regarding construction, development, leasing and operation of shopping centers, office buildings, industrial plants, and warehouse distribution centers. The firm is involved in financing techniques for real estate syndications, issuance of tax-exempt bonds, and equity participations.

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MEMBER SINCE 2005 Fee, Smith & Sharp, LLP an AV rated firm based in Dallas, Texas, was founded to service the litigation needs of the firm's individual, corporate and insurance clients. The partners' combined experience as lead counsel in well over 200 civil jury trials allows the firm to deliver an aggressive, team-oriented approach on behalf of their valued clients. The partnership is supported by a team of talented, experienced, and professional associate attorneys and legal staff who understand the importance of delivering efficient, quality legal services. The attorneys at Fee, Smith & Sharp, LLP are actively involved in representing clients throughout Texas in a variety of commercial, property and casualty cases at the state, federal and appellate levels.

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MEMBER SINCE 2019 MehaffyWeber was founded in 1946 as a litigation firm. As our clients' needs expanded, we evolved into a broad-based law firm, still with a strong litigation emphasis. We tailor our approaches to best suit the client's individual needs. We are proud to have a long record of winning cases in tough jurisdictions, but we know that not all cases need to be tried. We use legal motions and other means to achieve positive results pre-trial, and when appropriate, we work hand in hand with our clients to secure advantageous settlements. Today, we continue to believe that hard work, ethical and innovative approaches are core values that result in success for the firm and our clients.

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MEMBER SINCE 2005 Strong & Hanni, one of Utah's most respected and experienced law firms, demonstrates exceptional legal ability and superior quality. For more than one hundred years, the firm has provided effective, efficient, and ethical legal representation to individuals, small businesses, and large corporate clients. The firm's attorneys have received awards and commendations from many national and state legal organizations. The firm's practice groups allow attorneys to focus their in-depth knowledge in specific areas of the law. The firm's organization fosters interaction with attorneys across the firm's practice groups insuring that even the most complex legal matter is handled in the most effective and efficient manner. The firm's commitment to up to date technology and case management tools allows matters to be handled with client communication and document security in mind. The firm's trial attorneys have received commendations and recognition from local, state, and national organizations. Our business is protecting your business.

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The firm's litigation team handles product liability defense, toxic torts and environmental litigation, construction litigation, premises liability, commercial litigation, and general liability defense. Its award-winning healthcare team works on matters involving medical professional liability, healthcare litigation, and employment disputes. Known as experienced trial attorneys, MRC lawyers also pursue alternative means of dispute resolution when appropriate, including arbitration and mediation.

The firm's robust business transactional practice includes representation of corporate clients and developers in large-scale financing and commercial real estate deals. Team attorneys are experienced in entity formation, creditors' rights, securities offerings, tax-advantaged arrangements such as 1031 exchanges, and other complex transactions.

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MEMBER SINCE 2015 Flaherty Sensabaugh Bonasso PLLC serves local, national and international clients in the areas of litigation and transactional law. Founded in 1991, today more than 50 attorneys provide quality counsel to turn clients' obstacles into opportunities.

At Flaherty, we are deeply committed to partnering with our clients to obtain optimum results. Throughout our history, our prime consideration has been our client's interests, with a key consideration of the costs associated with litigation.

While avoiding litigation may be desired, when necessary, our attorneys stand prepared to bring their considerable experience to the courtroom. We are experienced in trying matters ranging from simple negligence to complex, multi-party matters involving catastrophic damages.

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Your USLAW structured settlements consultants look forward to working with you!

Immersion Legal Jury
OFFICIAL JURY CONSULTING PARTNER

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Immersion Legal Jury is USLAW's official jury consulting partner. Through carefully crafted mock trials and focus groups, Immersion's team of jury consultants meticulously analyzes juror feedback to arm litigators with data-driven insights and powerfully pithy themes. When cases proceed to trial, they leverage cutting-edge jury selection techniques to optimize success in the courtroom. For more information, visit immersionlegal.com.

2024 USLAW Corporate Partners

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With over 30 years of experience, Marshall Investigative Group is a premier leader in construction, retail, and transportation fraud investigations across the U.S., Canada, and Mexico. We specialize in disability, liability, bodily injury, and workers' compensation cases, utilizing the latest technologies to deliver comprehensive solutions that save our clients millions annually. Our expertise spans surveillance, research, SIU, and internet-based investigations.

Headquartered in Chicago, with regional offices nationwide, our goal is to exceed your expectations. Marshall Investigative Group's surveillance investigators are committed to delivering effective solutions for well-positioned claims.

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