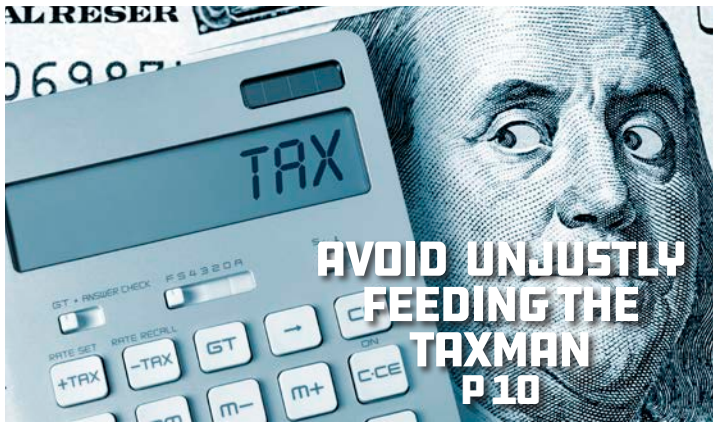
SUMMER •2022 PLUS+

# US LAW




AVOID UNJUSTLY FEEDING THE TAXMAN
P 10


WITHOUT LEADERSHIP BUY-IN, LAW FIRM DEI EFFORTS STAND TO FAIL P 26


MAY A HEALTH CARE PROVIDER REFUSE TO TREAT AN UNVACCINATED PATIENT? P 2

BREAKING BAD FAITH:
DOES LEGISLATING PRIVATE CAUSES OF ACTION AGAINST INSURERS DO MORE HARM OR GOOD?
P 24

INSURANCE COVERAGE ISSUES PRESENTED BY CHILD VICTIMS ACT LEGISLATION
P 8


We erase the speculation.

We analyze the could've beens.

We investigate the maybes.

We explain away the what-ifs.

To take note of the facts.

S-E-A™

Know.

Precisely revealing the cause of accidents and thoroughly testing to mitigate risk. Doing both at the highest level is what sets us apart. From our superior forensics talent, technology, and experience to the visualization expertise of our Imaging Sciences team, we dig past the speculation to find and convey the truth about what happened like no one else.

**Proud Partner USLAW NETWORK Inc. since 2004.**

Forensic Engineering, Investigation and Analysis

800.782.6851 | SEAlimited.com | Since 1970

SUBMIT AN ASSIGNMENT

table of CONTENTS

SUMMER 2022

www.uslaw.org USLAW

## FEATURES:



## DEPARTMENTS:

# Our *humanistic* approach leads to **better settlements** for your clients.

**Brian Annandono, CSSC**
Cleveland, OH

**Cassie Barkett, Esq**
Tulsa, OK

**Len Blonder**
Los Angeles, CA

**Rachel Grant, CSSC**
Detroit, MI

**Nicole Mayer, AIF, CDFA**
Chicago, IL

**Rich Regna, CSSC**
Denver, CO

**Iliana Valtchanova**
Pittsburgh, PA

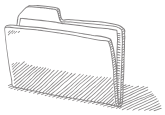
At Arcadia, our passion for empowering people is at the heart of everything we do. Our knowledge helps resolve conflicts, reduce litigation expenses and create long-term financial security for people involved in personal injury claims — helping settle over 340,000 claims, and positively impacting the lives of those we serve. Over 1,000 clients rely on Arcadia; we invest significantly in the development of innovative products and security tools that make doing business with us easier, and helping your clients settle more cases, faster.

- Licensed in all 50 states & Canada
- Experienced settlement consultants
- Lifetime payments & tax-advantaged income
- Spendthrift protection using a myriad of settlement tools

Visit teamarcadia.com | call 800.638.5890

USLAW NETWORK, INC®

ARCADIA
The Structured Settlements Company



# *from the* CHAIR'S DESK

Welcome to our latest issue of USLAW Magazine. Our quarterly magazine is one of many complimentary client resources we provide that focus on the latest insights and updates on topics impacting today's legal decision-makers.

As you read this, it is hard to believe we are nearly at the halfway point of 2022. Time is flying by this year! The world around us is changing by the moment. It requires us to adjust tactics constantly, adapt to changing environments in our business, and work to promote successful, healthy work, social and home environments. We thank you for taking the time to pause, take a moment and peruse the pages of USLAW Magazine.

USLAW members and our exclusive corporate partners provide insights on a range of topics from cover to cover. You will read about cybersecurity and threat actors, ESG in business evaluation, insurance coverage issues related to Child Victims Act Legislation, estate planning and the SECURE Act, FTC Enforcement, and so much more.

We also love to celebrate our members. Check out the firms and people on the move section, read about recent trial successes, and learn about the dedicated pro bono work led by attorneys from coast to coast, plus the expanding DEI initiatives instituted by our members.

We have a lot of exciting activities happening within USLAW. Connect with us online or at an upcoming USLAW event or let us know how we can help you. We continue to move business forward. With nearly 100 member firms across the U.S., Canada, Latin America, and Asia, and with affiliations in Europe through TELFA, we are ready to assist you wherever your legal needs arise. Thank you for your continued support of USLAW.

Sincerely,

**Rodney L. Umberger**
USLAW NETWORK Chair
Williams Kastner | Seattle, Washington

www.uslaw.org
USLAW

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



USLAW NETWORK, INC®

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

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

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

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

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

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

uslaw.org • Phone/Fax 800.231.9110


# *May a Health Care Provider Refuse to Treat an Unvaccinated Patient?*

**Edna L. McLain** and **Shannon McKeon** SmithAmundsen, LLC

According to the latest statistics, approximately 65.9% of people in the United States are fully vaccinated against COVID-19, meaning approximately one-third of the population is not vaccinated. During the last two-and-a-half years, arguments for and against vaccines remain polarizing. One example of this occurred earlier this year when a Boston hospital announced an unvaccinated organ transplant candidate was removed from the active transplant list due to the patient's vaccination status. This raised several ethical and legal questions about when, and if, a health care provider can refuse treatment based on vaccination status.

Generally, the determination of when a health care provider can refuse to treat a patient depends on a number of factors, including the context in which the care is being sought. In a private practice setting where a patient visits a physician's office, the American Medical Association's (AMA) Code of Ethics Opinion 1.1.2 states:

> Physicians must also uphold ethical responsibilities not to discriminate against a prospective patient on the basis of race, gender, sexual orientation or gender identity, or other personal or social characteristics that are not clinically relevant to the individual's care. Nor may physicians decline a patient based solely on the individual's infectious disease status. Physicians should not decline patients for whom they have accepted a contractual obligation to provide care.

However, even the AMA acknowledges that physicians are not ethically required to accept all "prospective" patients, and there are circumstances where a physician may decline to treat a new or existing patient. According to the AMA's Principles of Medical Ethics, "[a] physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care." AMA Opinion 1.1.2 outlines limited circumstances where a physician may decline to establish a patient-physician relationship with a new patient or to provide care to an existing patient. These circumstances include:

(a) A patient requests care beyond the physician's competence or scope of practice;
(b) A patient requests care that is scientifically invalid, is not medically indicated or not expected to achieve the intended clinical benefit;
(c) "A patient requests care incompatible with the physician's deeply held personal, religious or moral beliefs";
(d) The physician lacks the resources needed to provide the care;
(e) The requested care could seriously compromise the physician's ability to care for other patients; and
(f) The patient is abusive or threatening toward the physician, staff or other patients.

The AMA Principles of Medical Ethics also state, "[a] physician shall, while caring for a patient, regard responsibility to the patient as paramount." Therefore, termination of the patient-physician relationship should be done with extreme sensitivity and care, especially if the physician practices in an area with limited physicians readily accessible to the patient and few alternatives for care.

While AMA Opinion 1.1.2 allows for a physician to decline to treat a patient based on "deeply held personal, religious or moral beliefs," this rationale is not likely to apply in the COVID-19 vaccination context. "Conscience" laws have been adopted at both the federal and state levels and have been around for decades. Several states permit medical providers to refuse to provide medical services for religious or moral beliefs without being penalized by their employers. The language of these state conscience laws can be fairly broad. By contrast, the Federal Health Care Provider

Conscience Protection Laws are specifically geared toward protecting various individuals and entities for their refusal or willingness to provide sterilization or abortion procedures or participate in assisted suicide, so their protections are very limited.

During the COVID-19 pandemic, conscience laws were used by individuals seeking to avoid vaccine mandates in the workplace. However, physicians should consider AMA Opinion 1.1.7 entitled "Physician Exercise of Conscience" when determining when to act, or refrain from acting, "in accordance with the dictates of their conscience without violating their professional obligations." As AMA Opinion 1.1.7 recognizes, a physician's freedom to act according to his or her conscience is not unlimited:

> Physicians are expected to provide care in emergencies, honor patients' informed decisions to refuse life-sustaining treatment, and respect basic civil liberties and not discriminate against individuals in deciding whether to enter into a professional relationship with a new patient.

Additionally, Opinion 1.1.7 advises that physicians have "stronger obligations" when a physician-patient relationship exists, especially a long-standing one, when a patient is at imminent risk of foreseeable harm, when a delay in treatment may significantly adversely affect the patient's physical and emotional health, and when access to required treatment from another qualified physician is not reasonably available.

Applying the foregoing to the COVID-19 setting, a private practice physician could decline to accept a new unvaccinated patient seeking non-emergent care to protect his or her other immunocompromised or high-risk patients who are not medically able to be vaccinated. If the unvaccinated individual is an existing patient who medically can be vaccinated but chooses not to do so and the physician believes continued care of the unvaccinated patient may seriously compromise other existing patients and staff, the physician could terminate the relationship but must provide advance notice to allow the unvaccinated patient time to find another physician and provide necessary care of the patient in the interim to avoid any claim of abandonment. Another alternative is to institute policies and procedures in the private practice setting to minimize the risk an unvaccinated patient may pose to other patients and staff rather than outright refusing to care for unvaccinated patients, e.g., imposing screening, masking and other PPE requirements.

In the hospital setting, refusal to provide care is fraught with more risk due to the requirements of the Emergency Medical Treatment and Labor Act (EMTALA), which requires Medicare-participating hospitals with emergency departments (EDs) to, at a minimum:

- Provide a medical screening exam (MSE) to every individual who comes to the emergency department for examination or treatment for an emergency medical condition;
- Provide necessary stabilizing treatment for individuals with an EMC within the hospital's capability and capacity; and
- Provide for transfers when appropriate.

Therefore, regardless of vaccination status, if a patient presents to an ED with an emergency medical condition, the ED physician is required to provide a medical screening exam, necessary stabilizing treatment, and a transfer to another facility only if appropriate. Additionally, a hospital generally cannot refuse a patient transfer under EMTALA unless the hospital does not have the capacity and the specialized capabilities needed to provide the necessary care and services the patient requires.

In March 2020, before COVID-19 vaccines were available, CMS issued written guidance to hospitals to assist them in complying with their EMTALA obligations during the COVID-19 crisis. The guidance made it clear that CMS would take a hard line against a hospital with the capacity to provide the necessary care and services that refused a transfer of a COVID-infected patient. Given CMS stressing the importance of hospitals meeting their EMTALA obligations for COVID-infected patients, it is likely CMS would also frown upon a hospital refusing to accept a transfer based solely on vaccination status if the hospital had the capacity and capability to provide the necessary care the patient required.

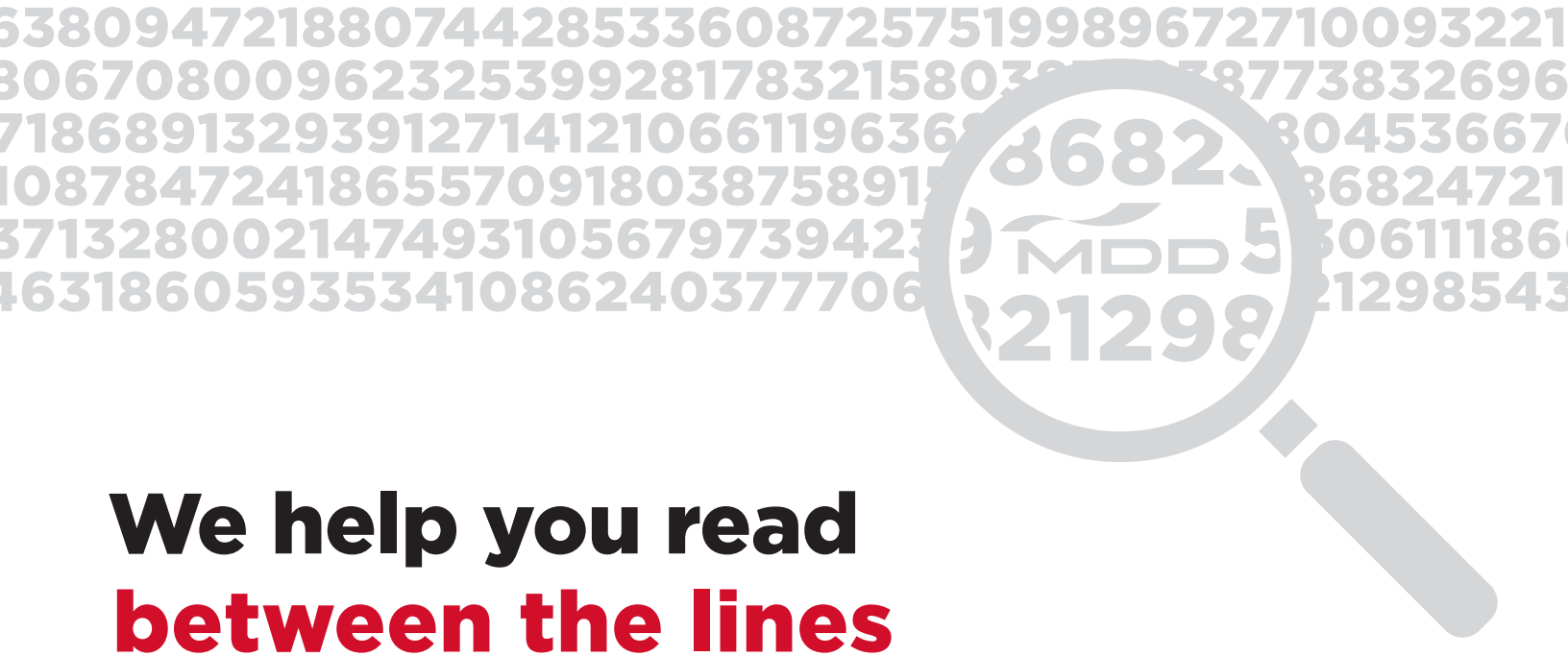
Further, as was mentioned above, in emergency situations physicians may not ethically refuse to provide care based on the patient's vaccination status. Therefore, if a patient needs emergency medical care, the patient's vaccination status is irrelevant, regardless of the medical setting.

For elective procedures, there may be some flexibility. Conceivably, a physician could refuse an elective procedure out of concern that a patient's unvaccinated status may pose a risk to recovery and recommend to the patient that it be postponed either to a time after the patient is vaccinated or when the risk of COVID-19 is reduced. However, this does not alleviate the physician's obligation to provide necessary treatment in the interim or to suggest the patient seek care elsewhere from a different provider.

As seems to be the case in many legal scenarios, the answer as to whether a healthcare provider may refuse treatment to an unvaccinated patient depends on the circumstances. The better question may be whether a healthcare provider should refuse treatment to an unvaccinated patient. While vaccination status may be a legitimate consideration in whether accommodations need to be made to protect other patients and staff or whether the patient meets the criteria for certain procedures, it probably has little bearing on the day-to-day practice of medicine. In an emergency setting, the obligation is to evaluate and stabilize any emergency medical condition, regardless of vaccination status. In an office setting, communication with the patient may be the key. The better practice may be to try to find out why the patient is not vaccinated and discuss with the patient any issues that may arise as a result of not being vaccinated. If a physician has a large population of high-risk, immunocompromised patients, it is best to explain to a prospective or existing patient the risks he or she may pose to others, the concerns the physician may have and whether any services or interventions may be limited. Determine if any accommodations can be made, and if not, discuss with the patient alternative providers for care, taking into consideration the needs of the patient and reasonable access to other qualified physicians in the area. An open dialogue may prevent hurt feelings, and more importantly, lawsuits.

*Edna L. McLain is a healthcare litigation partner in the Chicago office of SmithAmundsen and has represented hospitals, physicians, nurses and medical device manufacturers in state and federal court in Illinois and has tried several medical negligence cases to defense verdicts. Edna has been honored as an Illinois Super Lawyers Rising Star in 2011, 2014, 2015, 2016 and 2017. She also serves as an editor and contributing author for the Illinois Association of Defense Counsel's publication the IDC Quarterly. Contact: emclain@smithamundsen.com*

*Shannon McKeon is a healthcare litigation law clerk in the Chicago office of SmithAmundsen. Shannon is a graduate of the University of San Diego and a second-year student at DePaul University College of Law. Contact: smckeon@smithamundsen.com*



# We help you read between the lines

As the world's premier forensic accounting firm with over 40 offices on 5 continents, MDD is the choice of counsel around the world. We have over 20 US offices that can provide litigation services and expert witness testimony in courts, arbitrations and mediations.

**Our expertise Includes:**

> Business Valuations
> Business & Shareholder Disputes
> Class Action Certifications/Damages
> Construction Disputes
> Divorce Matters
> Employment Litigation
> Fraud/Ponzi Investigations
> Intellectual Property/Patent Infringement
> Lost Profits
> Personal Injury/Wrongful Death

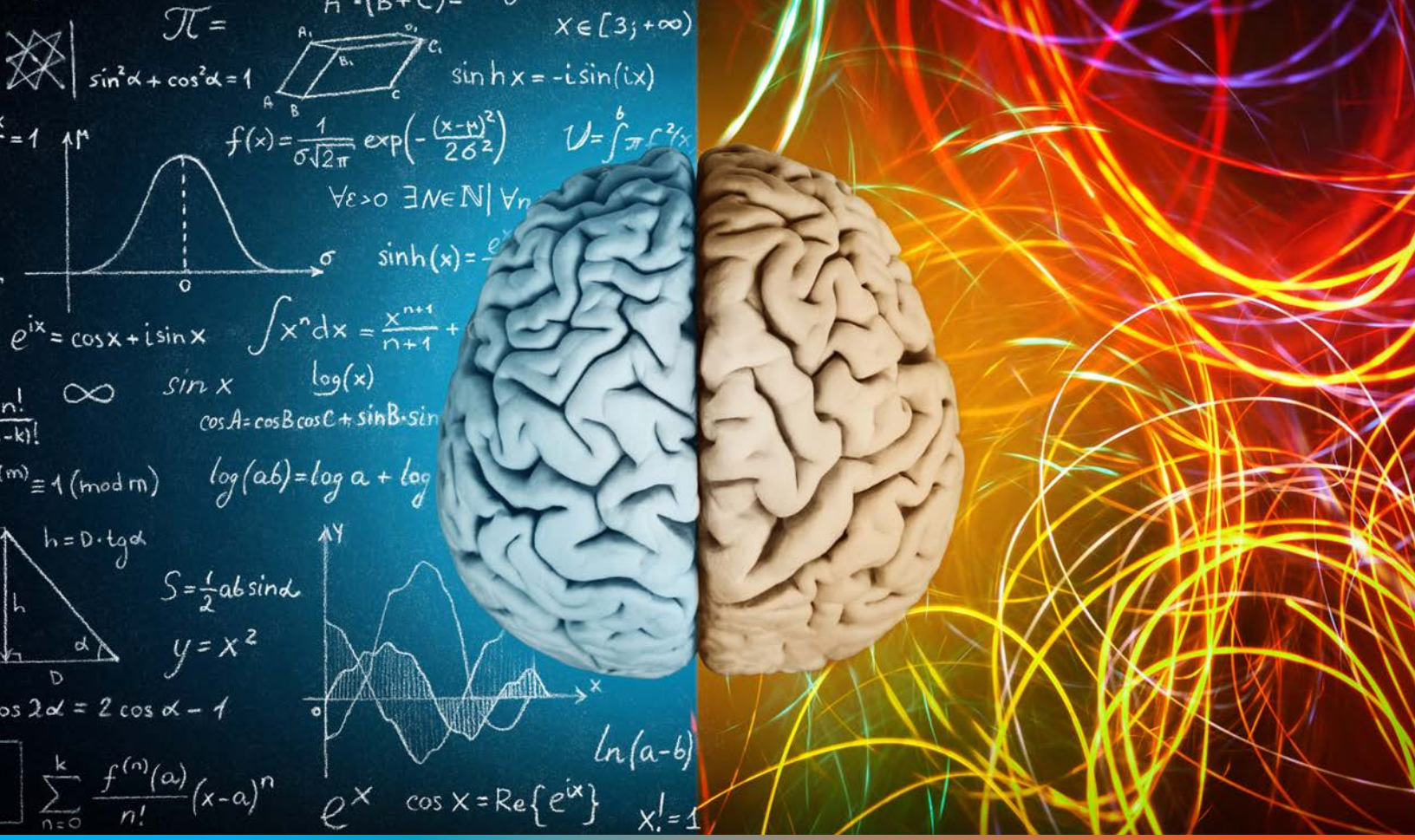
To learn more about our litigation expertise, please contact any one of our offices or visit us at mdd.com

MDD
FORENSIC ACCOUNTANTS

Making Numbers Make Sense

AUSTRALIA • BRAZIL • CANADA • FRANCE • GERMANY • HONG KONG • JAPAN • NEW ZEALAND
SINGAPORE • SOUTH KOREA • THAILAND • UNITED ARAB EMIRATES • UNITED KINGDOM • UNITED STATES

> mdd.com



# Knowlege is POWER

Enhance your trial strategy with insightful jury research and informative courtroom presentations.

Let's get started:
**expertservices.com**

## Partner with IMS to secure a strategic advantage.

For 30 years, the most influential attorneys have trusted IMS to position their case for success. Our unique perspectives and methods have been perfected through more than 20,000 cases and 2,000 completed trials.

IMS jury consultants use robust research methods to validate your strategy and maximize your client's chance of winning. Our trial technology experts ensure your presentation is delivered seamlessly to effectively teach and persuade the jury.

Together, these elements form a powerful combination.
**Together, we win™.**

IMS | Consulting & Expert Services™

*IMS is a Proud Corporate Sponsor of USLAW*

JURY CONSULTING | TRIAL PRESENTATION

877.838.8464 | contactus@expertservices.com

# 7 TAKEAWAYS FROM A RECENT FTC ENFORCEMENT ACTION IN LIGHT OF THEFT OF PRIVATE INFORMATION

**Noel D. Humphreys** Connell Foley LLP

The Federal Trade Commission (FTC) recently settled a matter with the owners of an online retailer related to statements and actions the company made regarding its privacy and security measures. At issue were customer-facing statements made by the company and its responses to unauthorized access to customer personal information the company was holding. The settlement orders provide a glimpse of what the FTC thinks responsible actors should be doing about protecting personal data and what the FTC may treat as "deceptive" behavior.

The settlement suggests seven takeaways.

## 1 Payment is just the first penalty

The immediate, out-of-pocket costs for the company's alleged deceptive practices, mostly in 2018 into 2020, were half a million dollars payable to the FTC.

## 2 Protect the data

If a company is going to collect and hold customers' personal information, and tell customers their information is secure, the company needs to make a genuine effort to make that a reality. The company advertised that it used "best and most accepted methods and technologies" to ensure collected personal information was "safe and secure." The FTC found that statement not to be true. At least one hacker stole personal information and sold it on the dark web. The FTC alleged the company "failed to implement readily available protections" against "reasonably foreseeable vulnerabilities." The FTC cited five different styles of often-used, unauthorized access known in the industry that the company failed to protect against. Among other issues, the company kept customer Social Security numbers in clear text, unencrypted, and never deleted customer information. The company also used an algorithm for password encryption that NIST (the National Institute of Standards and Technology) had "deprecated" years before. The FTC said the company needed to comply with its own written security procedures and to "implement reasonable procedures to prevent, detect or investigate an intrusion."

## 3 Don't let it happen AGAIN

After an initial breach of company servers, don't let it happen again. The company learned in 2019 that customer information was being sold on the dark web, but the company did not tell customers their information had been stolen. The company merely asked customers to change their passwords. The FTC adjudged that to be an inadequate response. The hackers had taken password reset information. Even when a customer did reset a password, the company made no effort to verify the person resetting the password was not an unauthorized intruder.

## 4 Do what you say you will do

A company needs to do what it tells the public it's going to do, as the FTC has long insisted. In this matter, the company billed itself as complying with the "shield" arrangement the U.S. had worked out with the European Union in conformity with European privacy law. Under that arrangement, a customer had the authority to require the company to delete the customer's information. In fact, when the company had received such a request, the FTC said, the company did not actually delete the customer information on its servers.

## 5 Protect the future

A company's buyer may become subject to onerous future obligations arising out of the predecessor's unlawful behavior. In this instance, the company changed hands in 2020. In the FTC settlement, the prior owner became liable for the $500,000 payment, but the new owner, like the old owner, was forced to agree to 20 years of annual reporting of responsible online digital behavior and ongoing security assessments by outside professionals.

## 6 It's so much more than just a penalty fee

A settlement with the FTC involves more than a $500,000 out-of-pocket settlement cost. Both the prior owner and the new owner had to undertake a "comprehensive information security program" immediately and over the next two decades regarding "collection, maintenance, use or disclosure of, or provision of access to" personal information, broadly defined. That program requires thorough internal reports annually and after a security event, as well as retention of a "qualified, objective, independent third-party professional" whose assessments are due at the FTC every 24 months.

## 7 You need to know what "personal information" data really means

The FTC's settlement orders view "personal information" expansively. The definition in the settlement order includes not only names, addresses and Social Security numbers but also "a persistent identifier," such as a customer number held in a "cookie," a static Internet protocol (IP) address, a mobile device identifier or processor serial number, as well as authentication credentials, such as a user ID, password and related security questions and answers.

A settlement agreement such as this one defining how to go about protecting "privacy, security, confidentiality and integrity" of "personal information" broadly defined, may set standards not only for clients but also for law firms.

For further information, as published in the Federal Register, click here.

*Noel Humphreys, Of Counsel at Connell Foley in Roseland, New Jersey, focuses on business transactions, lending transactions, organizational governance and intellectual property. He advises on transactions that often involve leveraging the value of patents, trademarks, copyrights and trade secrets, and he has a particular interest in privacy issues and data protection.*

# INSURANCE COVERAGE ISSUES PRESENTED BY CHILD VICTIMS ACT LEGISLATION

**Siobhain P. Minarovich** Rivkin Radler LLP

In recent years, states across the country, such as California, Minnesota, New York and New Jersey, have passed Child Victims Act (CVA) legislation. Such laws open a window for people who allege they were victims of sexual abuse as minors, enabling them to assert claims against abusers and/or the institutions that employed them that otherwise would have been barred by their state's statute of limitations.

In New York, during the two-year window opened by its Child Victims Act, over 10,000 lawsuits were filed against various organizations such as schools, municipal entities, religious institutions, hospitals, camps, daycare centers and foster home coordinators, alleging liability under a variety of theories for injury caused by the accused abusers. These claims can result in significant financial exposure.

Claims against sexual abusers have long been held inherently intentional and are not covered by general liability insurance policies because the abusive conduct and resulting injury were not caused by an "accident" and were not "unexpected" or "unintended." Institutions that employed an accused perpetrator, however, often are sued on theories of negligent hiring, retention and/or supervision. Such institutions may assert that they are entitled to insurance coverage because they were unaware of their employee's abusive conduct and did not expect or intend the abuse or the claimant's injury to occur.

## INSURANCE COVERAGE ISSUES PRESENTED BY CVA CLAIMS

Many CVA claims are based upon abuse that occurred decades ago. The insurance policies potentially applicable to such claims often are lost or incomplete. Both insureds and insurers should be familiar with their state's laws regarding the proof required to demonstrate the existence and applicability of a lost insurance policy.

Often, individual victims have suffered abuse from the same perpetrator at various times and locations over a multi-year period. A crucial coverage issue will be understanding how your state interprets the definition of "occurrence" under a liability insurance policy, and therefore, how many "occurrences" and, where applicable, how many self-insured retentions and policy limits potentially may be implicated. New York's highest court, for example, has held that "incidents of sexual abuse constituted multiple occurrences" where a claimant alleged sexual abuse by a single priest in different locations over nearly a six-year period. *Roman Catholic Diocese of Brooklyn v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 21 N.Y.3d 139, 969 N.Y.S.2d 808 (2013).

Where the abuse occurred over a period of years, issues are presented regarding trigger of coverage and allocation amongst insurers. Whether your state follows a pro rata allocation approach or allows for an all-sums allocation in instances of multi-year abuse may greatly affect how the loss is or is not covered. Additionally, how your state treats periods where the policyholder was uninsured, whether by choice or due to the unavailability of insurance in the marketplace or the insured's inability to locate its policies or establish their issuance, terms, conditions and limits, may greatly affect the availability of coverage.

Further, claims against an institution arising from repeated instances of sexual abuse potentially may lead to an award of punitive or exemplary damages. Many states specifically disallow the insurability of punitive damages, leaving the insured potentially subject to significant uninsured damages.

## SEXUAL MISCONDUCT EXCLUSIONS

Since the mid-1980s, many insurers have endorsed their policies with sexual misconduct, molestation and/or abuse exclusions which preclude claims for coverage arising out of sexual or physical abuse or molestation. These exclusions are routinely held to apply to claims of negligence against the employer of a perpetrator or the owner of the premises where the act of abuse occurred. Some of these exclusions specifically exclude claims for sexual abuse acts arising from negligent hiring, retention or supervision.

## EXPECTED / INTENDED DEFENSE

Liability insurance policies generally provide coverage for injury during the policy period caused by an "occurrence," which typically is defined to mean an "accident" and/or continuous or repeated exposure to conditions which unexpectedly and unintentionally result in bodily or personal injury. This language is generally interpreted to mean that injury or damage caused intentionally, or by acts which are expected or intended to cause harm, are not caused by an "occurrence." In other words, if the insured knew or should have known of an alleged abuser's proclivities to commit sexual abuse but failed to take any action to prevent such conduct, coverage may be barred.

In order to demonstrate liability under theories of negligent hiring, supervision and/or retention, claimants may attempt to show that the insured company or organization knew of an alleged abuser's conduct and proclivities but, instead of taking effective action to prevent such conduct, simply transferred the perpetrator to a different location. In such cases, however, this course of action would support an insurer's argument that the insured is not entitled to coverage. *See Diocese of Winona v. Interstate Fire & Cas. Co.*, 89 F.3d 1386 (1996) (Eighth Circuit, applying Minnesota law, held that Diocese which repeatedly transferred a perpetrator "expected or intended" that perpetrator to continue to abuse children and thus was not entitled to insurance coverage).

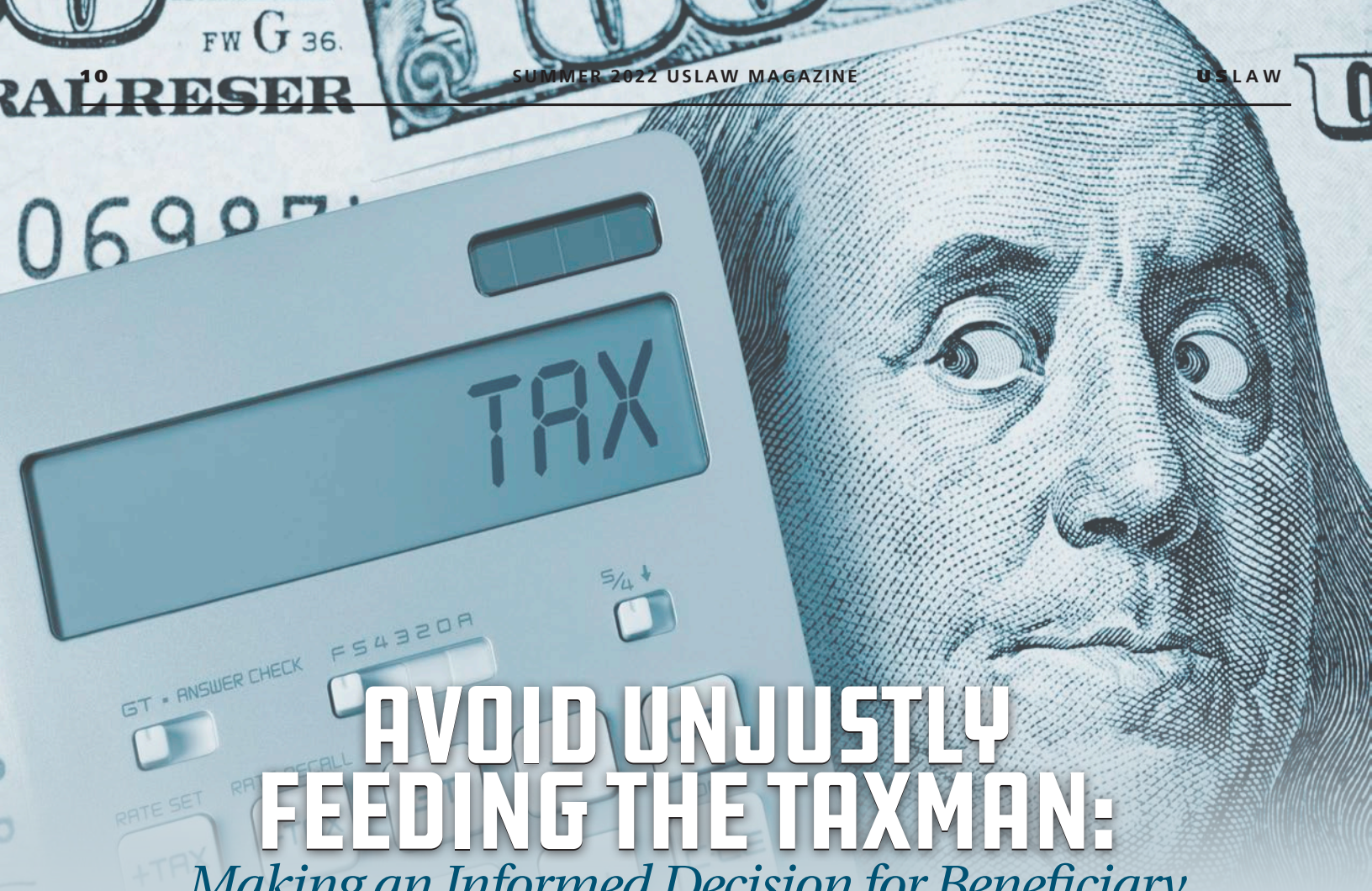
## NOTICE CONDITIONS

Liability insurance policies generally contain conditions precedent to coverage requiring that notice of an occurrence which appears likely to implicate the policy must be provided "immediately" or "as soon as practicable". This condition is often implicated where the insured may have received notice of the abuse years prior, near the time when the abuse allegedly occurred, but did not notify the insurer. Whether such late notice bars coverage depends on the law in your state and may hinge upon whether or not the delay prejudiced the insurer.

## MOVING FORWARD

A report from A.M. Best compared the potential financial implications of CVA suits to those of asbestos liabilities in the past. Potentially liable institutions and their insurers must be prepared to grapple with the significant coverage and financial issues these claims will undoubtedly raise if passed in their state.

*Siobhain Minarovich is an associate with Rivkin Radler LLP and is a member of the firm's Insurance Coverage group. She concentrates her practice on insurance coverage litigation and related counseling. Prior to joining Rivkin, Siobhain represented both victims and defendant institutions in negligence suits arising from instances of sexual abuse.*




# AVOID UNJUSTLY FEEDING THE TAXMAN:

## *Making an Informed Decision for Beneficiary Designation Under the SECURE Act*

**Richard R. Marsh** Flaherty Sensabaugh Bonasso, PLLC

At the end of 2021, Americans held nearly 40 trillion dollars in retirement assets, a significant portion of which are held in tax-deferred accounts, such as IRAs and 401Ks. If you are holding assets in such accounts, then without proper planning, those accounts could take a larger than required hit from the taxman upon your passing. You can minimize such risk by understanding how a beneficiary designation, or lack thereof, can affect the income tax payable upon your death and acting accordingly. The choice of whom to choose as a beneficiary can be complicated, and this article intends to provide a level of understanding to permit you to start to work through the process. And perhaps more importantly, to stress the need to begin such a process.

The latest federal regulation for retirement accounts is the SECURE Act. The SECURE Act was passed to provide mechanisms that would encourage Americans to participate in retirement savings accounts. A more cynical view is that the Act, in part, was intended to cut down on inherited wealth and ensure that the IRS was getting its cut of Americans' retirement savings. But, of course, that is something that the individual taxpayer wants to prevent, as lawfully permitted.

### TAX-DEFERRED RETIREMENT ACCOUNTS GROW TAX-FREE UNTIL THE WITHDRAWAL OF MONEY, AND SUCH WITHDRAWALS CAN ONLY BE POST-PONED FOR A CERTAIN TIME PERIOD.

Although it is a fundamental aspect of retirement accounts, reviewing how 401Ks and IRAs are taxed helps explain why the SECURE Act can hasten payment to the government. With that in mind, most 401Ks and IRAs are tax-deferred, meaning that pre-tax income is put into a 401K or IRA investment account. The income invested in such an account then grows tax-free. When you withdraw funds from the account, such withdrawn funds are reported as ordinary income to the IRS and taxed based on your income tax bracket. The general logic is that when you start withdrawing from the retirement account, your ordinary income will be lower than when you invested it. Due to your lower income, you are in a lower tax bracket and, ultimately, have lower taxes.

An important issue is when you have to start removing funds as the IRS does not want this money to accumulate tax-free indefinitely. Therefore, you must take a required minimum distribution from the account by April 1 of the year after you turn 72 years of age and by December 31 of each subsequent year. The distribution amount is based upon the account balance at the end of the previous year divided by your life expectancy (as outlined in IRS tables).

### YOUR RETIREMENT PLAN MUST BE INCLUDED FOR IN YOUR ESTATE PLAN.

Of course, if the account is not depleted by the time you pass, it must go to another person or entity. Retirement plan management then falls into the realm of estate planning. Unfortunately, this can be problematic because the retirement plan is often overlooked even though it is a valuable asset.

When dealing with a retirement plan and estate planning, you need to take a more "three-dimensional view" than you would with most other assets due to the income tax component. Most of your assets will pass to your heirs with no tax or even positive tax consequences. Real property, life insurance, bank accounts, and similar assets all pass to your heirs tax-free unless you are in a state that has estate or inheritance tax or your estate is worth more than the federal estate tax exemption. Therefore, in most instances, you can focus

on who is to receive the asset.

The same tax treatment does not apply to retirement accounts: the IRS will most definitely be coming for its share. Due to this income tax component, you must consider whom to leave the retirement account and how such a choice affects the ultimate amount received by the beneficiary.

Prior to the SECURE Act, you could minimize the income tax implications of a retirement account. This was done in much the same manner as the required minimum distribution: you "stretched" the distribution over many years, often decades. This could occur because the IRS would allow a beneficiary to stretch the distributions over such beneficiary's lifetime expectancies. Based on regulations, it could be challenging to understand which lifetime expectancy to use, but the underlying premise was still true: the distribution schedule could occur over many years.

### THE SECURE ACT SIMPLIFIES BUT OFTEN SHORTENS YOUR BENEFICIARIES' TIME TO WITHDRAW THE RETIREMENT FUNDS.

The SECURE Act simplified the determination of which life expectancy to apply but took away the option for many beneficiaries to stretch the distributions. This has hastened the payment of the government's cut of retirement accounts. Many individuals who previously could stretch out such distributions now find the timeframe condensed. For that reason, extra consideration must be given to who is named as a beneficiary.

Beneficiaries fall into one of three categories, and such categories determine the time window to withdraw funds. A beneficiary can be an "eligible designated beneficiary," a "designated beneficiary," or a "non-designated beneficiary." A designated beneficiary must withdraw all funds within 10 years after the account holder's death. A non-designated beneficiary only has five years after the account holder's death to make such withdrawal.[1] And finally, the eligible designated beneficiary has the most favorable withdrawal timeframe, and such timeframe will differ depending on who the beneficiary is.

The next question is what type of beneficiary falls into each category? The eligible designated beneficiary encompasses individuals the government believed were reasonable to receive the stretch benefit. Examples include the account owner's spouse or minor child, a disabled or chronically ill person, or a person who is older or less than 10 years younger than the account owner. Designated beneficiaries include all other individuals as well as see-through trusts. See-through trusts are ones in which all countable beneficiaries are individuals. A non-designated beneficiary encompasses all other beneficiaries, most notably the account owner's estate.

### IN CHOOSING YOUR BENEFICIARY, CONSIDER THE LENGTH OF TIME THE BENEFICIARY HAS TO MAKE THE WITHDRAWALS AND HOW TO MINIMIZE TAX IMPLICATIONS FOR THE BENEFICIARY.

The next step is applying the rules and deciding whom you should leave the retirement account. The best starting point for that decision is determining who you want to receive your assets. In many instances, that decision dictates whether the tax consequences are largely irrelevant because you do not have any tradeoffs to consider. For example, many people choose to leave their entire estate to their spouse without considering any children or others. If this is the case, then consideration of the tax implications is largely moot. Luckily, the surviving spouse receives the most favorable tax treatment because they can roll over the retirement account into their account, take the required minimum distributions according to their life expectancy, or some combination of both.

The real considerations begin when you have a choice of multiple beneficiaries. Common situations include allocating between a second spouse and your children, between your children and charity, or between your children when one may have special needs. As a starting point, you should consider leaving the retirement assets to the person who can extend the withdrawal period the longest. Then, you can make up the difference to the other beneficiaries with assets that are not subject to income tax. However, there are other considerations at play. As between your second spouse and your children, will the children ultimately receive any portion if you name the second spouse as the beneficiary? For the charity scenario, although the charity will have a shorter period to withdraw the money (5 years vs. 10 years), the charity can do so tax-free (and all at once if it desires). Therefore, leaving the retirement account to the charity and other assets to the children may make more sense. Finally, suppose the beneficiary is a special needs beneficiary. In that case, that beneficiary can stretch the withdrawals over their life expectancy, making such beneficiary (through an appropriate special needs trust) the best recipient of the retirement account. When choosing between multiple beneficiaries, the income tax consequences should be a priority in determining how to allocate the retirement account.

Another common issue is how to provide for minor children. For most assets, the choice is easy, set up a trust and have the trust manage the funds for the children until they are young (or older) adults. However, such a decision is more complicated with a retirement account. If the account is left directly to the minor child, then the child has the remainder of their minority plus 10 years to withdraw the entire amount. But, of course, that places control solely in the child's hands unless a trust receives the retirement account. The trust will likely only have 10 years to withdraw the funds in that event. Moreover, any money not distributed will be taxed nearly at the usury rates for trusts. The account owner is thus faced with a dilemma: do I leave the funds outright to the child or protect them and suffer tax consequences? This can lead further down the proverbial rabbit hole and make the account owner consider whether the owner should withdraw more funds, take the tax hit now, and protect the assets in a trust. These are the kinds of issues that an owner must consider on behalf of the beneficiaries.

These scenarios are a part of the situations encountered when planning to distribute a retirement asset. Estate planning with retirement assets, both before the SECURE Act and after, has many factors to consider. The ultimate goal behind this article was not necessarily to teach the rules of such planning but rather to stress the importance of assessing and trying to work through beneficiary designations on retirement accounts. If such accounts are overlooked, the owner may inadvertently cause substantial losses due to income tax that could have otherwise been minimized.

*Richard Marsh is an attorney with Flaherty Sensabaugh Bonasso PLLC in Clarksburg, West Virginia. His practice focuses on trust and estate planning, administration and litigation; real property; general business representation; and bankruptcy and creditor representation. He may be reached at 304.624.5687 or rmarsh@flahertylegal.com.*

[1] Though, adding to the oddity of the tax code, if the account holder was over the age of 72, the non-designated beneficiary can still stretch the minimum distributions and do so over the account holder's life expectancy had the holder not died. This creates a situation where the non-designated beneficiary has longer to withdraw the funds than the designated beneficiary.


# ESG DISPUTES AND BUSINESS VALUATION

**Eddy Lee** and **Jerome McDonagh** MDD Forensic Accountants

## INTRODUCTION

Environmental, Social and Governance ("ESG") factors have gained increasing importance in recent years as society has become more aware of how corporate conduct affects stakeholders, the environment and humanity at large. From issues such as climate change to socially responsible sourcing and corporate transparency, the ESG umbrella encompasses a wide and diverse variety of issues. In this article, we explore how ESG-related legal disputes may arise and how this will impact business valuations in a litigation context.

## ESG-RELATED DISPUTES

As businesses incorporate ESG criteria in their operations and reporting, it will present both challenges and opportunities in the corporate world. ESG is also increasingly important to shareholders, investors and governments, who are calling for action, particularly on climate change, diversity and transparency. This environment of growing awareness and desire for accountability means that litigation risk will invariably increase. Examples of where ESG-related disputes may arise include:

1. ***Financial Reporting and Disclosure claims*** – Businesses are facing rising pressures from investors to provide more ESG-related disclosures, which in turn are subject to greater scrutiny after being published. Businesses are therefore exposed to litigation risk if stakeholders deem that published disclosures are insufficiently adhered to, or outrightly false.
2. ***Greenwashing claims*** – This is a concept where businesses present a more socially or environmentally friendly image, without making any real commitment to green initiatives, or not to the extent implied.
3. ***Fiduciary Duty of Care*** – The concept of fiduciary duty is not novel, however, ESG-related responsibilities are increasingly being included. Disputes may arise from when a company's management deviates from its statutory or self-imposed ESG goals.

As a result of the above, we foresee an increase in ESG-related disputes requiring forensic accounting and valuation expertise in the following areas:

1. ***Post M&A disputes*** – As ESG factors have become more common place, they will also be incorporated into the M&A process. Consequently, disputes where ESG factors were represented by the seller but are subsequently discovered not to be true by the buyer will increase. Examples may include mining disputes, where the buyer discovers the acquired mine or company has not complied with the environmental

legislation leading it to be exposed to potential government fines and civil litigation.

2. ***Supply chain claims –*** In order to comply with ESG regulations, businesses increasingly have to ensure not only their own operations are compliant but those of their suppliers. For businesses with complex supply chains such as automotive or electrical goods manufacturers, legal disputes may arise if the company discovers that its supplier has not complied with workplace safety standards, or the materials supplied came from unethical sources.
3. ***Mis-selling claims –*** The investment industry has embraced ESG criteria, with many investment managers touting their incorporation of ESG criteria into their investment process and the dis-investment or avoidance of less socially responsible investments. Funds that fail to comply with their ESG criteria will face claims from their investors.
4. ***Securities claims –*** As ESG reporting requirements increase for publicly listed entities, so will scrutiny by investors. Public entities' jurisdictions where class action suits by investors are common will face legal risk from these sorts of claims, particularly when they have encountered an ESG policy failing. An example of this was the securities claim BP faced following the Deepwater Horizon Incident in 2010 in *re BP PLC, Sec. Litig., No. 4:12-cv-1256 (S.D. Tex. Sept. 30, 2013).*
5. ***Employee claims –*** Where companies fail in the 'S' of ESG compliance, they are likely to face litigation from employees from the top to the bottom of the seniority ladder. Claims may range from unsafe work practices on the factory floor to gender or racial discrimination in the boardroom.

It is likely that the valuer may have to consider how ESG factors affect business performance, and hence, value. In the sub-section below, we explore the ways in which ESG factors can affect the value of a business.

## HOW ESG AFFECTS BUSINESS VALUE

ESG factors will present both opportunities and risks to a business' value and profitability. Ultimately, ESG can impact the cash flows of the subject company, and the risks it faces, which are typically recognized in the discount rate when valuing a company.

## REVENUES

A strong ESG proposition can help companies tap new markets and expand into existing ones. One of the earlier, more well-established CSR or ESG initiatives was the 'fair trade' movement related to agricultural goods, where purchasers would negotiate 'fair prices' with producers, and also ensure the products purchased wouldn't be farmed using child labor. A study by MIT, Harvard University and the London School of Economics found that adding a fair-trade label could boost a brand's coffee sales by 10%[1]. It should be noted, however, that while there may be benefits in businesses publicly promoting their ESG policies, there are also risks associated with this approach especially if these policies are later perceived by consumers to be greenwashing. These risks and other risks associated with ESG criteria are most likely to be reflected in the discount rate applied to businesses, which is discussed further below.

## COSTS

The increased adoption of ESG policies may result in companies being more efficient in their use of resources, which should ultimately result in reductions in some operating expenses, such as raw materials and utility costs. However, the increased adoption of ESG policies will also result in increases in other costs, such as legal and compliance costs in ensuring ESG goals are being followed.

From the perspective of a business valuer, when reviewing or estimating cash flows related to ESG matters, they would need to assess whether these costs are continuous expenses or one-off items. If these are continuous expenses that are likely to continue into the foreseeable future, are they going to increase over time if a business is growing? If its supply chain network is expanding at a similar rate, would the business need to increase its ESG compliance costs to ensure that supply chains are being properly vetted?

## DISCOUNT RATE

Perhaps one of the most widely publicized aspects of ESG and value is the concept that 'greener' companies are less risky, as they are less likely to face legal or regulatory actions. Typically cited reasons include the fact that these companies will have better and more responsible governance, are less likely to face reputational risks associated with being seen as 'dirty' or less environmentally responsible and engaging in fair working practices means they don't face worker strikes. It is also suggested for all these reasons that they face fewer government interventions or legal actions which can have a detrimental effect on their operations and profitability.

From a business valuation perspective, businesses with higher ESG ratings may have a lower cost of capital, meaning that they may have a higher value than companies with a similar level of profitability but a lower ESG rating. In this regard, when considering the discount rate to be applied to a company, valuers should be conscious of the subject company's ESG policies and how that will affect the risks it encounters.

## CONCLUSION

As ESG issues continue to grow in importance and public awareness, ESG-related litigation is likely to increase. As we have noted above, this can take a variety of forms involving various stakeholders and interested parties. Understanding how ESG matters can impact profitability and business values will be crucial to management and investors alike when navigating these pertinent issues. This is where forensic accounting and valuation advice can assist parties in understanding the impact of ESG factors and how it will affect their claims.

*Eddy Lee of MDD Forensic Accountants is a regional managing director and head of disputes and litigation Asia. Based in Singapore, Eddy provides expert financial advice in cases of litigation and international arbitration. He specializes in the areas of business valuation, economic loss quantification, cost verification, minority shareholder disputes and solving complex accounting issues. Eddy has been appointed both as a valuation and an accounting expert on numerous occasions and has given oral testimony.*

*Jerome McDonagh is director of MDD Forensic Accountants litigation support services in Hong Kong. He has over 10 years of experience and focuses on matters related to business valuations, commercial disputes, damages quantification and fraud & investigations. He has extensive experience in litigation support and has acted as an expert witness in Hong Kong and UK court proceedings.*

[1] https://www.washingtonpost.com/business/fair-trade-products-turn-profits-creating-problems-for-a-movement/2011/12/27/gIQAYy31SP_story.html

# Unraveling Five of the Most Common Myths About MSAs

**Andrea Mills** and **Carla Roberts** Ametros

Think you understand the ins and outs of Medicare Set Asides (MSAs)? Great! Then you should easily ace this true/false quiz:

1. MSAs cover all home health care expenses.
2. If MSA money is not used for 5 years, the injured individual can spend it however they want.
3. Medicare does not come into play if the injured individual is not a Medicare beneficiary.

If you answered 'yes' to any of these questions, read on. These are among the many myths about the complex, confusing world of MSAs.

## ABOUT MSAS

An MSA is an account used to pay for injury-related, Medicare-covered medical services and prescription expenses. It seems simple enough, but a couple of caveats serve to complicate the idea of MSAs.

First is the term 'injury-related.' The MSA can only be used for medical treatment and prescriptions related to the incident (typically work-related), not all medical conditions the injured individual has.

Secondly, only 'Medicare-covered' services may be funded through the MSA. For example, many intermittent home health care expenses can be covered by Medicare, however, daily home health care services such as personal care for daily living activities would not be covered. Home health care expenses that are occasional and for intermittent use such as intermittent skilled nursing care, and physical or occupational therapy in the home would be covered by Medicare. To determine if there would be Medicare coverage for certain home health care expenses, it's important to understand the type of care and the duration for those needs.

According to Kathleen Correia, senior claims manager at Ametros, knowing what is covered can often be confusing for the injured individual. "Injured individuals who need someone to come in daily and do blood work, or wash the dishes, or all of those chores…are not things that Medicare covers."

Failing to comply with the rules and regulations of the Centers for Medicare & Medicaid Services (CMS) guidelines for MSAs can land an injured individual in a heap of trouble, jeopardizing Medicare benefits.

"If you misuse your Medicare Set Aside, Medicare can say 'we're not going to treat you until you make up this money that you've misspent," Correia added. "If we don't keep our members compliant when they do get to Medicare, Medicare will not pay for any injury-related services if that MSA was not used properly."

Managing MSAs is no easy task. That's why CMS has 'highly recommended' that injured individuals use professional administrators to assist with their MSAs after they've settled their claims.

## HERE ARE SOME OF THE MOST COMMON MYTHS AND REALITIES ABOUT MSAS.

### 1. MEDICARE COVERS EVERYTHING

There are a variety of medical treatments and modalities that Medicare does not cover, and it's often complicated for people to understand what they can and cannot get coverage for with their settlement funds.

Some inaccurately believe, for example, that everything that the insurance carrier previously paid for can be funded through the MSA, which is not the case. That can be extremely frustrating when people learn some of the treatment they

were receiving pre-settlement is suddenly not covered.

The injured individual may need to find alternatives and ensure treatments are covered. An experienced professional administrator can be invaluable by offering discount networks for non-MSA services and medications, thereby limiting out-of-pocket expenses.

### 2. MSAS COVER THE SAME ITEMS UNIVERSALLY

Each injured individual who settles their claim has unique needs; no two MSA allocations are the same. The MSA outlines the specific injury(ies) covered, treatments, prescriptions, etc. and includes the associated funding amounts.

One of the misconceptions is that if MSA funds are unspent for a time period, the funds can be used on unrelated items, which is incorrect. Unspent MSA money cannot be used for recreational spending money, for example, buying a new car or paying down debts, and must still be used for 'injury-related' and 'Medicare-covered services' purposes.

MSAs are often funded via an annuity where there is a set annual amount to fund the injury-related treatment. This fact alludes many injured individuals and others alike. Some believe that an unused portion of the annual MSA amount can be spent on something other than Medicare-covered services for the specific injury.

### 3. NEXT YEAR'S MSA FUNDS CAN BE USED IF THIS YEAR'S ALLOCATION IS DEPLETED

Temporary MSA fund depletion can be complicated for injured individuals to understand. They may wonder why they can't tap into additional funds to pay for treatment in a given year when they have exhausted allotted funds for the year. Support from a professional administrator can be helpful during the process to ensure that the correct documentation is sent to Medicare, which demonstrates the settlement funds were exhausted correctly, as is required by CMS.

Additionally, it should also be noted that when Medicare pays, the injured individual is responsible for 20-percent copays. Contrary to what some believe, the MSA does not pay these copays.

"A lot of times the member was told that they won't [have to pay] out of pocket ever again, and they're like, 'why am I paying for this? It should come out of my account?'" said Ana Parks, assistant manager for member care for Ametros. "Medicare doesn't cover copays. So being compliant, we wouldn't be able to cover those anyway."

An injured individual who opts to self-administer their own money would still not be able to use MSA funds for copays. "We get hired to keep the account compliant," said Robin Kavanaugh, assistant manager, voice of customer at Ametros. "If [the injured individual] self-administers and was spending it on things that are not compliant, they would be at risk."

Ensuring the right treatment is paid for with the right funds – whether MSA or non-MSA, is vital to the process so Medicare can become the primary payer when and if funds are exhausted.

### 4. NON-MEDICARE BENEFICIARIES CAN IGNORE THE RULES

The injured individual who settles their claim and is not on Medicare at the time often thinks, 'Medicare has nothing to do with my settlement funds, or 'I don't need to worry about Medicare's interests, I'm not on Medicare right now,' or, 'I can just use my spouse's insurance.'

At some point, most will be Medicare beneficiaries. If MSA money has not been used for treating the specific injury, Medicare may not pay until it can be shown, through attestation, that money has been depleted appropriately. Otherwise, Medicare can demand that the person refund that money, possibly with penalties.

### 5. MY MEDICAL TREATMENT NEEDS ARE UNLIKELY TO CHANGE

Medical treatment needs do change over time. Physicians may add new medications and/or change the dosages. Or a surgery may be needed to treat the work-related injury. Treatment plans can and do change – often.

One thought is that the person can pay out-of-pocket for unexpected, additional treatments. That could become extremely expensive, especially since the prices paid post-settlement of the claim may be much higher than what the insurance company paid.

Leveraging discount providers and pharmacies offered by reputable professional administrators can be key to unexpected changes in treatment regimens by helping to extend and protect the injured individual's MSA funds.

Finding the right pharmacy and manufacturer, for example, can save substantial amounts of money on prescriptions.

"We do know that treatment changes over time. Sometimes we'll see that they might have just one medication listed on their account, where later the doctor may prescribe other medications," Parks said. "As long as it's related to the injury and Medicare-covered, we will continue to pay for the services that they have."

## CONCLUSION

One of the most important decisions in settling a claim with future medical is determining how the MSA will be administered—whether an individual will choose to administer their own funds or have professionals manage them. With the complexities of MSAs, it's common for individuals to become overwhelmed by the responsibility of having an MSA or misunderstand how it needs to be managed according to Medicare's guidelines. This is particularly true if self-administration is their chosen path after settlement.

If an individual opts to manage their own funds, it's critical they understand how to properly administer them, without the support of their case manager, adjuster and attorney. This is where professional administration is a helpful tool. As the main resource and support for an individual's medical care after settlement, the administrator ensures common mistakes made with medical settlement funds caused by preliminary misconceptions are completely avoided. Navigating the world of MSAs is challenging, except for the few experts who specialize in them. Professional administrators are a crucial component to preserving and appropriately expending the MSA account and providing ongoing support for the injured individual after settlement.

*Andrea Mills, Executive Vice President of Sales at Ametros, focuses on growing business and partnering with clients to find solutions that best fit their needs or solve problems. She has been in the workers' compensation space for over 10 years, starting her career as a marketer for a case management company, and transitioning to a sales role for a large provider of ancillary services in the WC space.*

*Carla Roberts, senior VP of client success, brings 20 years of insurance industry experience in operations and sales management to Ametros. Carla works in coordination with Ametros' account management and development teams to successfully onboard and implement new clients while driving customer retention and satisfaction efforts. Carla earned a B.A. in communications and a B.A. in sociology from Chapman University. Carla also completed her MBA at Redlands University.*

# FIVE INCREASINGLY VALUABLE SKILLS *for Outside Corporate Counsel*

**Mike Moore** Barclay Damon LLP

Historically, outside business and mergers and acquisitions counsel (OC) have been called upon primarily reactively and for "traditional" purposes: to paper a deal, review a contract, and draft resolutions. But, as budgets shrink and margins narrow, the OC's role can head down one of two paths: toward characterization as avoidable overhead (i.e., something to be phased out or minimized wherever possible) or in the opposite direction—that of a valued, high-ROI business resource.

While good OC have always played an important strategic and advisory role—especially those who've been fortunate enough to enjoy long-term client relationships—businesses are increasingly seeking value from their OC that extends beyond just raw legal skill. Knowing how to do deals well, how to draft agreements, and having a good precedent base are all rapidly becoming "table stakes" for OC—the price of admission. Clients assume, largely correctly, that many lawyers and firms are capable of competently doing basic legal work. It's not enough anymore; the market wants more from us.

Having spent most of my career on the client side of the relationship, I learned that while many law firms can do fine legal work, when I found a lawyer who had experience in my particular business, who knew the jargon and players in my industry, who could help me analyze legal issues in context (i.e., factoring in an understanding of our financial position, our strategic goals, and so forth), they became an invaluable resource that delivered far more than basic legal work. The best OC became more akin to a business and legal spec ops team versus an occupying lawyer army, so to speak—a highly skilled, cross-functionally capable resource. And while the bills from those special types of lawyers weren't inexpensive, they were nonetheless worth every penny. I wasn't just getting drafting resources from them, and they didn't just give me access to bodies or associate bandwidth; rather, their capabilities gave me a real, competitive business advantage. Knowledge, insight, expertise, and experience all packaged in a legal wrapper. They weren't just the lawyers, they were knowledgeable experts who just happened to also be adept at business law, mergers and acquisitions work, intellectual property, and more. Great lawyers yes, but also great business partners.

While the individual characteristics among these special kind of resources can vary (e.g., different personalities, varying styles, some from a big firm, some from a small firm), the best nonetheless did share several characteristics. They've now become the type of characteristics I try to continually work on and improve in my practice, and they are the skills that we impress upon

and train our up-and-coming business lawyers to strive for in their professional development.

## ADD BUSINESS VALUE

While we need not be accountants, KPI experts, or management consultants, achieving some competence (via experience, education, or both) in these areas can help bring important context to our legal work and make it even more valuable to our clients. Whatever the immediate legal work happens to be—an acquisition, a contract review, a governance dispute—bringing an understanding of these other potential aspects can add an additional layer of value to the engagement that extends beyond just a narrow academic or technical approach. For instance, if a client we know who may be eventually seeking venture capital asks us to review an IP license, our review can become much more valuable and holistic if we're able to not only comment on the technical legal terms but also understand how it fits in (i.e., how the deal itself might impact the company's fundraising efforts). Bringing a bigger-picture view along with the narrow legal advice is almost always appreciated.

## UNDERSTAND UNIQUE RISK PREFERENCES

A deep understanding of a client's risk tolerance can go a very long way toward adding value to their business. While some clients (e.g., those in the health care industry or other regulated industries) have a serious need to minimize any potential risks, others (e.g., cutting-edge start-ups) are often fine assuming much higher degrees of risk. Some clients want their attorney simply to surface and discuss risk with them; others want their attorney to eliminate it completely. But having a deep understanding of these highly variable preferences—which vary by client and can even vary by project for the same client—can teach the degree to which certain contract terms need to be granularly negotiated as opposed to which we can pass on entirely, even if some risk may follow. Few things are worse than dealing with opposing counsel who is (expensively, and time-consumingly) "digging in" on terms that, unbeknownst to them, their clients don't even place a high value on. For them, the representation can inadvertently become almost an academic exercise. Learning your client's preference, whether by experience, open and regular communication, or both, can make attorneys' work much more directed while increasing the client's legal ROI.

## SPEAK THE LANGUAGE; USE THE TOOLS

Business lawyers who are comfortable with financial statements, basic valuation and financial analysis methods, a client's industry practices and jargon, and the like will instantly be more valuable to their clients. Similarly, business lawyers who are comfortable with—and better yet already routinely work with—today's basic business technology tools (e.g., Microsoft Teams, Excel, PowerPoint, etc.) will also offer a large advantage. As a former client, I can attest that working with a lawyer who is already familiar with the language and tools of my business is appreciated right away. A lawyer who is tech savvy; who is (at least nearly) fully functional away from their office as they are in the office; who is organized, timely, and who doesn't need an admin or a team of 10 associates to accomplish work that businesspeople (who themselves don't have armies of admins or secretaries) handle daily is just better. It's an entirely superior relationship experience to be able to work with a lawyer who works like the client works. Pre-COVID-19, when I was hiring OC as a software CFO and I saw that it required the OC's entire IT department, a secretary, and multiple associates for me to set up a simple remote meeting with them, I knew right away it would not work well, no matter how good of a technical lawyer they might be. Being able to work like our clients work, to speak their language and use the same tools they do, goes a long way toward increasing our practical value.

## BE AN EXPERT (OR ADMIT YOU'RE NOT)

As lawyers, we have ethical duties of competence, yet most of us have experienced (more than once) the lawyer who oversells their expertise. And, while there are few things better than working with truly expert, experienced counsel, conversely there is nothing worse than having OC claim expertise on a matter only to find out—after the representation is underway—that their definition of "expert" is much different. Sadly, during my career I've heard some lawyers half-jokingly note they're "now an expert" after handling a particular type of matter for the first time. As a former client, hearing that was cringeworthy. What OC doesn't always understand is that if a client asks for expert advice on something, admitting they don't have it will not keep the client from sending the next project their way. It's precisely the opposite: it'll make the client trust their judgment even more. In the end that's what a client needs from their OC more than anything: to have complete faith and trust.

## TREAT YOUR WORK LIKE AN INVESTMENT

The work we do for our clients isn't—and shouldn't be—inexpensive. Knowing that, a key piece of any project ROI calculation is planning for and managing project costs. Legal projects are no different. Professional interactions that our clients choose to have with us always need to be viewed in that context. Using our resources shouldn't be thought of as a "spend budget" or "legal costs"; rather, they're investments. The goal of the investment can take many different forms: trying to reduce risk, add revenue, save on other costs, or advance a strategic initiative. But whatever the objective, the investment in OC needs to withstand independent scrutiny. Clients have sent us contracts to review, and before deep diving into the terms, we ask: what's your objective? How does this fit it? The next set of questions is just as important: what do we think, together, is the appropriate legal investment in this? What's worth it? A standard lease document involving a short commitment and a relatively small dollar amount typically doesn't warrant much, if any, OC investment, and legal terms may, as a practical matter, be largely nonnegotiable anyway. A key part of making sure we are delivering positive ROI is to always keep costs in the picture. To do that, we should be conducting open and honest analyses of how much and what kind of OC is appropriate—both at the outset of the project and, if appropriate, during the project if it pivots or evolves. Talking costs is not embarrassing, it's not uncomfortable, it's a simple and completely appropriate piece of any resource investment analysis.

The role of OC is continually evolving. Our work can be improved by striving to have sufficient understanding of the business, having an understanding of the company's unique risk preferences, knowing—and better yet, having experience with—the underlying business transaction at issue, and recognizing that ROI is virtually always a key consideration.

*Mike Moore is a partner, co-chair of the Corporate Practice Area, and co-leader of the Manufacturing Team at Barclay Damon LLP. A former software-as-a-service (SaaS) CFO and executive, Mike often works with entrepreneurs, start-ups, and venture capital in addition to leading merger and acquisition teams.*


# HOW TO PROTECT YOURSELF FROM CYBERCRIME

**Doug Marshall,** Marshall Investigative Group and **Eric Rieger,** WEBIT Services

*Over the past two years, I have attended several presentations regarding what to do when cyber criminals have attacked you. While these have been informative regarding the law, very little was said to protect yourself from being hacked. I wanted more information, so I consulted Eric Rieger of WEBIT Services, a friend and leading expert in the security business. I posed several questions, and he answered each in detail. He then agreed to work with me to share this information with the broader USLAW audience through this article.*

*Below are Eric's insights and answers to my questions about cybersecurity before an attack happens. I hope this will give you some insight into how to protect yourself and your business. We live in very unsettling times, especially with the current Russia-Ukraine War. Even though I believe we have been in cyberwar for at least the last decade, there is a visible escalation of cyberattacks on America from Russia and other threat actors. Learning steps you can take to protect, prevent and prepare are always helpful.*

## WHAT DO WE NEED TO DO FIRST TO ENSURE THAT OUR DATA IS SAFE?

Everything starts with a baseline risk assessment. Your risk assessment should be aligned with a recognized security framework such as NIST CSF or CIS Controls. The risk assessment results will show you where your most significant risks are, and from there, you can prioritize addressing them. This review is an ongoing, forever process, so you'll need to make it part of your company DNA to have the best chance of protecting your business.

## WHAT DO YOU SEE AS THE GREATEST THREAT TO AN AMERICAN BUSINESS FROM A THREAT ACTOR?

The biggest threat we face is an attack on our utilities that would cause a mass outage, disruption to our supply chain or a mass casualty event. We came very close to seeing such an event when water treatment plants were hacked.

## WHAT ARE SOME OF THE THINGS SMALL BUSINESSES CAN DO TO PROTECT THEMSELVES AGAINST CYBERCRIME?

Pick a recognized cybersecurity framework, conduct a risk assessment, set quarterly goals for remediation based on the assessment, rinse and repeat. By following a framework, you'll be following a plan that is proven to be effective and will be updated as threats change and evolve.

## WHAT ARE THE MOST COMMON WAYS THREAT ACTORS COMPROMISE SENSITIVE DATA?

Business Email Compromise (BEC) continues to lead the way in entry points for threat actors. Learn more here from the FBI. Also, you're only as strong as your weakest employee when it comes to security. Employers should only give employees permissions and access to information and systems they need to successfully perform their jobs.

## HOW CAN WE PROTECT OUR EMPLOYEES AND PREVENT THEM FROM MAKING CRITICAL MISTAKES?

Humans will make mistakes; it's unavoidable. The goal is to reduce the number of mistakes, create awareness and a strong security culture, and provide them with small, frequent training opportunities to test and measure their understanding. The average company will see a failure rate north of 30% the first time they conduct a phish testing campaign. With a good training program, you can typically reduce that failure rate to around 2-3% within 12 months.

## WHAT ARE THE BEST PROGRAMS OUT THERE TO PREVENT ATTACKS?

The best program follows a recognized security framework like NIST and CIS Controls and is followed religiously by the organization. There are a lot of vendors out there that want to pitch their services or a piece of software, and unfortunately, they use fear-based selling instead of taking an educational approach. No single tool or process can prevent a security incident.

The goal should always be to reduce risk to a reasonable level. Following a framework will help identify risk by high probability, severe damage to low probability and low damage. If appropriately followed, any program that features education and assessments aligned with a framework should succeed.

## SHOULD TWO-FACTOR AUTHENTICATION (2FA) BE PUT ON EVERY PROGRAM WITH SENSITIVE DATA, INCLUDING ACCESSING YOUR COMPUTER?

In 2019, Microsoft issued a statement saying that 99.9% of their compromised accounts did not use multi-factor authentication. Does that mean 2FA is the answer to all our security prayers? Not so much. It is an integral part of the recognized security frameworks, and any application that offers it, you should enable it for your protection. Conversely, if an application doesn't provide it, you should consider whether your organization needs that application because of its inherent risks.

2FA also comes in many flavors, of which most people aren't keenly aware. This guide from Daniel Miessler shows all the different varieties and their relative effectiveness: 2FA guide.

*For additional details, visit https://www.cisecurity.org/controls/implementation-groups*


## HOW DO WE TEST THE SECURITY WE ALREADY HAVE?

There are many ways to test your security, and they vary in the degree of cost and effectiveness. If you follow a recognized security framework, there will be pieces along the way where testing is needed. For example, implementing a security awareness training program comes early in the process (CIS Control 14 – Group 1). But an item like penetration testing isn't recommended until the second implementation group in the CIS Controls. Penetration testing can be costly and, without a set objective, can create a false sense of security while not providing a significant return on the investment.

## WHY IS SENTINEL ONE SO IMPORTANT TO SECURE YOUR DATA?

Sentinel One is part of a newer group of software protection called EDR (Endpoint Detection and Response). Traditional anti-virus software has become outdated and easily circumvented. One of the main problems with anti-virus software is it is dependent on being updated frequently, typically through a definition file it needs to download via an internet connection. Unfortunately, you're only as good as your last update in that case, and anti-virus cannot detect new "in the wild" viruses and threats we see today.

EDR solutions are typically driven by artificial intelligence and combine real-time continuous monitoring and collection of endpoint data with rules-based automated response and analysis capabilities. This type of solution is far superior protection when compared with traditional anti-virus. As with any tool, it's only effective if properly deployed and monitored as part of a comprehensive security program.

## CAN WE COMPLETELY STOP THE STEALING OF OUR DATA?

The short answer is no. If someone has enough time and resources (i.e., money), they can achieve the objective of stealing your information. With that being said, the goal is to make it incredibly difficult to do so, which can be an effective deterrent. Statistics show that the current average is over 200 days before a data breach is detected. That is almost SEVEN MONTHS. By implementing a proper security framework, you can significantly reduce that number over time, making you more cyber resilient and less likely to suffer a significant event.

## WHAT AREAS OF THE WORLD ARE OUR GREATEST CYBER THREATS?

The usual suspects that top the list are Russia, North Korea, Iran and China. The reasoning behind the attacks varies based on origin and actor, but a great article on the recent state of security can be found in Microsoft's Digital Defense report.

## HOW CAN THE U.S. GOVERNMENT HELP WITH THIS FIGHT AGAINST CYBERCRIME?

For starters, the government can create a more proactive, cohesive message. Back in 2020, the Department of Treasury issued an advisory that was not well received by the general public. In essence, the government threatened to double down on the pain suffered by U.S. businesses if they paid ransom to a cybercriminal who originated in a country currently sanctioned by the U.S. Instead of offering ways to help reduce the threat profile for U.S. businesses, the advisory is a threat without any offer of assistance.

The FBI has a history of empowering criminals when it comes to ransomware. For example, in 2015, they came out in support of paying ransoms, which I believe directly contributed to encouraging the criminals to up the ante when it came to ransom asks.

And now, more recently, the FBI told lawmakers, "it is the FBI's opinion that banning ransomware payment is not the road to go down."

To be fair, the federal government is doing more to help businesses through the CISA and Infragard, a public/private initiative aimed at informing and guiding companies to better security practices.

The best thing the government can do is invest in helping businesses adopt a recognized security framework and protect our critical infrastructure. That would go a long way towards reducing the overall risk we face as a country.

I want to thank Eric for his contributions to this article. I hope this gives readers some additional knowledge about what you may already know about protecting yourself from cybercrime.

*Doug Marshall, president of Marshall Investigative Group, has been doing insurance investigative work for more than 30 years. Well known in the industry, he has been a speaker at CLM, TIDA, USLAW and the Chicago and Orlando TLA. Marshall Investigative Group's unique approach to investigations is complemented by its integrity and attention to detail.*

*Eric Rieger, founder and president of WEBIT Services, Inc., helps businesses evaluate the return on their technology investments, identify business risk and strategically plan technology implementations that align with the goals of the business.*

# THE SKY'S THE LIMIT

## *Drone Footage in the Courtroom*

**By Colleen Cochran** IMS Consulting

*Based on an interview with IMS Trial Consultant Andrew Buckley, this article discusses techniques for drone video capture, examples of cases in which these recordings are useful, and the many ways drone footage can enhance courtroom presentations.*

Most people think of drones in terms of their ability to capture images of large expanses of land and sea—and they are great for that purpose. But Andrew Buckley, trial consultant and certified drone pilot, knows drone cameras are capable of capturing much more than top-down, wide-lens aerial photos and videos.

"Drones offer a variety of options beyond the typical Google Maps-type shot," he shared. "Drone cameras can take still and video shots from all sorts of angles, both high and low. They can pan large expanses and zoom in on particular objects. In the courtroom, they enable attorneys to capture dynamic footage that coincides with their case narratives."

### DRONES CAN PROVIDE JURORS WITH A POINT OF VIEW

Just like when Hollywood filmmakers use camera placement to show viewers what a character is seeing, drones can film at a level that mirrors the perspective of a party or witness in a lawsuit. When jurors view footage that is filmed using this point-of-view technique, they have the sense that events are unfolding before their eyes. According to Andrew, this type of video evidence impacts them on both a cognitive and an emotional level.

"For example, in a personal injury case in which a worker fell from a high platform, it wouldn't be feasible to use a handheld camera to capture that scenario, but a drone could do so from the eye level of that employee," he explained. "The drone's film could show, from the employee's vantage point, the lack of safety precautions to prevent that fall. Using a single, continuous video clip, the film could also connect the viewers to the actual height of the environment by enabling them to follow the trajectory of the worker's fall to the ground."

Andrew added, "The plaintiff would have a difficult time overcoming that evidence because the jurors will have had a near real-life experience when observing it."

### DRONES CAN RELAY THE CONCEPT OF MOTION

In lawsuits in which motion or speed is at issue, such as a case involving a car crash, Andrew said point-of-view footage can help jurors gain a sense of that movement.

Google Earth might be used to trace the path of a car going down a road in real

time, but it would portray a rough, rudimentary 3D model; thus, viewers would merely feel as if they were observing the action from afar. Also, its satellite or street-level images could be out of date, omitting vital details that would have to be explained by the witness or imagined by the viewer.

A drone, however, could be flown over the roads the car traveled—and at its height and speed—to capture the most important narrative details so viewers would feel a part of that experience.

## DRONES INCREASE THE AMOUNT OF INFORMATION JURORS RECEIVE

Buckley recently used a drone to obtain footage for an environmental case. The video took jurors on an aerial journey to view a Louisiana bayou from on high and down low, so they flew just above rippling waters and swamp plants waving in the wind. It featured static shots, which guided viewers to focus on particular images, such as hornets busily working on their nests. The video also employed several slow-moving vertical pans from the bottom to the top of cypress trees.

These various camera and video techniques, many of which were accomplished via drone, supplied jurors with a wealth of information. The high-altitude, wide-angle views gave them an idea of the terrain's scale. The close-up motion and still shots provided a sense of the number and variety of plants and animals. And the slow-moving pan shots informed jurors about the size of the natural elements they were viewing.

All this information was powerful evidence the jury could not ignore. The plaintiff in that case had claimed the defendant destroyed the region when it installed oil wells and pipelines. The drone video footage depicting a lush and pristine bayou certainly called that claim into question. Interestingly, while the drone captured an area that did contain industrial debris, it was the plaintiff and not the defendant who had created that dumping ground.

Buckley elaborated on the advantage of this footage: "We can relay information about a scene through witness testimony. We can use still pictures, charts, and graphs. But in this case, we were able to capture compelling video that enabled viewers to experience the scene for themselves. Without the drone, that feat would have been impossible because the area was largely inaccessible."

## COMBINING MEDIUMS CREATES A DYNAMIC PRESENTATION

"Drone footage allows for all sorts of possibilities," Buckley revealed. "Legal professionals shouldn't think of the medium simply in terms of a video presentation. The footage can be combined with text overlays, color coding, and still photos so the presentation is intriguing and fully depicts the case narrative."

Buckley gave an example of how a drone might be used to capture all sides of a building or large piece of industrial equipment. That footage could help create a 3D model of the structure, or it could be turned into an interactive video that would allow a witness to identify various features of the structure that coincide with their testimony. Certain features could even be blown up into large images or overlaid with text.

"Drones are simply another tool that enables attorneys and witnesses to become better visual storytellers in the courtroom," Andrew continued. "And often, when tools are combined, a presentation becomes very powerful."

## THE VALUE OF AN FAA CERTIFIED DRONE PILOT

To operate the drone and secure this type of footage, Buckley needed to acquire an FAA Part 107 pilot certification. Attainment of this certification required careful study of some of the very same subject matters that airplane pilots must learn—weather patterns, for example.

"In order to fly a drone safely, I need to know how cloud conditions, temperature, and wind are going to affect my flight," he said. "Dangerous updrafts and downdrafts can be caused by humidity and other weather conditions, and even by the presence of tall buildings."

Andrew also studied airspace regulations, air traffic control patterns, and airspace maps. He uses these maps to discern whether low-flying planes or helicopters will be in the airspace in which he intends to fly the drone. Although the drone is not typically flown above 400 feet, the possibility for air crashes still exists.

Airspace maps are also used to help discern which entities within a flight zone utilize geofences—virtual fences that, when breached, alert the entity controlling the airspace and can even cause the pilot to lose control of the drone. Airports, military installations, and large public events, for instance, often employ these virtual boundary lines.

"I want to stay a good distance from a military installation," Andrew confirmed. "I don't want to take a chance that a gust of wind blows the drone into a military geofence."

On top of all these airspace considerations, Andrew must keep up with the constantly evolving laws related to drones and privacy issues. Although his certification training informed him about federal laws regarding the type of imagery he may legally capture, states and local areas have enacted their own laws.

## THE CERTIFIED PILOT NEEDS TO HAVE THE EYE OF A VISUAL STORYTELLER

Drone pilots who capture imagery for the courtroom need to possess skills beyond those required for certification. They need to have the sensibilities of a visual storyteller who knows precisely which images are going to intrigue viewers. And they need to be aware of which images will enable attorneys and witnesses to relay a case most poignantly.

Buckley has a background in photojournalism, and he and his colleagues are skilled in photography, videography, graphic design, and multimedia formats. He shared, "Drones have greatly expanded our possibilities for visual storytelling."

## WHAT ABOUT COST?

In the grand scheme of what it costs to go to trial, it is not very expensive to include drone footage in a case strategy. The bulk of the costs relate to the drone team's travel and hotel expenses and the time commitment required.

Buckley revealed, "There is a lot of good value in drone footage. It can be used as standalone footage or integrated into the graphics production process. And because it has such potential to hammer home a narrative, it can make a real difference in a case outcome. In fact, in several instances, shortly after viewing our sides' drone imagery, the opposing parties instigated settlements."

Ultimately, drone footage is an innovative visual tool that can advance attorneys' arguments and help decision-makers see the case from their point of view.

*Colleen Cochran, JD, is editor at IMS Consulting and writes about the evolving nature of law and its associated courtroom tools and technologies.*

*Andrew Buckley of IMS Consulting is a trial consultant who leverages case themes by skillfully transforming them into courtroom imagery that has the power to persuade.*

# MATERIALS OVERLOAD: THE IMPACT AND ADVANCEMENT OF A TIMELESS STUDY

**David Riegner, Ph.D.** S-E-A

The Stone Age, the Bronze Age, the Iron Age: the impact of materials science is so profound and transformative that we have named historical ages after advancements in materials. The "information age" could have been called the "silicon" or "semiconductor" age as the solid-state transistor depended on an understanding of new materials.

The underlying premise of materials science is that materials act predictably, and that predictable behavior is informed by understanding the underlying atoms. Materials science connects the atomic scale to the human scale. Considering the theory of the atom wasn't really nailed down until the early 20th century, materials science is, in some sense, "new." The abundance of engineered materials in daily life makes it easy to forget that useful, predictable materials are intentionally designed and selected. History has demonstrated that advancements in materials provide an engineer with new capabilities and possibilities. Bronze and iron were breakthroughs when they were discovered and allowed early humans to craft complex tools and weapons. The construction of the first skyscrapers was made possible only by advances in steelmaking through the Bessemer Process.

## MATERIALS ARE PART OF DESIGN

When thinking about design, one might envision plans, drawings, measurements and prototypes, but design drawings also specify materials. Materials selection is a central part of design, and, like all design, is an exercise in balancing trade-offs. A stronger material may be more expensive per ounce, but now less total material is needed to carry the expected load. A slightly lighter material may require thinner supports or fewer fasteners. Materials selection is a decision made with intent and consequence and therefore must consider reasonable use by an end user. When these decisions are made poorly and considerations for usage and environment are inaccurate, failures occur. A forensic expert specializing in materials can analyze and evaluate those decisions after the fact.

## FORENSICS

A material cannot be fundamentally flawed. A chunk of steel in a dark, airless, empty void with no applied stress won't "fail" because it isn't doing anything. It is only through application that failure becomes a consideration. Failures occur when a material is placed into an application or environment that is incompatible with its capabilities.

This isn't to say that materials defects don't exist. Materials can have cracks, inclusions, voids and other defects, but only through application do those defects lead to failure. Without a failure caused by improper application, a defective material never warrants an investigation.

A famous example of this concept is the tragic explosion of the Space Shuttle Challenger in 1986. Shortly after liftoff, an O-ring on one of the solid rocket boosters failed and the escaping hot gas from the booster led to an explosion. But Challenger didn't explode because the O-ring material was fundamentally bad. The materials selection process of the O-ring did not consider a launch from Florida taking place in below freezing temperatures. The O-ring failed because it was pushed into operation at a temperature that degraded its performance beyond what was anticipated by the designers. Physicist Richard Feynman famously submerged an O-ring in ice water and demonstrated that the ring lost its ability to seal below about 32°F.

This is how materials expertise contributes to a forensic investigation: first, identify the material and then identify interactions that lead to a failure. The circumstances surrounding a failure are always critically important when investigating a failure and a forensic materials expert will know what questions to ask and what resources to consult to identify those circumstances.

## FAILURE MODES

All cracks are not the same. When a material fails, telltale signs of the circumstances surrounding its failure are left behind on the fracture surface. The ways in which a material can fail are called "modes." The most common, and easy to identify, failure mode is subjecting the material to too large a load. These failures are, predictably, called overload failures. Repeated loading of the part "back and forth" is another mode, called "fatigue." The environment can contribute to a failure by causing corrosion or wear. Identifying the failure mode is a crucial step in an investigation as it often leads to identifying a cause of failure. A railing might fail due to being overloaded (mode), because too many people were leaning on it on an overcrowded balcony (cause).

An example of the evidence left behind by different modes of failure is illustrated by Chlorinated Polyvinyl Chloride (CPVC),

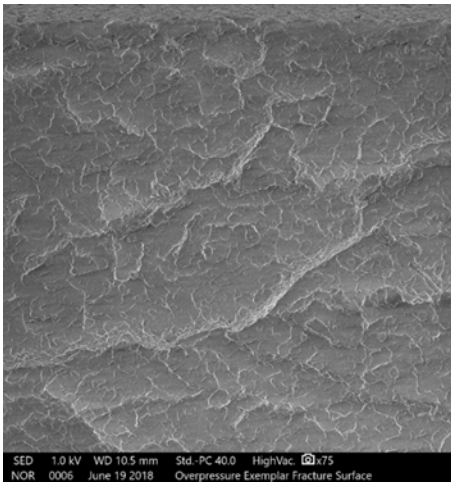



**FIGURE 1:** Fracture surface of a CPVC pipe failed due to over pressurization.

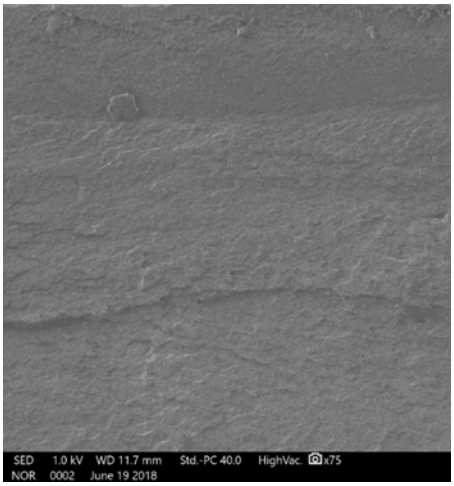



**FIGURE 2:** Fracture surface of a CPVC pipe failed due to freezing water expanding inside the pipe.

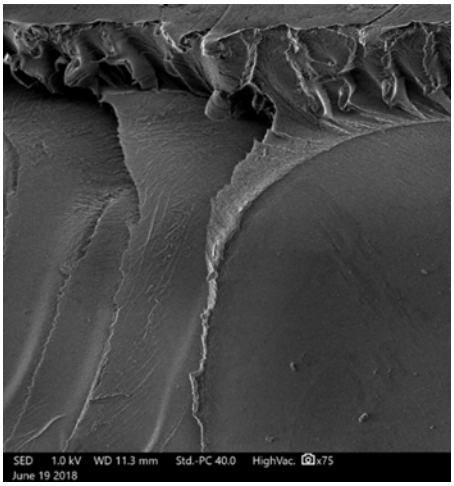



**FIGURE 3:** Fracture surface of a CPVC pipe that has failed due to environmental stress cracking (ESC).

a plastic tubing material commonly used in fire sprinkler pipe. S-E-A regularly investigates these failures as they often lead to catastrophic water losses. To illustrate failure modes, S-E-A used brand new CPVC sprinkler pipe and intentionally induced failures by three common modes: overload, freezing of internal water, and environmental stress cracking (ESC). Using an electron microscope, the fractured surfaces were examined. Each mode leaves unique features on the fracture surface. The study of fracture surfaces, or "fractography" is just one part of a comprehensive materials failure analysis.

The images above illustrate the same CPVC material at the same magnification. This is a concise, if simplified, view of how materials experts can advance a forensic investigation. The difference in appearance is attributable to different modes, and different modes suggest a different cause. Interestingly, the load plays a role in all three failures, but the magnitude of the load isn't the same!

The first image (Fig. 1) shows a pipe that was purely overloaded. The pipe was connected to a pump, sealed shut and had pressure increased until the pipe burst. Note the thin white features all over the fracture surface. These are thin, delicate peaks of material left behind as the material stretched and pulled apart like taffy, leaving behind tendrils at the point of rupture.

The second image (Fig. 2) shows a pipe that failed due to water freezing inside the pipe. When water freezes, it expands, and inside a sealed pipe this expansion can burst the pipe. As seen in Fig. 2, the fracture surface is relatively smooth and flat. Compared to Fig. 1, there are no tendrils of material on the surface. Like Challenger's O-ring, the cold temperature reduced the material's ability to stretch and made it more brittle. The lack of features on the fracture surface is indicative of a low-temperature failure in this material. The features left behind on the fracture surface distinguish a low-temperature overload failure (freeze) from a room-temperature overload.

The third image (Fig. 3) shows a fracture surface caused by environmental stress cracking. ESC occurs when polymer materials contaminated by a specific incompatible chemical are subjected to sufficient stress to cause the formation of microscopic cracks. The fracture surface in Fig. 3 looks nothing like Fig. 1 or Fig. 2 because the mode of failure is different. The pipe in Fig. 3 was exposed to Polyol Ester Oil (POE Oil) which is chemically incompatible with CPVC. The POE oil causes the pipe to burst at a relatively low load, much less than that required in Fig. 1 or Fig. 2. Often ESC failures are difficult to diagnose until the telltale "ruffled" fracture surface shown in Fig. 3 is observed.

Manufacturers of products have no control over the environment once a component or product is distributed. Manufacturers of CPVC and other commercially important materials publish "compatibility charts" that inform users which chemicals are known to be inert or aggressive to their product. Even with diligent obedience to the compatibility chart during a materials selection process, accidental cross-contamination from another system can occur and ESC can quickly destroy a piping system. Once ESC is identified as the mode, a more complex chemical analysis can identify traces of the contaminant left inside the pipe. ESC is a good reminder that hostile environments can induce failure in otherwise acceptable materials.

## CONCLUSION

From a bronze-tipped spear to a booster rocket O-ring, smelted iron to synthesized nanoparticles, materials are changing as are the applications and forces they are subjected to. The way the material fails leaves behind objective evidence that reveals how and why a failure occurred. Materials science plays an important role in analyzing and diagnosing that failure. Quite often materials science is just one part of a multi-disciplinary investigation. Fires, construction defects, consumer product failures, vehicle accidents, HVAC systems and buried infrastructure can all potentially fall under the mantle of a materials-related investigation. Everything is made of something, and a materials investigation can help reveal what actually happened and why.

*David Riegner, Ph.D. is a Materials Analyst at S-E-A. He earned his Bachelor of Science degree in materials engineering from Iowa State University. He completed his Master of Science and Doctor of Philosophy degrees at The Ohio State University, where he also served as a postdoctoral researcher and instructor.*

# BREAKING BAD FAITH

## DOES LEGISLATING PRIVATE CAUSES OF ACTION AGAINST INSURERS DO MORE HARM OR GOOD?

**Neil V. Mody** and **Thomas M. Wester** Connell Foley LLP

For state lawmakers, proposed bills designed to protect policyholders from bad faith insurance practices can often appear popular and sensible on paper. In practice, however, so-called bad faith bills are often drafted without a firm appreciation of the robust common law protections against improper insurance claim handling conduct that already exist in most U.S. jurisdictions. Thus, like the character arc explored in the critically acclaimed television series Breaking Bad, even well-intentioned efforts to legislate insurance claim practices can lead to unintended negative consequences.

Anyone generally familiar with AMC's Breaking Bad series will recall that its protagonist, Walter White, took desperate measures to protect his family after learning he was terminally ill – yet those well-intentioned measures wound up jeopardizing the very family he vowed to protect.Analogously, bills aimed at stopping insurers from engaging in bad faith claim practices do not always benefit consumers or improve claim handling. In many instances, bad faith bills can conflict with existing state common laws or render them unclear, while undermining the authority of state insurance regulators, resulting in more confusion and litigation. Additionally, bad faith legislation can be wielded by trial lawyers as a cudgel to force insurers to pay claims or settle lawsuits that are defensible, ultimately hurting insureds through increased costs and premiums.

In fact, many of these bad faith laws have been used by policyholder attorneys as tools to threaten jackpot verdicts through treble damages and fee-shifting. Additionally, the bills exacerbate coverage litigation, clogging courts and keeping meritorious suits from being decided. Thus, bad faith laws, while ostensibly designed to protect insureds, can often lead to confusion in existing bad faith jurisprudence.

For example, in 2007, the Washington State legislature enacted the Insurance Fair Conduct Act to provide insureds with a private bad faith cause of action against insurers who unreasonably deny coverage. On its face, the act broadly addressed unfair insurer practices, but Washington courts have been split on its scope since enactment. In particular, in 2017 the Washington Supreme Court finally ruled, after a decade of hotly debated litigation, that the act creates a private cause of action only where an unreasonable denial of coverage has taken place, but not for alleged unfair claim handling practices and regulatory violations. Even after this ruling, however, Washingtonians continue to debate what constitutes an "unreasonable denial" as the term is undefined in the act. Accordingly, this act purportedly designed to clarify insurer good faith obligations and reduce insurance litigation has in many respects achieved the opposite result.

In 2022, New Jersey became the most recent state to codify private causes of action for so-called bad faith with the enactment of the New Jersey Insurance Fair Conduct Act ("NJIFCA"). Originally conceived to apply broadly to multiple lines of insurance, the final version of NJIFCA passed into law is applicable only to uninsured and underinsured motorist claims.

The NJIFCA is illustrative of how these private causes of action can result in confusion. It creates a private cause of action for claimants who have suffered "an unreasonable delay or unreasonable denial" of a claim for payment of benefits under an insurance policy in connection with uninsured and underinsured motorist claims. Successful claimants under the NJIFCA can claim up to three times the coverage amount, plus interest, costs and attorneys' fees as damages. However, the NJIFCA fails to define what constitutes an "unreasonable" denial or delay, nor does it specify what conduct will satisfy this standard, what statute of limitation applies, and whether it applies to claims made prior to its effective date. With arguments emerging on all sides of these issues, it will be left to the already over-burdened judiciary to fill these gaps in the statutory language.

In Massachusetts, insureds can bring a private cause of action against an insurer if it fails to promptly settle a claim within a statutory 30-day window or as soon thereafter as "liability has become reasonably clear," but the operative statute provides little guidance as to what factors make liability "reasonably clear" to an insurer. Accordingly, the Massachusetts law has resulted in litigation over this undefined term and other provisions, including fee shifting and awarding of multiple damages. Here again, a bill purportedly designed to clarify insurers' obligations and avoid litigation can result in more confusion and litigation than before its enactment.

Similarly, Montana residents can bring private causes of action against insurers for which an insurance company can be found liable to its insured and/or an injured third party for various types of alleged conduct, ranging from claims the insurer misrepresented insurance terms to the alleged failure to promptly settle claims. Claims can be made by the insured within two years of the alleged violation or by third-party claimants within one year from the date of the settlement of or entry of judgment on the underlying claim. Montana's Unfair Trade Practices Act lists a number of potential violations but fails to define key terms.

California has a comprehensive bad faith statutory scheme that forbids, among other things, denying a claim without a "reasonable" cause, failing to establish "reasonable standards" for claim handling, and failing to respond to a claim "promptly." Recoverable damages for such claims include attorneys' fees and costs of suit, emotional distress and punitive damages – in addition to payment of the claim itself.

Florida's bad faith statute was amended in 2019 to specifically include a provision requiring policyholders to file a Civil Remedy Notice as a prerequisite before commencing bad faith litigation against an insurer for certain types of claims. The impetus for including this requirement was to avoid unnecessary bad faith litigation, and commensurately, reduce costs. States whose bad faith statutes do not include a similar notice provision, or other conditions precedent to filing bad faith lawsuits, should not be surprised when the proverbial floodgates of litigation open.

In New York, the state legislature has been examining Bills 7285 and 5623 or variations thereof for nearly 10 years. These proposed bad faith bills would, respectively, create private causes of action against insurers who refuse or delay payment of claims and allow policyholders to recover consequential damages, attorneys' fees and interest if successful against insurers. If enacted, the legislation would immediately put insurers on the defensive by imposing arbitrary claim response times and expose insurers to multiplied damages for technical violations.

Similarly, state legislators in Oregon and other U.S. jurisdictions are considering bad faith bills. Over the past several years, various Oregon house and senate bills have been drafted to codify insurance bad faith standards, yet suffered many defects, including undefined terms. In 2019, the Virginia legislature considered a bad faith bill that would have allowed suits against insurers for refusing a "reasonable" settlement demand, but that bill died in committee. These types of bad faith bills, if enacted, can lead to inflated settlement demands, encourage more lawsuits, create incentives for insurance fraud, and clog judicial systems. Additionally, statutory bad faith laws can effectively redefine contractual relationships between insurers and their insureds to the detriment of insureds through increased insurance costs and premiums.

Like Walter White's initial stated goal to support his family, bad faith laws can be well-intentioned and marketed as protective of consumers. In reality, however, these private causes of action can do more harm than good. Statutory bad faith schemes can incentivize unscrupulous policyholder attorneys to commence bad faith litigation anytime they are displeased with an insurer's coverage determination and use the threat of treble damages and fee-shifting to justify outrageous demands, all of which can increase the number of litigated disputes and drive up insurance costs. Additionally, statutory bad faith schemes often fail to account for existing common law standards and insurance regulations, resulting in inconsistencies and confusion. Any legislation aimed at curbing bad faith claim practices should give due consideration to existing common law and clearly define key terms.

*Neil Mody is a partner in Connell Foley's Insurance Coverage Group in Roseland, New Jersey. He represents insurers in complex coverage issues implicating various lines of insurance, including personal, property, casualty, excess, marine, contractors, environmental, reinsurance, and specialty and professional risk (such as D&O, E&O, EPL, cyber, tech, and management liability).*

*Thomas Wester, an associate at Connell Foley in Roseland, New Jersey, represents insurance companies in coverage-related matters. He has substantial experience representing insurers in state and federal courts and defends insureds in lawsuits arising out of liability and commercial disputes. Tom also counsels clients in connection with coverage opinions and determinations.*


# WITHOUT LEADERSHIP BUY-IN, LAW FIRM DEI EFFORTS STAND TO FAIL

**Noble F. Allen** Hinckley Allen

*"Differences challenge assumptions."*
*—Anne Wilson Schaef*

*Reprinted with permission from Hinckley Allen, the original article appeared in Law360. While the article has a law-firm focus, the principles and organizational DEI steps apply to any company, association, group or business navigating and establishing DEI initiatives.*

The above quote from this clinical psychologist is one of my favorite quotes because it says so much with so few words.

It seems like the past couple of years or so have marked a turning point in terms of how law firms and organizations, in general, are focusing on diversity, equity and inclusion goals and initiatives. Some cynics will say that we have been here before with little to show for it; however, most objective observers will agree that it feels just a tad different this time around because there has never been such an intense focus on DEI issues as there is right now.

The main reason for this also seems abundantly clear: George Floyd. Ahmaud Arbery. Breonna Taylor, Jacob Blake. There are more names that can be added to this list, but you get the point.

However, as much as the recent focus on diversity initiatives has been propelled by these sad and tragic events, we cannot allow the cadence of our diversity initiatives to be anchored to tragedies. Granted, these tragedies have captured some necessary attention in the short run, but the concern is that this attention could soon fade away until the next tragedy.

So those of us in the DEI space in law firms and legal departments must be able to pivot and focus all our efforts toward the advancement of more self-sustaining diversity strategies, so that we can ensure long-term solutions to the global concept of DEI in our law firms and legal departments.

So how do we go about doing that in a law firm, and what will it take?

First, let me get this out of the way: Diversity is hard. Really hard.

It takes resilience, resolve and a tenacity of purpose at the organizational level. To that end, a law firm's DEI strategies must command the full attention and support of the top leadership in the firm — specifically the managing partner, members of the firm's executive committee, its practice group chairs and other top decision-makers.

If it lacks this buy-in from the leadership level, it does not stand a chance to succeed in the long run. End of analysis. Full stop.

Top leadership must be the foundational component and the main driver behind a firm's diversity initiatives. DEI initiatives cannot be effective and self-sustaining without everyone in the organization — including those who are indifferent to diversity and inclusion — knowing that the firm is fully committed to those initiatives. It should not be a guessing game. The firm's commitment cannot be perfunctory; it must be unmistakably clear and unequivocal.

### SO HOW DOES THIS ORGANIZATIONAL COMMITMENT MANIFEST ITSELF? FOR EXAMPLE, IF THE FIRM'S DEI COMMITTEE IS MADE UP OF:

- The managing partner.
- The chief operating officer.
- The chief talent officer.
- A representative or two from the executive committee.
- A selection of other senior management level personnel.
- A number of committed partners and associates.

### THEN ITS STRENGTH IS IN THAT COMPOSITION, AND THE FIRM WILL SURELY HAVE A FIGHTING CHANCE OF:

- Challenging assumptions.
- Changing perceptions — internally and externally.
- Increasing its representation of diverse attorneys and nonattorneys.
- Most importantly, figuring out what it takes to keep them.

The infusion of top leadership personnel as part of a firm's DEI committee also has another collateral effect: it increases efficiencies and eliminates inertia by drastically decreasing the timeline between when a DEI initiative is first proposed to the time that it is finally implemented.

When those who have a say in running the firm are themselves members of the DEI committee —who also incidentally played active roles in the discussion and approval of those DEI initiatives in real time at the committee level — then there is no need to waste more precious time — additional emails, telephone calls, zoom calls, more zoom calls — just to bring others up to speed in order to proceed with or fund that initiative.

The inertia is therefore eliminated, and worthy DEI initiatives get implemented faster.

Once this foundational leadership is cemented and becomes part of the firm's DNA, then the other nitty-gritty components of DEI — recruitment, hiring, retention, mentorship and sponsorship, just to name a few, will then confidently take shape and hopefully evolve and succeed.

Implementing effective diversity initiatives is hard; making them self-sustaining and enduring is even harder. However, with the unmistakable support of a strong and active leadership structure, these challenges will become more manageable.

Aspirational goals will become operational and achievable, which in turn will result in decreasing DEI fatigue, frustration and apathy all around. This will hopefully create a culture within the firm that is conducive to diversity, equity and inclusive goals.

### HERE ARE A FEW PRACTICAL STEPS THAT FIRMS CAN TAKE TO STRENGTHEN THEIR DEI COMMITTEES:

- Reassess the composition and makeup of the committee so that it includes, in addition to partners and associates, a representation of the following top-level management personnel: managing partner, COO, chief talent officer, practice group chairs, and the chief business development and marketing officers.

- Ensure that the committee meetings are scheduled such that they do not conflict with other important firm meetings — such as the executive committee, practice group or practice group chair meetings. Change the starting time of the meeting if you have to in order to ensure optimal attendance. Who shows up for these meetings is more important than who is actually on the committee.

- The committee should not be so large that members just blend into the background.

- Each member should not only have a say on the issues but should also be given the requisite time to offer their perspective on those issues.

- Do not schedule meetings if you do not have anything new to talk about or if you do not have any new updates on ongoing action items. Consider meeting every other month to allow smaller subcommittees or ad hoc committees to get things done during the months that the entire committee does not meet — conversely, urgent situations that demand all hands on deck should be promptly scheduled.

- The DEI committee should not be a theoretical debate club where important diversity-related issues go to die. No one on the committee is going to be presented a trophy for being an oracle. The issues should be thoroughly debated, but the committee should not lose sight of the ultimate objective: the prompt rollout and implementation of its initiatives.

*Noble F. Allen practices in litigation, including civil and business litigation, premises liability/insurance claims defense, and commercial landlord/tenant law, including commercial lease litigation and evictions. He also is the Chair of the firm's Diversity, Equity and Inclusion Committee, the past Chair of the Connecticut Statewide Grievance Committee and the current Chair of USLAW NETWORK's Diversity Council.*

# FACES of USLAW

**Iosif Sorokin helps fleeing Ukrainian reach the U.S.**

*Iosif Sorokin of Larson King in St. Paul, Minnesota, helped a 22-year-old Ukrainian student who had fled Russia's invasion of Ukraine get humanitarian parole in the U.S. The student, Sofia (not her real name), was finishing her final semester of medical school in Kyiv, Ukraine, when the Russian invasion began. She fled Ukraine with her mother (her father could not join as military-age males cannot leave Ukraine) and traveled by train to Madrid, where they stayed with her mother's co-workers. At that point, their cousins in the U.S. contacted Sorokin to see if it was possible to bring Sofia to the U.S.*

*Sorokin evaluated their options and determined that the fastest way to bring Sofia to the U.S. was for her cousin to sponsor her for humanitarian parole under the Uniting for Ukraine program implemented by the Biden Administration on April 21. Sorokin guided them through the newfangled application process, which required Sofia and her cousin to each submit online applications to the U.S. Citizenship and Immigration Service. Both applications were approved within a week, and Sofia was granted authorization to travel to the U.S. to be interviewed by Customs and Border Patrol. Sorokin prepared her for the interview, and Sofia then flew to the U.S., where she was granted humanitarian parole for two years. Sofia's cousins welcomed her to the U.S. and were elated and relieved to have brought her far from the ongoing carnage in Ukraine.*

*Sorokin is now helping Sofia apply for employment authorization for the next two years. Her mother remains in Europe, hoping to convince her elderly father to leave Ukraine. Sorokin and his family fled another war-torn post-Soviet republic (Azerbaijan) 30 years ago and resettled in the U.S., so he is familiar with the immense decisions they are now facing and is grateful to be able to help them through this harrowing time.*

*Idaho Women Lawyers selected Keely Duke of Duke Evett PLLC for the Idaho Women Lawyers' 2022 Kate Feltham award. The award recognizes a leader "who has advanced the frontier of opportunity for women in Idaho." Idaho Women Lawyers selected Duke based on her extraordinary efforts to promote equal rights and opportunities for women within the legal community in Idaho.*

*In April, Baird Holm was proud to sponsor and participate in the American Lung Association's Corporate Cup Race (10K, 5K, and one-mile walk). The purpose of the walk is to raise funds for the American Lung Association's impactful programming in research, education, and advocacy.*

*Cheryl Hanley, a marketing and business development leader from Cleveland, Ohio, joins USLAW NETWORK as its practice group, special projects and corporate partner director, a newly created position. She previously was director of marketing and business development for a full-service law firm serving clients globally, and now will manage USLAW's 24 practice groups while helping to set and implement each group's strategic direction, initiatives, and business development efforts. She also will serve as the primary staff liaison for other critical and ongoing USLAW initiatives, including the USLAW's Managing Partner Forum, Future Leaders, DEI initiatives and Live Better, USLAW and S-E-A's health and wellness program.*

*Patrick K. McMonigle of Dysart Taylor Cotter McMonigle & Brumitt, P.C. in Kansas City, Missouri, was honored with the Transportation Lawyers Association's (TLA's) Lifetime Achievement Award on May 13 at the TLA's annual conference in Williamsburg, Virginia. McMonigle served as the TLA's president – one of seven Dysart Taylor attorneys who served in the position – in 2011-2012 and is the firm's third lifetime award honoree. Former TLA presidents include current partners John F. Wilcox, Jr. (2020-2021) and Kenneth R. Hoffman (2000-2001). Hoffman and former name partner Frank W. Taylor, Jr. were honored with lifetime achievement awards in 2011 and 1995, respectively. (Pictured L-to-R John Wilcox, Pat McMonigle, Ken Hoffman)*

*Franklin & Prokopik, P.C. partner Steve Marshall and associate Gina Musto play kickball for "Stonewall Baltimore," an LGBTQ+ sports league that raises funds for a transgender community wellness center called "Baltimore Safe Haven."*

*For nearly two decades, Connell Foley staff, attorneys, friends, and family have proudly participated in Rebuilding Together Jersey City, a leading organization that, in partnership with the community, rehabilitates the homes of low-income, elderly or disabled persons, or families with children, at no cost to them, and non-profit organizations, including the Boys and Girls Club, Camp Liberty.*

*Connell Foley partner Thomas Forrester, who has been instrumental in organizing the firm's participation with Rebuilding Together Jersey City this year, led the Connell Foley team of 10 colleagues and their family members as they volunteered for Rebuilding Together Jersey City. This year the team cleaned and painted the interior of a multifamily residence in Jersey City, side-by-side with trade union volunteers who completed the replacement and repair of several windows, doors, and light fixtures.*

*Other volunteers who were on hand and working hard included Tim Corriston, James McCann, Lisa Trembly, Robert Scheinbaum, Vanessa Pinto, Gianni Garyfallos, Brian Dempster, and family members.*

*Barclay Damon LLP's Syracuse, New York, team participated in the American Heart Association Heart Walk. Organized and led by Brenda Colella, the office recruited a stellar team to take part. Barclay Damon was a sponsor of the event, and the firm provided T-shirts for our participants and fun giveaways for other attendees. In person for the first time in two years, the event was very much enjoyed by all.*


*For Barclay Damon LLP in Rochester, New York, it was all about Rocking Crazy Socks for Down Syndrome Awareness. Special thanks go to Barclay Damon's Georgia Streeter and her son Quinton, who worked with the firm's local Diversity Leadership Team to lead the Rochester office's observance of World Down Syndrome Day. Participants showed their support by wearing mismatched, bright-colored socks. The "Rock Your Socks" slogan was chosen to mimic the shape of chromosomes—and to emphasize that having three chromosomes instead of two, like people with Down syndrome do, is as unique as wearing mismatched socks. The Rochester Diversity Leadership Team also sponsored a jeans day so that those taking part could dress more casually along with their choice of socks. If they desired, people could donate to Flower City Down Syndrome Network or GiGi's Playhouse, which supports those with Down syndrome and their families in the Rochester community.*


*The Hanson Bridgett Healers had another successful Cycle for Survival Event on April 9, 2022. Sandy Rappaport (pictured back row right) and other attorneys and administrative professionals enjoyed a beautiful Saturday morning together out in the community to support this important cause. This is a longstanding firm event to raise funds for research and clinical trials. 100% of every dollar supports pioneering research and lifesaving clinical trials led by Memorial Sloan Kettering Cancer Center (MSK), the world's oldest and largest private institution dedicated to revolutionizing our understanding and treatment of cancer.*

*Mert Howard and other Hanson Bridgett attorneys and administrative professionals participated in the annual firm-sponsored Rebuilding Together San Francisco events on Saturday, April 23 and April 30. Hanson Bridgett has been a proud supporter of this wonderful community event for many years. Founded in 1989 in response to the Loma Prieta earthquake, Rebuilding Together works in partnership to preserve affordable housing in San Francisco, addressing home safety repairs, deferred maintenance and code violations to provide safe homes and communities for everyone.*

*USLAW Chair Rod Umberger from Williams Kastner in Seattle, Washington, welcomes keynote speaker Travis Mills to the Spring 2022 Client Conference in Amelia Island, Florida, where Mills with his larger-than-life personality, sense of humor and incredible spirit for life engaged, wowed and inspired the audience with his signature "Never give up. Never quit." life stories and messages of challenges, hope, love and resilience.*

*Rise and shine! A beautiful sunrise and a two-mile beach walk welcomed attendees during the Spring 2022 Client Conference in Amelia Island, Florida. The morning stroll was part of Live Better, a joint S-E-A and USLAW NETWORK initiative that focuses on mind, heart and health and promotes a culture of health and well-being.*


*Rivkin Radler associate Kaitlyn E. Flynn coached a team of four Hofstra Law students who were named Champions of the 2022 Peter James Johnson National Civil Rights Trial Competition, hosted in person by St. John's University. The competition pitted 16 teams from law schools across the country against one another and featured a case file alleging a violation of the Americans with Disabilities Act.*

*Rivkin Radler partner Brian Bank and associate Joanna Rosenblatt served as judges for Cardozo Law School's Intraschool Negotiation Competition. The competition was organized by the Cardozo ADR Competition Honor Society and led by editor-in-chief and 2021 Rivkin summer associate Gloria Medina.*


*Rivkin Radler partner Gene Kang marched with the Korean American Lawyers Association of Greater New York alongside other Asian American organizations in New York City's inaugural Asian American Heritage and Culture Parade in midtown Manhattan.*

*From land and sea, attendees enjoyed the culture and beauty of Charleston, South Carolina, during the 2022 USLAW NETWORK Labor and Employment Forum.*

# Faces from around the USLAW educational circuit...

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

*Keely E. Duke, Duke Evett, PLLC (Boise, ID); Eliot M. Harris, Williams Kastner (Seattle, WA); Erica M. Baumgras, Flaherty Sensabaugh Bonasso PLLC (Charleston, WV)*

*Nathan Lundquist, senior vice president, claims, Protective Insurance Company (Carmel, IN); John C. Lennon, Pierce Couch Hendrickson Baysinger & Green, L.L.P. (Oklahoma City, OK); Christine Anto, SmithAmundsen LLC (Chicago, IL)*

*Kurt Spengler, Wicker Smith O'Hara McCoy & Ford P.A. (Orlando, FL); Thomas McLaughlin, senior director of risk management and claims, TFI international (Eagan, MN); Michael P. Sharp, Fee, Smith, Sharp & Vitullo, LLP (Dallas, TX)*

*Dennis J. Cotter, SmithAmundsen LLC (Chicago, IL) and Louis J. Vogel, Jr. Sweeney & Sheehan, P.C. (Philadelphia, PA)*

*Stephen E. Winborn, senior vice president, National Interstate Insurance (Richfield, OH); Kristen L. Burman, director of insurance and claims, United Road Services (Plymouth, MI); Tamara Goorevitz, Franklin & Prokopik, PC (Baltimore, MD); Lew R.C. Bricker, SmithAmundsen LLC (Chicago, IL)*

*John A. Markert, Larson King, LLP (St. Paul, MN); Ben M. Ochoa, Lewis Roca (Denver, CO); Stanford P. Fitts, Strong & Hanni, PC (Salt Lake City, UT)*

*Patrick Foppe, Lashly & Baer, P.C. (St. Louis, MO); Clarice A. Spicker, Jones, Skelton & Hochuli, P.L.C. (Phoenix, AZ); Jack Laffey, Laffey, Leitner & Goode LLC (Milwaukee, WI)*

*Douglas A. Marshall, president, Marshall Investigative Group (Park Ridge, IL); Kristen L. Burman, director of insurance and claims, United Road Services (Plymouth, MI); Christopher E. Cotter, Roetzel & Andress (Cleveland, OH)*

*Julie Z. Devine, Lashly & Baer, P.C. (St. Louis, MO) and Katherine F. Parks, Thorndal, Armstrong, Delk, Balkenbush & Eisinger (Reno, NV)*

*Sandra L. Rappaport, Hanson Bridgett LLP (San Francisco, CA) and Lisa A. Zaccardelli, Hinckley Allen (Hartford, CT)*

*Alfred A. Gray, Jr., Rubin and Rudman LLP (Boston, MA) and Julie Proscia, SmithAmundsen (Chicago, IL)*

*Robert P. Brooks, Adler Pollock & Sheehan, P.C. (Providence, RI) and Nadia P. Bermudez, Klinedinst PC (San Diego, CA)*

*Aretta K. Bernard, Roetzel & Andress (Cleveland, OH) and Kevin J. Visser, Simmons Perrine Moyer Bergman PLC (Cedar Rapids, IA)*

# Savings, Support and Security After Settlement

## Helps Ease Settlement Fears and Assists in Settling Difficult and Complex Claims

## Solutions for All Types of Cases:

- Workers' Compensation
- Liability
- Trusts
- Life Care Plans
- Medicare Set Asides
- All Future Medical Allocations

AMETROS
Settle well.

ametros.com/uslaw20
contactus@ametros.com
877-275-7415

find us on


USLAW NETWORK, INC
*Proud Corporate Sponsor*

## Let us determine if your claim is fake or fact

Marshall Investigative Group is a recognized leader in fraud investigations throughout the United States, Canada and Mexico.

Our investigative services utilize the latest technologies to provide our clients with the most comprehensive investigative solutions in the industry. Specializing in Insurance, Legal, Enterprise, Internet and Intellectual Property Investigations.

**Nationwide Services Include:**

- Activity Checks
- Background Checks
- AOE / COE
- Asset Checks
- Bankruptcies
- Contestable Death
- Criminal & Civil Records
- Decedent Check
- Health History
- Internet Investigations
- Pre-Employment
- Recorded Statements
- Scene Investigations
- SIU Services
- Skip Trace
- Surveillance

MARSHALL INVESTIGATIVE GROUP

*Nationwide Investigative Services*

www.mi-pi.com
Toll Free: 855.350.6474
Fax: 847.993.2039

Connect with us on LinkedIn



Doug Marshall
President
dmarshall@mi-pi.com


Matt Mills
VP Business Development


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


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


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


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


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


Valentina Benjamin
SIU Manager
vbenjamin@mi-pi.com

# AMERICAN LEGAL RECORDS

American Legal Records offers many services to assist and simplify the discovery process. ALR is an industry leader in record procurement and duplication services with a personalized customer service staff for all your needs. Our management represents over 200 years of knowledge in our field assisting the legal and insurance communities.

## Below are a few types of Records American Legal retrieves

- Medical
- Insurance
- Government (including SSA)
- Employment
- Scholastic
- Military
- Pharmacy

**Our staff is fully HIPAA Compliant**

## We offer a full range of services for the record retrieval process including

- Notices to all parties
- Customized Billing including direct to Carrier/TPA or Client
- Dedicated account reps
- Expedited Service
- Multi-Party Management
- Online Secure Account access with live status updates of requests
- Payment of Fee Advances/ Custodial Fees
- Many other services customized to your needs

## CLIENT SERVICES SECOND TO NONE

P# (888)519-8565
F# (877)861-9459

info@americanlegalrecords.com
www.americanlegalrecords.com

NATIONWIDE LEADERS IN DOCUMENT RETRIEVAL

## *firms* ON THE MOVE

Michael J. Judy of Dysart Taylor Cotter McMonigle & Brumitt, P.C. in Kansas City, Missouri, was unanimously elected as managing director of the firm by the board of directors.

Barbara Jane Barron has been named managing shareholder of MehaffyWeber in Houston, the first woman to hold this position in the firm's 75-year history.

Sheryl Willert of Williams Kastner in Seattle has been named one of the 2022 Most Influential Black Lawyers in the U.S. by Savoy Magazine. Willert concentrates her legal practice on defending national, regional and local businesses in litigation as well as providing counseling, investigations and dispute resolution. She served as managing director of the firm for more than a decade, continues to serve on the firm's board of directors and is Chair of the firm's Diversity Equity & Inclusion Committee. Willert's commitment to diversity and inclusion has garnered recognition from DRI, which named its Diversity and Inclusion Award (The Sheryl J. Willert Pioneer Diversity Award) in her honor. Willert also is a past Chair of USLAW NETWORK and serves as a steering committee leader of USLAW's Diversity Council.

BAIRD HOLM LLP ATTORNEYS AT LAW

Baird Holm Associate Sapphire Andersen was selected for the Women's Fund of Omaha Circles Class of 10. Sapphire will join Baird Holm Partner Amy Lawrenson, a member of the Circles Class 8. Circles members are selected for three-year terms based on community involvement, workplace contributions, and their vision for all women in Omaha.

Baird Holm Partner David Levy is a member of the Urban Core Working Group that recently helped develop the Great Omaha Chamber's Urban Core Strategic Plan. Learn about the Urban Core Strategic Plan here.

Baird Holm Associate Sarah M. Gorsche was selected to serve on the Executive Committee for the Nebraska State Bar Association's Labor Relations and Employment Law section. Gorsche concentrates her practice on all aspects of labor and employment matters.

Baird Holm Partner Leigh Campbell Joyce was selected to join the 2022 NACUANotes Editorial Board for the National Association of College and University Attorneys (NACUA).

BARCLAY DAMON LLP

Oliver Young of Barclay Damon LLP in Buffalo, New York, has been appointed by the president of the New York State Bar Association to serve on the Evaluation of Court Adopted Pandemic Practices (ECAPP) Working Group of the Commission to Reimagine the Future of New York Courts. Chief Judge Janet DiFiore created the commission ". . . to examine regulatory, technological, structural, and other innovations, and [to] propose practical short- and long-range reforms." Initially, the commission comprised six working groups (technology, online courts, regulatory innovations, structural innovations, trials, and appellate practice). The recently formed ECAPP is the seventh working group.

Flaherty℠ FLAHERTY | SENSABAUGH | BONASSO PLLC

Flaherty Sensabaugh Bonasso PLLC Chief Executive Officer Michael T. Bumgarner, CPA, CLM, CGMA finished up his year as president of the Association of Legal Administrators (ALA) Board of Directors in May. Bumgarner is one of only 475 Certified Legal Managers (CLM) worldwide and was the first CLM in West Virginia. He has been a member of ALA since 2002 and has held various leadership positions. Bumgarner was the first West Virginia resident to serve as president of ALA, which includes 8,000 members worldwide who are involved in the management of law firms, corporate legal departments and government legal agencies.

Jason Proctor of Flaherty Sensabaugh Bonasso PLLC in West Virginia has been accepted as a member of the Federation of Defense & Corporate Counsel (FDCC). Proctor is a member of Flaherty's Complex Tort and Product Liability group.

FRANKLIN & PROKOPIK A PROFESSIONAL CORPORATION ATTORNEYS AT LAW

Jessica D. Corace of Franklin & Prokopik, P.C. in Maryland was recognized by The Daily Record and the Maryland State Bar Association with the Generation J.D designation, which honors rising attorneys who demonstrate professional accomplishment, community service, and a strong commitment to the legal profession early in their careers.

HansonBridgett

Hanson Bridgett LLP in San Francisco has been recertified as a B Corporation by B Lab for the sixth consecutive term. The firm is proud to be a founding B Corp member as well as the first law firm to become a B Corp back in 2007. The firm has maintained its certification continuously for 15 years and is currently one of only 39 law firms on the list of nearly 5,000 companies that achieve certification. B Corp Certification is a designation that indicates a business is meeting the highest standards of verified performance, accountability and transparency on factors from employee benefits and charitable giving to supply chain practices and input materials. Click here to learn more.

## *firms* ON THE MOVE *(Continued)*

Hanson Bridgett LLP Partner Christopher Karachale has been elected as a Fellow of the American Tax Counsel, which promotes sound tax policy and engages with the government on matters affecting the tax system.

Hanson Bridgett LLP Partner Jonathan Storper in San Francisco has been named to the MO 100 Top Impact CEO Rankings, the first list to honor the 100 most impactful leaders sparking positive environmental and social change. Storper has long been at the forefront in this space as he founded and led the firm's sustainable business practice group and chaired the legal working group that drafted and advocated for benefit corporation legislation in California, the first triple-bottom line corporate form. To learn more about this honor and Storper's work, click here.

Constance Liu, a partner and Chair of Hanson Bridgett LLP's Family Wealth Planning Group, has been named a member of the 2022 class of Leadership Council on Legal Diversity (LCLD) Fellows. Launched in 2011, this landmark program is an intensive, yearlong professional development program that mentors the legal industry's diverse leaders of tomorrow.

Lashly & Baer attorney Mark R. Feldhaus received the first-ever Healthcare Service Group Defense Counsel Client Service Award. Healthcare Services Group (HSG) provides a vast array of value-added services, including claim management, risk management and patient safety education.

The International Association of Defense Counsel honored Michele Smith of MehaffyWeber in Houston as a third-year board member.

The reins were passed to Sandra Clark of MehaffyWeber in Houston as the 2022–2023 president of the Symphony of Southeast Texas.

MehaffyWeber's Joe Broussard received the Silver Beaver Award from the Three Rivers Council of the Boy Scouts of America in Southeast Texas. It was presented by the National Court of Honor and is the highest honor given to a volunteer leader for outstanding service to youth. Broussard continues to offer his time and talents to these organizations, including serving as legal counsel and an executive board member for Three Rivers Council of the Boy Scouts of America.

Tomas Garcia of Modrall Sperling in New Mexico was elected to a position on the State Bar of New Mexico Board of Bar Commissioners. Garcia will serve a two-year term as a commissioner for the 2nd Judicial District (Bernalillo County). He also served on the Board of Bar Commissioners in 2020. Garcia is a shareholder in Modrall Sperling's Litigation group and serves on the Executive Committee.

David B. Vandergriff of Quattlebaum, Grooms & Tull PLLC in Little Rock, Arkansas, has been reappointed to the Arkansas Pollution Control and Ecology Commission by Gov. Asa Hutchinson. With guidance from the Governor, the Legislature, the Environmental Protection Agency (EPA) and others, the Commission determines the environmental policy for the state and the Arkansas Department of Environmental Quality implements those policies. The Commission is comprised of 13 members, six representing state agencies and seven appointed by the governor. First appointed in 2020, Vandergriff's term will expire March 29, 2025.

Rivkin Radler partner Louis Vlahos placed No. 2 among the top 10 authors on the topic of tax law and debuted at No. 5 on the topic of wealth management for 2021 in JD Supra's Readers' Choice Awards. Additionally, his article, Increased Capital Gain Rate, Nonresident Aliens, And ESBTs, is recognized as among the most popular for 2021 on the subject of wealth management.

Mike McGrory, partner in SmithAmundsen's Chicago office, was selected for an additional term as chair of the Attorney Division for the Aviation Insurance Association (AIA). The AIA is an international organization dedicated to expanding the knowledge of and promoting the general welfare of the aviation insurance industry through educational programs and events. Members of the AIA work in all facets of the aviation industry, including claims professionals, attorneys, underwriters, and brokers. McGrory is a member of SmithAmundsen's Aerospace Service Group and has represented airlines, airports, aircraft owners and manufacturers in business disputes and lawsuits.

**IN MEMORIAM:** USLAW NETWORK extends heartfelt condolences to our friends and colleagues at Larson King LLP, USLAW's Minnesota member firm, on the recent passing of Dale I. Larson. Larson's contributions to the law firm that proudly bears his name were incalculable. Read more here.

# *successful* RECENT USLAW LAW FIRM VERDICTS & TRANSACTIONS

## VERDICTS

### Adler Pollock & Sheehan, P.C. (Providence, RI)

*Michael Chittick and Kyle Zambarano of Adler Pollock & Sheehan Win Appeal on Behalf of Bally's/Twin River*

On June 1, 2022, Adler Pollock & Sheehan Shareholders, Mike Chittick and Kyle Zambarano were successful in convincing the Rhode Island Supreme Court to affirm the dismissal of claims brought against UTGR, Inc. (currently doing business as Bally's Twin River Lincoln Casino Resort). In relation to a commercial lease that was terminated by agreement back in 2011, a former tenant in the casino food court brought suit against UTGR claiming the termination of the lease was wrongful and asserting various claims ranging from breach of contract to breach of fiduciary duty. On December 18, 2020, the Rhode Island Superior Court determined beyond a reasonable doubt that all of the former tenant's claims failed to state a claim upon which relief could be granted. The former tenant then appealed that ruling. In a written opinion by Chief Justice Paul Suttell, the Rhode Island Supreme Court has now affirmed the dismissal of those claims. In doing so, the Supreme Court reiterated the procedural standard applicable to the Superior Court's ability to analyze documents relied on in a complaint in the course of ruling on a motion to dismiss, and the Supreme Court held that the typical commercial landlord-tenant relationship does not impose a fiduciary duty on the landlord. The opinion means that these claims were defeated at the very outset of the litigation, and UTGR will not have to engage in costly discovery in relation to these meritless claims.

### Baird Holm LLP (Omaha, NE)

*Baird Holm's Creditors' Rights team, led by distressed investments attorney Jeremy Hollembeak, successfully executed an aggressive enforcement strategy to protect the client's collateral rights and obtain a buyout on favorable terms.*

Following a March 2021 default under its forbearance and rescue financing agreements with the client, the borrower – a farm and feedlot operator – transferred its farming operation to a non-borrower affiliate. The client believed this transfer was the borrower's attempt to harvest and sell a 2021 crop outside the reach of the client's security interest in all of the borrower's farm products and proceeds.

Baird Holm's team uncovered and commenced litigation to attack the transfer, obtaining novel pre-judgment relief in a November 5, 2021, injunction order. Among other things, the injunction order required all proceeds from the sale of the affiliate's 2021 crop to be held in escrow pending a final determination of whether the client's security interest attached to the proceeds on the basis that the affiliate was the borrower's alter-ego. Baird Holm quickly used the injunction order to prevent nearly $1.5 million in 2021 crop proceeds from being paid to the affiliate and its lender who claimed to have a superior security interest in the proceeds.

Shortly thereafter, the client was able to negotiate a buyout of its entire debt position at a price substantially higher than any offer made prior to the injunction order. The buyout, which Baird Holm closed in December 2021, allowed the client to exit a deteriorating situation without suffering material loss on its overall investment or having to litigate another 18-24 months to forcibly liquidate its collateral through foreclosure and other judicial procedures.

### Duke Evett PLLC (Boise, ID)

*Duke Evett wins product liability case*

Josh Evett and Mallam Prior of Duke Evett PLLC in Idaho defended an international dryer manufacturer in a high-value court trial in eastern Idaho. Plaintiff claimed the manufacturer's dryer caught fire and burned the plaintiff's business to the ground. The district court, in that case, authored a complete defense verdict in Duke Evett's client's favor, finding that plaintiff failed to prove a defect or that the dryer was the fire's point of origin.

### Dysart Taylor Cotter McMonigle & Brumitt, P.C. (Kansas City, MO)

*Matthew Geary Successfully Defends Clients in Wrongful Death Appeal*

The Eighth Circuit upheld a judgment obtained by Dysart Taylor director Matthew W. Geary and retired director George Coughlin in favor of a vegetation management company in a wrongful death case that could have a wide-ranging impact in workplace injury cases in cases involving parent companies and co-employee liability. The case involved the plaintiffs' son who suffered from heat stroke and passed away the next day.

# *successful* RECENT USLAW LAW FIRM VERDICTS & TRANSACTIONS

*(Continued)*

The plaintiffs filed suit against three parties: (1) their son's on-site supervisor, alleging that the supervisor was liable by directing their son to continue working in the heat and not providing air conditioning in work trucks; (2) their son's employer, alleging that their son's obesity was an idiopathic condition, which removed his death from the workers' compensation law; and (3) the employer's parent company, alleging that the parent company completely subsumed the safety functions of the employer. The Eighth Circuit determined that none of the defendants were liable to the plaintiffs.

Dysart Taylor filed a motion for summary judgment on the basis that the parent company was not liable because it did not completely subsume or supplant its subsidiary/employer's responsibility to provide a safe workplace and whether the son's obesity was an idiopathic condition that removed his death from the workers' compensation law was a matter that required determination by the administrative procedures established under the Missouri Workers' Compensation Law. The District Court agreed and granted summary judgment. On appeal, the Eighth Circuit affirmed the District Court in all respects.


### MehaffyWeber (Houston, TX)

*Maryalyce Cox earns defense verdict for large retail property*

Maryalyce Cox of MehaffyWeber in Houston received a defense verdict in March 2022 in a slip-and-fall case against a large retail property and its cleaning company. The plaintiff underwent two back surgeries, and damages were high. Plaintiff argued that the premise owner had notice of the large pink smoothie spilled on the floor and that changes in the inspection procedures resulted in insufficient inspections of the area. The jury found no negligence by either defendant and found Plaintiff was negligent for failing to watch where she was walking.


### Rivkin Radler LLP (Uniondale, NY)

*Grill and Honig Secure Win for Real Estate Developer in RPAPL §881 Proceeding*

David M. Grill and Jeremy B. Honig of Rivkin Radler in Uniondale, New York, scored a decisive victory after 7 months of litigation in a Real Property Actions and Proceedings Law §881 proceeding in Supreme Court, New York County. RPAPL §881 governs access to an adjoining property to make improvements or repairs.

The firm commenced the proceeding on behalf of its real estate developer client, which needed to demolish two buildings to complete a development project. The client sought to obtain a license to access a neighboring property so that it could install required protections ahead of the demolition.

To delay the client's development, the respondent, whose building is sandwiched between the client's buildings, alleged that it was entitled to an easement through the client's property and that any license granted to the client must be conditioned upon a requirement not to interfere with the alleged easement. After the Rivkin Radler team conclusively established in a motion to dismiss that the respondent had submitted false affidavits and fabricated the existence of documentary evidence, the respondent amended its counterclaims to allege an entirely new fact set and a new basis for the purported easement. Grill and Honig then filed a motion for summary judgment establishing, through extensive investigation of records going back to the Civil War, that the respondent's new theory was also completely without merit. The respondent yet again filed a cross-motion to amend its counterclaims, this time alleging that it had inadvertently identified the wrong property through which it was entitled to an easement. Rivkin Radler vehemently opposed the cross-motion, arguing that the court must not permit the respondent once again to completely change the underlying allegations as the resulting delays were highly prejudicial to the firm's client and were only designed to stall the development.

After a lengthy and contentious oral argument, the court granted the firm's client's petition, awarding the client a license to access the respondent's property to install the protections as required by the building code. Importantly, the court did not require the firm's client to pay the respondent a license fee or to

# successful RECENT USLAW LAW FIRM VERDICTS & TRANSACTIONS

*(Continued)*

reimburse any of the respondent's fees or expenses as a condition of the license. The court also dismissed the respondent's counterclaims in their entirety and denied its motion seeking to amend its counterclaims.

In the scathing decision, the court found it "deeply concerning" that the respondent repeatedly changed its position each time Rivkin Radler disproved its allegations, stating: "Now, only after two motions to dismiss previous versions of its counterclaims does Respondent finally settle on a new theory (for now). This is a special proceeding, not a game of whack-a-mole."

This decision will allow Rivkin Radler's client to proceed with the property development and should serve as a warning to neighbors that delaying a development project without merit is an expensive exercise in futility.

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

Ryan Holt of Sweeny, Wingate & Barrow, P.A. recently obtained a defense verdict in the Charleston (South Carolina) County Court of Common Pleas for a national restaurant chain. Plaintiff alleged that she contracted viral gastroenteritis after consuming a meal at the restaurant. The jury reached a defense verdict in less than half an hour.

### Wicker Smith

*The Supreme Court of Florida handed down a decision that the Court deemed "of great public importance." Dial v. Calusa Palms Master Ass'n, 308 So. 3d 690 (Fla. 2d DCA 2020)*

Wicker Smith Partner Michael D'Lugo represented Calusa Palms Master Association in an appeal to the Second District Court of Appeal and the Florida Supreme Court. The Supreme Court of Florida handed down a decision for the firm's client that the Court has deemed "of great public importance" related to the amount of medical expenses a jury may consider.

Medicare providers routinely bill patients for services in amounts that greatly exceed what Medicare will pay for those services. Those providers must accept the amount that Medicare pays in order to participate in the program. The issue presented was whether the jury hears what the provider billed or what the provider accepted in full and final payment from Medicare. This decision makes clear that the jury will only consider the amount the provider accepted as payment.

According to the Medicare Enrollment Dashboard, there are over 4.5 million Floridians who are Medicare beneficiaries. This opinion will therefore have a broad impact in lowering the amount of medical expenses the jury may consider.

A long-time client, Calusa Palms, was represented by retired Naples Partner Craig Ferrante at the trial court. Orlando Partner Michael D'Lugo handled the appeal to the Second District Court of Appeal and the Florida Supreme Court.

## TRANSACTIONS

### Lashly & Baer, P.C. (St. Louis, MO)

*Lashly & Baer attorneys represent St. Louis accounting firm in acquisition of virtual CFO firm*

Lashly & Baer attorneys Stuart J. Vogelsmeier and Scott A. Pummell represented Anders CPAs + Advisors in its acquisition of Summit CPA Group and its Virtual CFO business.

### Poyner Spruill LLP (Charlotte, NC)

***Bob Hagemann** of **Poyner Spruill LLP** in Charlotte, North Carolina, successfully represented Chatham County in the recently announced multibillion-dollar economic development deal with VinFast, a start-up automotive company from Vietnam.*

The deal – worth an estimated $4-$7 billion – is the largest economic development deal in North Carolina history and one that will bring the first car manufacturing plant to the state. VinFast will build a multibillion-dollar production facility in the Triangle area, specifically at Chatham's Triangle Innovation Point, for its new line of electric vehicles and batteries.

In March, Gov. Roy Cooper, legislative leaders, Vietnam's U.S. ambassador and VinFast's CEO announced the plant at a ceremony outside the Raleigh Convention Center.

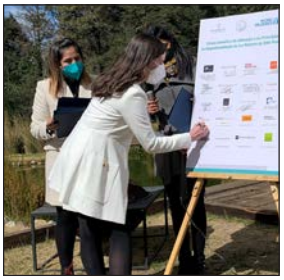
While representing Chatham County, Hagemann negotiated an economic development incentives agreement that was critical to landing the project.

Hagemann spent 24 years in the Charlotte City Attorney's office, including seven years as the Charlotte City Attorney, and brings his deep understanding and extensive experience in local government to the firm.

# DIVERSITY, EQUITY AND INCLUSION

## Barclay Damon co-created and supports annual award

At the 2022 University at Buffalo (UB) Law Students of Color Dinner, an award co-created by Barclay Damon LLP, the Monique E. Emdin Memorial Award, was presented. The award is named after the late Monique Emdin, a 2006 summer associate who became a firm associate. Tragically, soon after graduating from UB School of Law, Monique was diagnosed with a rare form of cancer, and she passed away in 2008. After her death, the firm, in partnership with Monique's church, Bethesda World Harvest International, and UB School of Law, created the award, which is given annually at this event to "one or more . . . graduating seniors; members of groups traditionally underrepresented in the legal profession; who demonstrate a commitment to community service, including significant service in faith-based communities; or have made significant contributions to the law school through involvement in student groups." Preference is given to students who demonstrate financial need. This year the award went to Shakierah Smith, a first-generation college student who earned her UB law degree on May 14.



## EC Rubio supports DEI initiatives in Mexico

Earlier this year, EC Rubio participated in the symbolic signing of adhesion to the "UN Women Women's Empowerment Principles" in an event organized by Abogadas MX and UN Women, as one of the 38 law firms participating in its project for the creation of the "Minimum Standards for Diversity and Inclusion within Law Firms in Mexico".

EC Rubio partner Daniela Flores, who heads the firm's social responsibility, diversity and inclusion initiatives and represented EC Rubio in this symbolic signing, commented: "Our thanks and recognition to Abogadas MX and UN Women for this important initiative, which has contributed to putting the issue of women's empowerment and diversity and inclusion in general at the center of the discussion of law firms in Mexico and that all necessary actions are taken to level the floor, the road and the ceiling for all. Congratulations!"

## Poyner Spruill co-creates Cheslie C. Kryst Advocacy and Social Justice Law Scholarship

Poyner Spruill LLP and Wake Forest University School of Law have established the Cheslie C. Kryst Advocacy and Social Justice Law Scholarship to honor the legacy of Cheslie, a dear friend and colleague at Poyner Spruill and a Wake Forest law graduate. Per the firm, whether you worked alongside Cheslie or watched her from afar, you couldn't help but be inspired by her dedication to advocating for others. She was such a vessel of light and poured out unselfishly to those around her. Cheslie's scholarship will be awarded annually to students from underrepresented backgrounds who demonstrate a passion for the pursuit of social justice and civil rights causes after graduation. The Cheslie C. Kryst Advocacy and Social Justice Law Scholarship will enable generations of law students to earn their law degrees, who will then go on to make the kind of meaningful and lasting impact on the world Cheslie made during her time with us. To learn more about the scholarship or make a gift online, click here.

## Simmons Perrine Moyer Bergman PLC Completes Diversity, Equity and\Inclusion Pledge

The ISBA Young Lawyers Division Diversity and Inclusion Committee created a pledge that Iowa legal employers could take to improve diversity, equity and inclusion (DEI) in their offices. The pledge included a list of tasks to choose from with the number of tasks needed based on the size of the firm. Simmons Perrine Moyer Bergman PLC (SPMB) completed the year-long pledge that included tasks such as sensitivity training on topics like pronoun usage, religious tolerance and political differences. Externally, the firm committed to providing services to marginalized community members and activities and supporting minority associations that support DEI efforts. SPMB is one of 20 firms, companies and organizations in Iowa to complete the pledge and will be recognized at the ISBA Annual Meeting in June.

## Hanson Bridgett LLP receives Beacon of Justice Award, creates affinity group, celebrates heritage months

Hanson Bridgett LLP formally launched a LGBTQ employee affinity group, Outlaw Network.

Hanson Bridgett LLP is one of 18 firms being honored with a 2022 Beacon of Justice Award from The National Legal Aid & Defender Association (NLADA). Each honoree is being recognized for their efforts to address systematic racial disparities in 2022. The 2022 Beacon of Justice honorees have demonstrated excellence in service across the legal spectrum from civil rights and special relief motions related to COVID that have racial significance, to advocates raising their voices and committing resources, to untangling systems that are inherently unjust.

The firm celebrated Women's History Month with an event hosted by the Women's Impact Network (WIN) on March 30. The topic was Diversifying the Profession: Reflecting Back & Looking Ahead, and panelists shared their professional journeys and thoughts on how the bench and legal executive roles are diversifying. The discussion was moderated by Jennifer Martinez, the firm's chief diversity, equity and inclusion officer. Panelists included Sasha Cummings, circuit mediator for the 9th Circuit; Kelli Evans, Alameda County Superior Court judge; and Brenda Harbin-Forte, retired Alameda County Superior Court judge.

The firm also celebrated AAPI Heritage Month with two programs: On Tuesday, May 17, the firm hosted a virtual presentation from Asian Pacific Islander Legal Outreach (APILO), a long-time pro bono partner of the firm. The second event on May 25 featured former partner, The Honorable André Campbell, who talked about his background, his experience as a lawyer and his path to the bench.

# pro bono SPOTLIGHT

Led by Jen Leonardi and Corey Auerbach of Barclay Damon LLP in Buffalo, New York, Barclay Damon has been named a 2021 Pro Bono Leader by the American Bar Association Standing Committee on Pro Bono and Public Service. The notification states that, because of the firm's "sincere dedication to pro bono service through [its] participation in ABA Free Legal Answers," Barclay Damon is acknowledged on the ABA website as a 2021 Pro Bono Leader. A letter from the chair of the committee notes, "Through Barclay Damon LLP's exceptional pro bono service, you are helping to ensure that tens of thousands of low-income individuals across this country are receiving the legal help they deserve." An ABA Free Legal Answers summary report highlights the impact volunteers have made since launching the portal and notes that in 2021 our attorneys answered 85 civil legal questions.

BARCLAY DAMON LLP

Barclay Damon LLP continued its commitment to all attorneys providing pro bono service throughout the COVID-19 pandemic. A team of attorneys from the firm's Rochester, New York, office assisted JustCause, a Rochester-area pro bono partner of the firm, in continuing to deliver pro bono assistance throughout the COVID-19 pandemic by offering legal services via phone instead of in person. The team, coordinated by Barclay Damon's Patrick Burke, still provides legal aid even now that the Help Center housed at the Hall of Justice has reopened to walk-in service. Through the team's dedicated effort, Barclay Damon continues to ensure low-income residents of Monroe County, New York, have access to legal aid.

## Hinckley Allen partners with the GK Fund

HINCKLEY ALLEN

As a partner with the GK Fund, Hinckley Allen will provide pro bono legal services to GK Fund grantees, which are small businesses that cannot afford legal services and are owned by members of underserved communities. The GK Fund is a 501(c)(3) that makes small grants ($10,000) to growth-stage start-up and growing for-profit companies whose founders/owners identify as BIPOC, women or veterans and whose annual revenue is less than $100K. The goal is to help high-impact, high-potential entrepreneurs who are traditionally underserved by investors and face bigger challenges accessing capital. In addition to the grant, the GK Fund offers mentors, helps with marketing and creates networking opportunities.

HansonBridgett

## Hanson Bridgett LLP (San Francisco, CA)

*Hanson Bridgett's Appellate Group and Litigators Obtain Published 9th Circuit Victory on Behalf of Gay Nigerian Client Seeking Asylum and Protection Under the Convention Against Torture*

The petitioner, a gay man from Nigeria, was seeking asylum and protection under the Convention Against Torture in the United States after he was discovered being intimate with his boyfriend in a Nigerian hotel and was beaten and threatened with death as a result of that discovery. The Immigration Judge (IJ) found that the petitioner was not credible because he got the name of the hotel wrong, which led the IJ to find that the petitioner was not gay and did not face persecution in his home country. The IJ and Board of Immigration Appeals (BIA) denied all relief. Following expert briefing by Hanson Bridgett attorneys David Casarrubias, Breana Burgos, and Alexandra Atencio, and Casarrubias' compelling oral argument, the Ninth Circuit granted the petition for review, holding the BIA failed to give "reasoned consideration" to all of the evidence. Further, the Ninth Circuit ruled that the petitioner's asylum application was not "frivolous" merely because he got the name of the hotel wrong. While potentially relevant to his asylum claim, the location of the hotel was not a central element of his asylum claim. Not only is this a victory for Hanson Bridgett's client but one enshrined in a published Ninth Circuit precedent.

Hanson Bridgett attorneys participate in monthly Centro Legal's Tenants "Know Your Rights" evening clinics to provide one-on-one consultations with tenants facing some issue with their tenancy or landlord. The firm also hosted a pro bono asylum clinic with Centro Legal in May.

Hanson Bridgett LLP presented at the California Attorney General's legal convening on April 27, calling for law firms to step up to provide pro bono assistance to survivors of domestic violence.

## Rebekah Jalilian-Nosraty volunteers at Expungement Clinic

SPMB Simmons Perrine Moyer Bergman PLC

Simmons Perrine Moyer Bergman PLC attorney Rebekah Jalilian-Nosrady volunteered her services at an expungement clinic on April 30 in Cedar Rapids, Iowa. Linn County, IowaWORKS, Iowa Legal Aid, and Advocates for Social Justice held the county's fourth Expungement Clinic and Resource Fair, where attorneys assisted 58 Linn County residents with advice on expunging criminal cases from their records and filing expungement motions with the court to remove the charges from public view. Jalilian-Nosraty is a transactional attorney working with matters relating to estate planning, tax, creditors' rights, small business organization and non-profit applications.

# about USLAW NETWORK

## 2001. The Start of Something Better.

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

### Fast forward to today.

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

### Home Field Advantage.

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

### A Legal Network for Purchasers of Legal Services.

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

### USLAW IN EUROPE.

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

### How USLAW NETWORK Membership is Determined.

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

### USLAW in Review.

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

### The USLAW Success Story.

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

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

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

USLAW NETWORK, INC®

# 2022 MEMBERSHIP ROSTER

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

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

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

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

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

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

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

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

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

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

**FLORIDA** | CENTRAL FLORIDA
**Wicker Smith O'Hara McCoy & Ford P.A.**
Richards H. Ford ..... (407) 843-3939
rford@wickersmith.com

**FLORIDA** | SOUTH FLORIDA
**Wicker Smith O'Hara McCoy & Ford P.A.**
Nicholas E. Christin..... (305) 448-3939
nchristin@wickersmith.com

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## USLAW INTERNATIONAL

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

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

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

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

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

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

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

## TELFA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**NETHERLANDS**
**Dirkzwager Legal & Tax**
Karen A. Verkerk..... +31 26 365 55 57
Verkerk@dirkzwager.nl

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

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

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

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

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

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

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

**TURKEY**
**Cukur & Yilmaz**
Phone..... +90 232 465 07 07

# 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 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. Moving forward, we will promote a hybrid virtual approach to our future live events.

## EDUCATION

It's no secret – USLAW can host a great event. We are very proud of the timely industry-leading interactive roundtable discussions at our semi-annual client conferences, 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. For 2022, we are re-focusing on in-person meetings where and when possible and will continue to be creative with virtual event offerings. CLE accreditation is provided for most USLAW educational offerings.

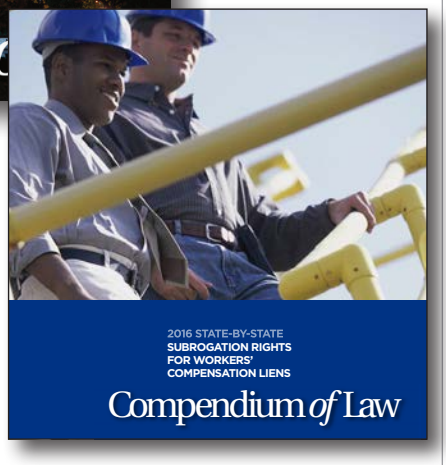

## A TEAM OF EXPERTS

USLAW NETWORK undoubtedly has some of the most knowledgeable attorneys in the world, but did you know that we also have the most valuable corporate partners in the legal profession? Don't miss out on an opportunity to better your legal game plan by taking advantage of our corporate partners' expertise. Areas of expertise include forensic engineering, legal visualization services, jury consultation, courtroom technology, forensic accounting, record retrieval, structured settlements, future medical fund management, and investigation.

S·E·A
AMERICAN LEGAL RECORDS
AMETROS Settle well.
ARCADIA The Structured Settlements Company
IMS Consulting & Expert Service
MARSHALL INVESTIGATIVE
MDD FORENSIC ACCOUNTANTS

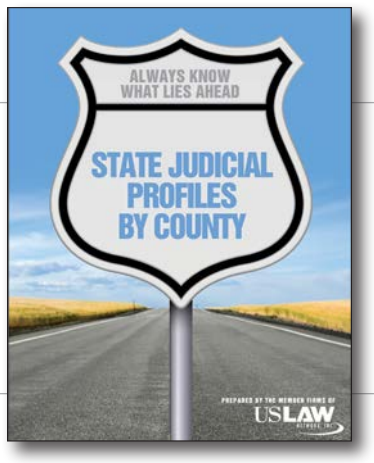
## LAWMOBILE

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. In light of COVID-19, consider hosting a virtual LawMobile event for your team.


## COMPENDIA OF LAW

USLAW regularly produces new and updates existing Compendia providing multi-state resources that permit users to easily access state common and statutory law. Compendia are easily sourced on a state-by-state basis and are developed by the member firms of USLAW. Some of the current compendia include: Retail, Spoliation of Evidence, Transportation, Construction Law, Workers' Compensation, Surveillance, Offer of Judgment, Employee Rights on Initial Medical Treatment, and a National Compendium addressing issues that arise prior to the commencement of litigation through trial and on to appeal. Visit the Client Resources section of uslaw.org for the complete USLAW compendium library.




## 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 commercial and corporate clients. Recent topics have covered cybersecurity & data privacy, COVID-19 impacts, medical marijuana & employer drug policies, management liability issues in the face of a cyberattack, defending motor carriers performing oversized load & heavy haul operations, employee wellness programs, social media & the law, effects of electronic healthcare records, allocating risk by contract and much more.

## USLAW CONNECTIVITY

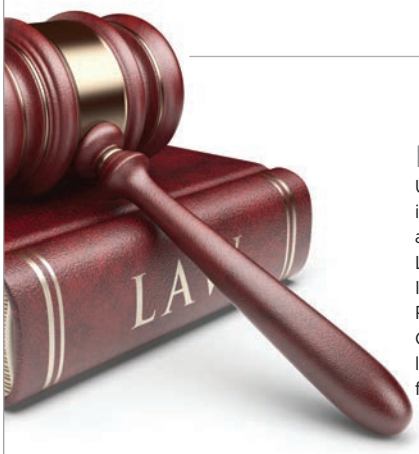
In today's digital world there are many ways to connect, share, communicate, engage, interact and collaborate. Through any one of our various communication channels, sign on, ask a question, offer insight, share comments, and collaborate with others connected to USLAW. Please check out USLAW on Twitter @uslawnetwork and our LinkedIn group page.


## USLAW MEMBERSHIP DIRECTORY

Each year USLAW produces a comprehensive membership directory. Here you can quickly and easily identify the attorney best-suited to handle your legal issue. Arranged by state, listings include primary and alternate contacts, practice group contact information as well as firm profiles. If you would like to be added to the distribution list, _mailto:jennifer@uslaw.org.

## CLIENT LEADERSHIP COUNCIL AND PRACTICE GROUP CLIENT ADVISORS

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.

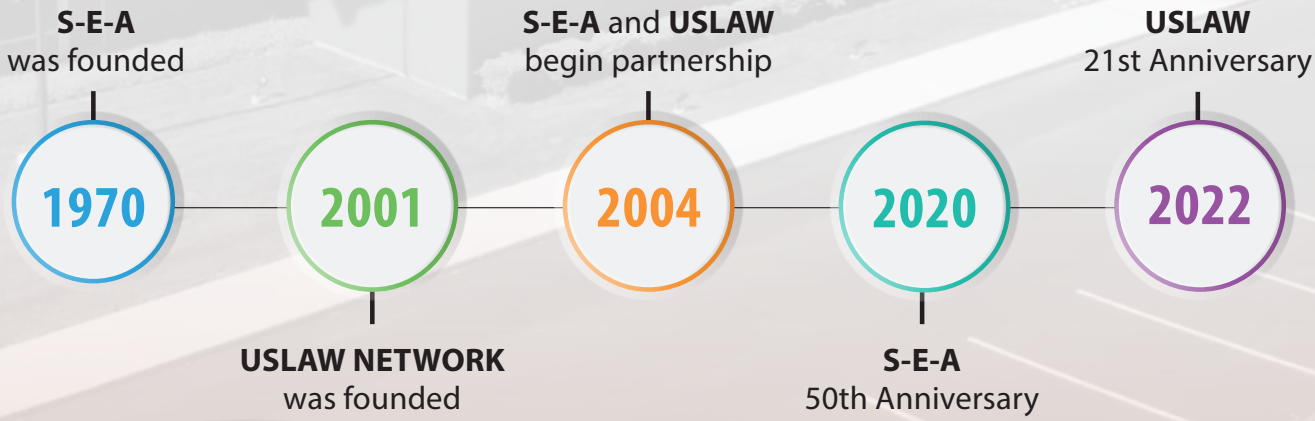


## PRACTICE GROUPS

USLAW prides itself on variety. Its 6,000+ attorneys excel in all areas of legal practice and participate in USLAW's 25+ substantive active practice groups and communities, including Appellate Law, Banking and Financial Services, Cannabis Law, Commercial Law, Complex Tort and Product Liability, Construction Law, Data Privacy and Security, eDiscovery, Energy/Environmental, Healthcare Law, Insurance Law, International Business and Trade, IP and Technology, Labor and Employment Law, Professional Liability, Real Estate, Retail and Hospitality Law, Tax Law, Transportation and Logistics, Trust and Estates, White Collar Defense, Women's Connection, and Workers' Compensation. Don't see a specific practice area listed? Not a problem. USLAW firms cover the gamut of the legal profession and we will help you find a firm that has significant experience in your area of need.

# SOME THINGS GET BETTER WITH AGE.

# LIKE THE S-E-A AND USLAW PARTNERSHIP.




As we celebrate 18 years of collaboration and friendship, we are proud to continue to
**make our partnership and communities stronger**
with the Live Better initiative.

LiveBetter
MIND. HEART. HEALTH.

S-E-A

USLAW NETWORK, INC.

*Mental and physical health is of critical importance to personal and professional well-being. To promote wellness within our "community," S-E-A and USLAW have jointly initiated a new program called, "Live Better" focused toward our members, associates, and our families.*

# 2022 USLAW Corporate Partners

THANK YOU PARTNERS

USLAW PREMIER PARTNER

S·E·A Know.

## S-E-A

**OFFICIAL TECHNICAL FORENSIC ENGINEERING AND LEGAL VISUALIZATION SERVICES PARTNER**

www.SEAlimited.com
7001 Buffalo Parkway
Columbus, OH 43229
Phone: (800) 782-6851
Fax: (614) 885-8014

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

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

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

S-E-A is proud to be the exclusive partner/sponsor of technical forensic engineering and legal visualization services for USLAW NETWORK.

A powerful resource in litigation for 50 years, S-E-A is a multi-disciplined forensic engineering, fire investigation and visualization services company specializing in failure analysis. S-E-A's full-time staff consists of licensed/registered professionals who are experts in their respective fields. S-E-A offers complete investigative services, including: mechanical, biomechanical, electrical, civil and materials engineering, as well as fire investigation, industrial hygiene, visualization services, and health sciences—along with a fully equipped chemical laboratory. These disciplines interact to provide thorough and independent analysis that will support any subsequent litigation.

S-E-A's expertise in failure analysis doesn't end with investigation and research. Should animations, graphics, or medical illustrations be needed, S-E-A's Imaging Sciences/Animation Practice can prepare accurate demonstrative pieces for litigation support. The company's on-staff engineers and graphics professionals coordinate their expertise and can make a significant impact in assisting a judge, mediator or juror in understanding the complex principles and nuances of a case. S-E-A can provide technical drawings, camera-matching technology, motion capture for biomechanical analysis and accident simulation, and 3D laser scanning and fly-through technology for scene documentation and preservation. In addition, S-E-A can prepare scale models of products, buildings or scenes made by professional model builders or using 3D printing technology, depending on the application.

You only have one opportunity to present your case at trial. The work being done at S-E-A is incredibly important to us and to our clients – because a case isn't made until it is understood. Please visit www.SEAlimited.com to see our capabilities and how we can help you effectively communicate your position.

# 2022 USLAW Corporate Partners

## American Legal Records
**OFFICIAL RECORD RETRIEVAL PARTNER**

www.americanlegalrecords.com
1974 Sproul Road, 4th Floor
Broomall, PA 19008
Phone: (888) 519-8565

**Michael Funk**
Director of Business Development
Phone: (610) 848-4302
Email: mfunk@americanlegalrecords.com

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

**Kelly McCann**
Director of Operations
Phone: (610) 848-4303
Email: kmccann@americanlegalrecords.com

American Legal Records is the fastest-growing record retrieval company in the country. The pandemic has greatly impacted the record retrieval industry and made it increasingly difficult to obtain medical records in a timely fashion. We have streamlined this process to eliminate the monotonous, never-ending time your team/panel counsel is spending on obtaining records. Our team has over 200 years of experience and can provide nationwide coverage for all your record retrieval needs. Our highly trained staff is experienced in all civil rules of procedures and familiar with all state-mandated statutes regarding copying fees. We are approved by more than 80% of the carriers and TPAs.

## Ametros
**OFFICIAL FUTURE MEDICAL FUND MANAGEMENT PARTNER**

www.ametros.com
P.O. Box 827
Burlington, MA 01803
Phone: (877) 275-7415

**Mark Doherty, CMSP**
Executive Vice President of Sales
Email: mdoherty@ametros.com

Ametros is the largest and most trusted professional administration expert in the industry, working closely with everyone involved in the settlement process to drive resolution and provide support, security and potential savings for injured individuals once they settle their case. Ametros becomes the injured individual's main resource to help guide them through their medical treatment and any necessary reporting after settlement. Ametros helps ease settlement fears and assists in settling difficult and complex claims, including workers' compensation, liability, trusts, life care plans, Medicare Set Asides, and all other future medical allocations.

## Arcadia
**OFFICIAL STRUCTURED SETTLEMENT PARTNER**

www.teamarcadia.com
5613 DTC Parkway, Suite 610
Greenwood Village, CO 80111
Phone: (800) 354-4098

**Rachel D. Grant, CSSC**
Structured Settlement Consultant
12894 Parkridge Drive, Suite 100
Shelby Township, MI 48315
Phone: 586.932.2111
Email: rgrant@teamarcadia.com

**Your USLAW structured settlements consultants are:**
Brian Annandono, CSSC • Cleveland, OH
Cassie Barkett, Esq. • Tulsa, OK
Len Blonder • Los Angeles, CA
Rachel Grant, CSSC • Detroit, MI
Nicole Mayer • Chicago, IL
Richard Regna, CSSC • Denver, CO
Iliana Valtchinova • Pittsburgh, PA

Arcadia Settlements Group is honored to be USLAW's exclusive partner for structured settlement services.

Arcadia Settlements Group (Arcadia) and Structured Financial Associates (SFA) have merged to create the largest provider of structured settlement services, combining the strength of best-in-class consultants, innovative products and services, and deep industry expertise. Our consultants help resolve conflicts, reduce litigation expenses, and create long-term financial security for injured people through our settlement consulting services. Arcadia Consultants also assist in the establishment and funding of other settlement tools, including Special Needs Trusts and Medicare Set-Aside Arrangements, and are strategically partnered to provide innovative market-based, tax-efficient income solutions for injured plaintiffs.

Arcadia is recognized as the first structured settlement firm with more than 45 years in business. Our consultants have used our skill and knowledge, innovative products and unparalleled caring service to help settle more than 325,000 claims involving structured settlement funding of more than $40 billion and have positively impacted hundreds of thousands of lives by providing security and closure.

# 2022 USLAW Corporate Partners

## IMS Consulting
**OFFICIAL JURY CONSULTANT AND COURTROOM TECHNOLOGY PARTNER**

www.expertservices.com
4400 Bayou Boulevard, Suite 4
Pensacola, FL 32503
Phone: (877) 838-8464
Twitter:@ExpertServices

**Merrie Jo Pitera, Ph.D.**
Senior Director of Jury Consulting
Phone: 913.339.6468
Email: mjpitera@expertservices.com

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

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

**Christina Marinakis, J.D., Psy.D.**
Director of Jury Research
Phone: 443.742.6130
Email: cmarinakis@expertservices.com

Your goal is to provide high-caliber advocacy for your client—IMS Consulting helps you achieve that goal by providing jury consulting and courtroom technology services.

Everything we do at IMS is anchored in our commitment to help you gain the best position to win. Our 2021 union with Litigation Insights joined complementary strengths and common ideals to elevate your visual communications and jury research.

For 30 years, the most influential attorneys and firms have relied on IMS for the most comprehensive trial services. Our unique perspectives and proprietary methods have been developed over more than 20,000 cases and 2,000 completed trials. With strategic locations in major U.S. markets, the IMS team is primed to support your in-person and remote litigation proceedings.

Gain peace of mind with our experienced trial professionals. Let's work together: expertservices.com.

## Marshall Investigative Group
**OFFICIAL INVESTIGATIVE PARTNER**

www.mi-pi.com
401 Devon Ave.
Park Ridge, IL 60068
Phone: (855) 350-6474 (MIPI)
Fax: (847) 993-2039

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

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

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

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

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

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

Marshall Investigative Group is a national investigative firm providing an array of services that help our clients mediate the validity of questionable cargo, disability, liability and workers' compensation claims. Our specialists in investigations and surveillance have a variety of backgrounds in law enforcement, criminal justice, military, business and the insurance industry. Our investigators are committed to innovative thinking, formative solutions and detailed diligence.

One of our recent achievements is leading the industry in Internet Presence Investigations. With the increasing popularity of communicating and publishing personal information on the internet, internet presence evidence opens doors in determining the merit of a claim. Without approved methods for collection and authentication this information may be inadmissible and useless as evidence. Our team can preserve conversations, photographs, video recordings, and blogs that include authenticating metadata, and MD5 hash values. Our goal is to exceed your expectations by providing prompt, thorough and accurate information. At Marshall Investigative Group, we value each and every customer and are confident that our extraordinary work, will make a difference in your bottom line. **Services include:**

- Activity/Background Checks
- AOE / COE
- Asset Checks
- Bankruptcies
- Contestable Death
- Criminal & Civil Records
- Decedent Check
- Health History
- Intellectual Property Investigations
- Internet Presence Investigations
- Pre-Employment
- Recorded Statements
- Skip Trace
- Surveillance

## MDD Forensic Accountants
**OFFICIAL FORENSIC ACCOUNTANT PARTNER**

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

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

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

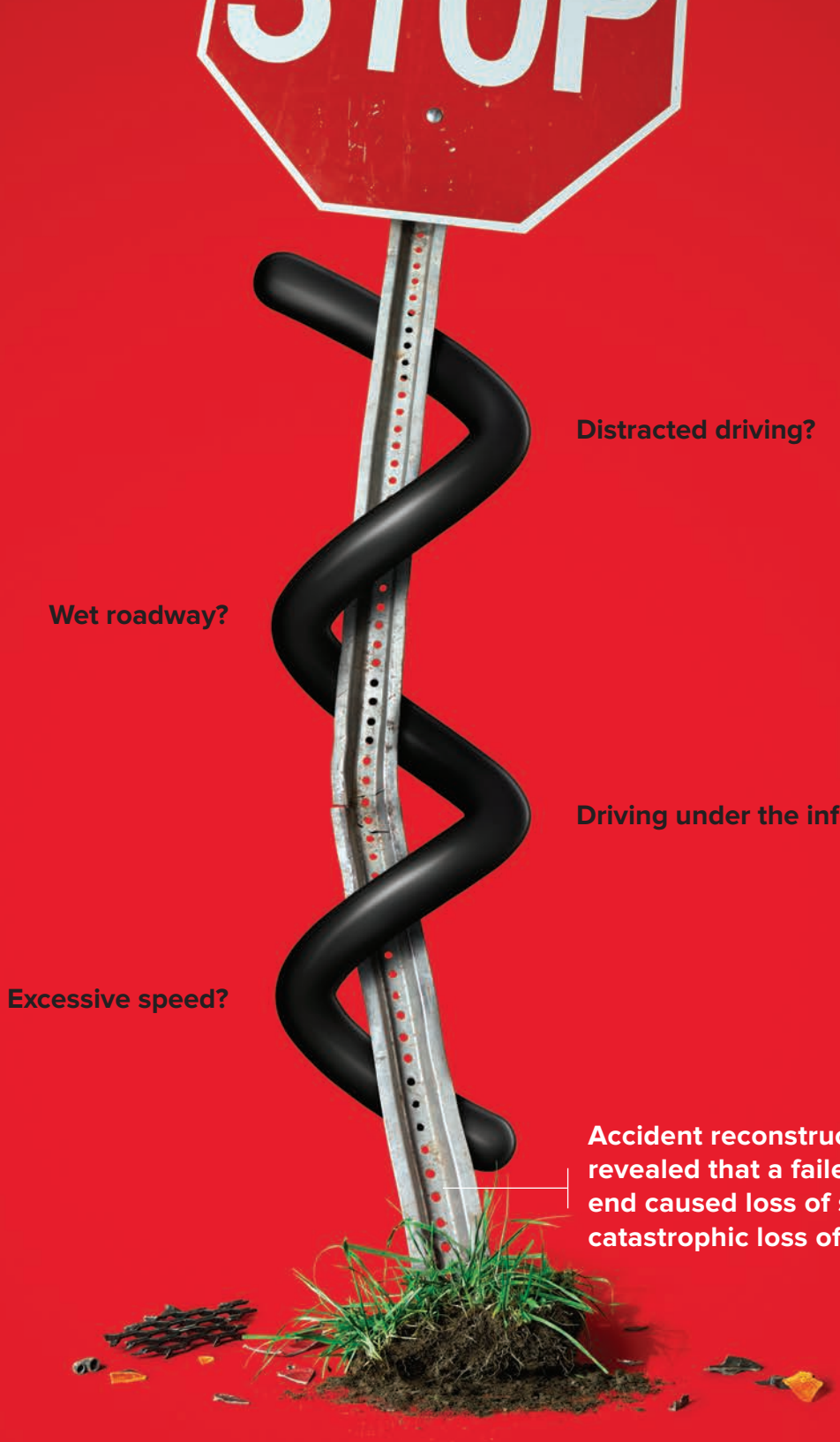
Matson, Driscoll & Damico is a leading forensic accounting firm that specializes in providing economic damage quantification assessments for our clients. Our professionals regularly deliver expert, consulting and fact witness testimony in courts, arbitrations and mediations around the world.

We have been honored to provide our expertise on cases of every size and scope, and we would be pleased to discuss our involvement on these files while still maintaining our commitment to client confidentiality. Briefly, some of these engagements have involved: lost profit calculations; business disputes or valuations; commercial lending; fraud; product liability and construction damages. However, we have also worked across many other practice areas and, as a result, in virtually every industry.

Founded in Chicago in 1933, MDD is now a global entity with over 40 offices worldwide.

In the United States, MDD's partners and senior staff are Certified Public Accountants; many are also Certified Valuation Analysts and Certified Fraud Examiners. Our international partners and professionals possess the appropriate designations and are similarly qualified for their respective countries. In addition to these designations, our forensic accountants speak more than 30 languages.

Regardless of where our work may take us around the world, our exceptional dedication, singularly qualified experts and demonstrated results will always be the hallmark of our firm. To learn more about MDD and the services we provide, we invite you to visit us at www.mdd.com.




Distracted driving?

Wet roadway?

Driving under the influence?

Excessive speed?

**Accident reconstruction revealed that a failed tie rod end caused loss of steering and catastrophic loss of control.**

S-E-A™

**Know.**

With expertise ranging from personal, commercial, and industrial vehicles to motorcycles, bicycles, and pedestrian accidents, our highly-experienced accident reconstruction team, toxicologists, and visualization specialists meticulously analyze vehicle accidents to dig past the speculation and present the truth like no one else.

**Proud Partner USLAW NETWORK Inc. since 2004.**

Forensic Engineering, Investigation and Analysis

800.782.6851 | SEAlimited.com | Since 1970

SUBMIT AN ASSIGNMENT