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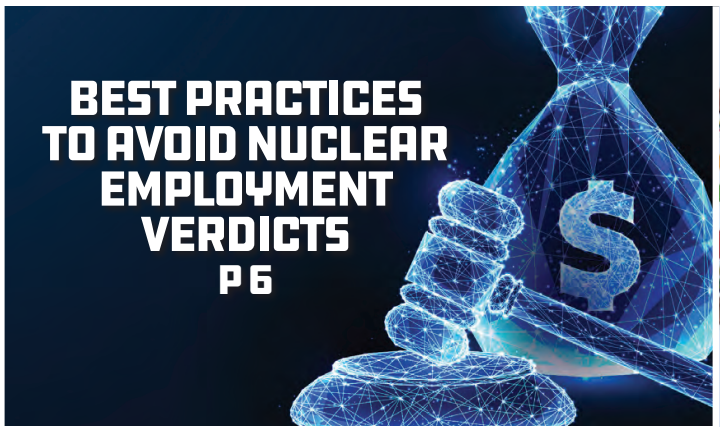

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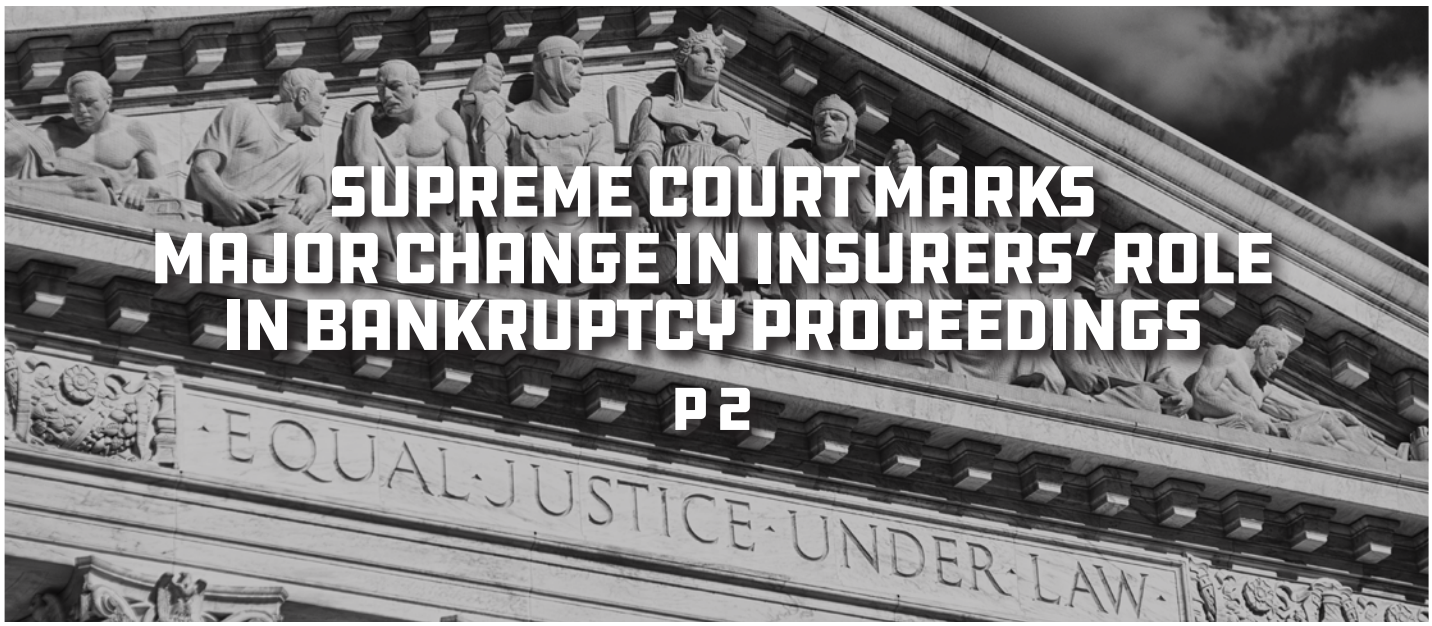

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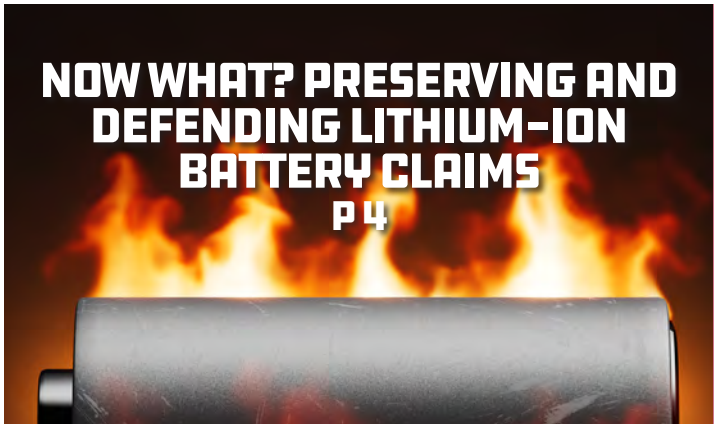

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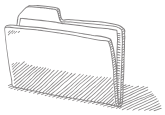

from the CHAIR'S DESK

As we prepare to usher in a new year, we are excited about the opportunities to connect, network and support your legal needs in the year ahead.

We also are in the heart of basketball season; no matter the team you might follow, this is an exciting time of year for anyone who loves basketball. Count me in. As a fan, I carry over my love of teamwork and the "full-court press" to my role as Chair of USLAW NETWORK. We focus on our clients' legal matters, create and communicate plays (i.e. strategies), and stay nimble and focused on our collective goals. Also, when you use one highly knowledgeable and skilled USLAW firm, you gain the power of nearly 60 more teams in the United States and 100 worldwide to support you. We have trusted friendships, jurisdictional knowledge, and vetted members who create reliable referrals to support our clients. Now, that is teamwork!

Our membership covers nearly every practice area and jurisdiction, as seen by the range of content in this issue of USLAW Magazine. You will read about nuclear employment verdicts, the insurers' role in bankruptcy proceedings, lithium-ion battery claims, navigating foreign judgments, judicial analogies, anti-corruption requirements, fail-safe design principles, and so much more. You'll also read about industry recognitions, leadership roles and generous community service.

Please tap into our vast NETWORK and connect with our team. Let's work together to create a strategic game plan to help support your business and legal needs.

On behalf of our entire USLAW NETWORK team, we wish you and your family and friends a happy, healthy and prosperous new year.

Sincerely,

Kenneth B. Wingate
Chair, USLAW NETWORK
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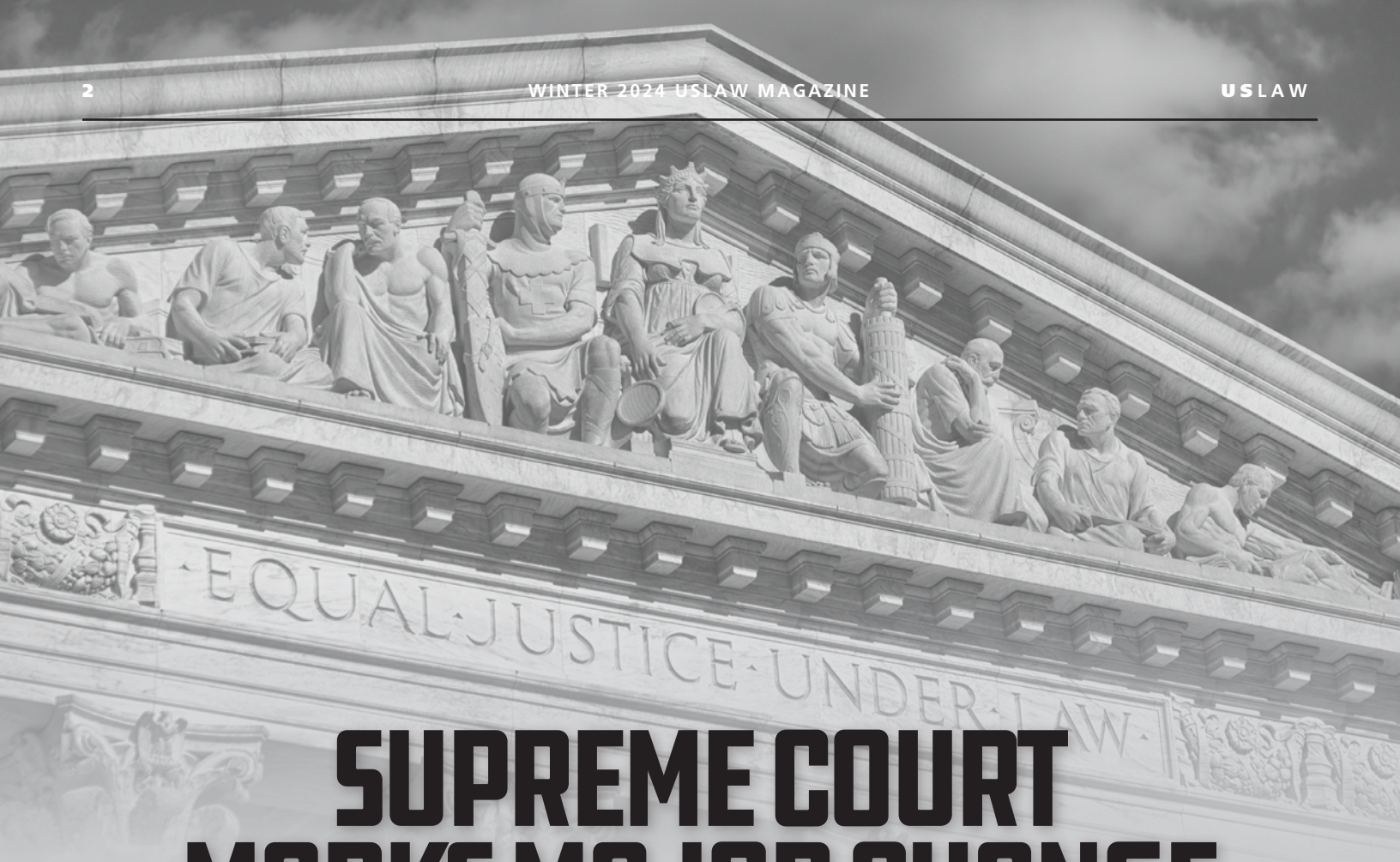

SUPREME COURT MARKS MAJOR CHANGE IN INSURERS' ROLE IN BANKRUPTCY PROCEEDINGS

Insurers May Now Object to Insureds' Chapter 11 Reorganizations

Greg Mann Rivkin Radler LLP

It's not often that the U.S. Supreme Court weighs in on insurance issues. That's because the McCarran-Ferguson Act gives states the primary authority to regulate the business of insurance. So, when the Supreme Court speaks on insurance, even in the context of a bankruptcy plan, it's noteworthy for insurers.

This past term, the U.S. Supreme Court issued a decision in *Truck Ins. Exch. v. Kaiser Gypsum Co.*, No. 22-1079 (U.S. June 6, 2024) exploring the intersection of bankruptcy and insurance issues. In *Truck*, the Supreme Court held that debtors' insurers have a right to be heard in a Chapter 11 bankruptcy proceeding. *Truck* is a reversal from decades of bankruptcy jurisprudence.

In Chapter 11 bankruptcy proceedings, a debtor is generally a business seeking to reorganize while remaining in operation and paying its creditors over time. The debtor

usually proposes a plan for its reorganization, which is then subject to judicial scrutiny and potential objection by any "party in interest" under 11 U.S.C. § 1109(b).

Until recently, that phrase — "party in interest" — was understood to extend to the debtor, the bankruptcy trustee and creditors, but not necessarily a debtor's insurer. An insurer was only considered a "party in interest" if the proposed reorganization plan either increased the insured's obligations or impaired its policy rights.

Insurers often complained about this situation. During normal third-party litigation, insurers and insureds usually cooperate to resolve the insured's liability. But, in bankruptcy proceedings, the insured and third-party claimant would work together, with the insurer watching from the outside. From the insurer's perspective, this creates several potential problems. Even if a reorganization plan did not on its face purport to prejudice insurers, it could do so indirectly. For example, the reorganization plan could be collusive between debtors and creditors, it could create conditions making it more likely that insurers face inflated or fraudulent claims, and it could affect an insurer's right to control the defense or settlement of claims.

These insurer concerns were usually downplayed. Courts were more concerned with not disrupting reorganization proceedings and delaying payments to creditors than protecting the rights of the parties who might actually pay on the claims, the debtor's insurer. Insurers were left with the short end of the stick.

These concerns are pronounced in the asbestos mass tort claims at issue in *Truck*. In 1994, Congress enacted Section 524(g) of the U.S. bankruptcy code. Section 524(g) allows Chapter 11 debtors with substantial asbestos liabilities to fund a trust and channel present and future asbestos claims into that trust. Section 524(g) provides a special procedure for debtors previously engaged in the sale or production of asbestos-containing products to restructure while ensuring those injured through exposure to those products are compensated. In particular, Section 524(g) provides for the formation of a trust that can settle asbestos-related tort claims after the plan has been confirmed by a bankruptcy court. These trusts are funded in whole or in part by the securities of the debtor, which is required to make future payments to the trusts. In return, the debtor receives an injunction barring direct claims against it for asbestos-related injuries.

Before Section 524(g), asbestos bankruptcies were heavily litigated. Since then, many bankruptcy proceedings have ended with negotiated bankruptcy plans, with little or no say from insurers. And because claims were more likely to be settled than litigated, there was little case law about the permissible scope of Section 524(g).

Insurance assets can be a significant factor in a trust's proceeds. This creates issues for insurers who, again, issue policies to the debtor, not the trust. This is exactly the problem that arose in *Truck*.

There, two insureds, Kaiser Gypsum Co. and its parent company, Hanson Permanente Cement, filed for Chapter 11 bankruptcy after facing thousands of asbestos-related lawsuits. As part of the bankruptcy process, Kaiser filed a proposed reorganization plan.

Truck argued that (1) the plan was collusive between the debtors and claimants' representatives because it had fewer fraud-preventing disclosure requirements for insured claims than for uninsured claims, and (2) the plan altered Truck's policy rights by relieving the debtors of their assistance-and-cooperation obligations and barring Truck from raising their conduct in the bankruptcy proceedings as a defense in coverage disputes.

The U.S. Bankruptcy Court for the Western District of North Carolina recommended the plan's confirmation, and the plan was adopted by the U.S. District Court for the Western District of North Carolina. Both found the proposed plan insurance-neutral because it "neither increase[d] Truck's obligations nor impair[ed] its prepetition contractual rights under the Truck policies." Because the plan didn't alter Truck's "quantum of liability," the Bankruptcy Court concluded that the plan was "insurance neutral." As such, Truck Insurance was not a "party in interest" and was precluded from objecting to the reorganization plan.

Truck appealed but was again unsuccessful. The Fourth Circuit affirmed. The Fourth Circuit held that Truck Insurance was not a "party in interest" and lacked a right to object because the reorganization plan was insurance-neutral and did not increase the insured's liability under the policy or impair the insured's policy rights.

The Supreme Court granted certiorari to decide the extent to which an insurer has standing to assert objections in an insured's Chapter 11 bankruptcy proceedings.

The Supreme Court, in an 8-0 opinion by Justice Sotomayor,[1] ruled for the insurer. The Court emphasized that "party in interest" was a broad phrase that includes any entity potentially concerned with or affected by the bankruptcy proceeding. In this case, Truck faced exposure of up to $50,000 per claim for thousands of asbestos-injury claims, and thus, it could certainly be affected by the bankruptcy proceedings.

As the court observed, neither the debtor nor the claimant had an incentive to limit the post-confirmation costs of defending or paying claims. Because the reorganization plan eliminated all of the debtors' ongoing liability and the claimant had no reason to limit their own recovery, the insurer was the only entity with any incentive to identify problems with the plan before it was confirmed.

The Court added that it was immaterial, for a standing analysis, whether the plan was "insurance neutral" or whether Truck would have been entitled to fraud prevention disclosure requirements under its policies absent the bankruptcy trust. Those arguments, Justice Sotomayor reasoned, conflated the merits of the insurer's objections with its standing to raise objections in the first instance. The Court emphasized that when an insurer like Truck has a financial interest in the proceedings, 11 U.S.C. § 1109(b) grants the insurer neither a vote nor veto but a voice in the proceedings.

The opinion could have wide-ranging effects. Both pending and future bankruptcy proceedings will need to account for *Truck*. At first blush, fewer insurers will have to litigate the issue of bankruptcy standing. On the other hand, as Uncle Ben in Spiderman said, with this new insurer power comes new responsibility. If insurers fail to voice concerns early about draft reorganization plans, insureds may use that failure against them in later coverage disputes. Insureds may argue that an insurer's silence was acquiescence to a reorganization plan. Thus, depending on the facts of each situation, insurers should strongly consider acting early to voice their concerns and protect their rights before a reorganization plan is confirmed.

The case is *Truck Ins. Exch. v. Kaiser Gypsum Co.*, No. 22-1079 (U.S. June 6, 2024).

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Greg Mann, a partner at Rivkin Radler LLP, represents and advises some of the nation's leading insurers on a broad range of coverage matters. He can be reached at greg.mann@rivkin.com.

[1] Justice Samuel Alito did not participate in consideration of the case.

NOW WHAT?
PRESERVING AND DEFENDING LITHIUM-ION BATTERY CLAIMS
(The Best Defense Is a Good Offense)

Anne M. Fishbeck Amundsen Davis, LLC
Nicholas A. Rauch Larson King, LLP

In recent years, the transportation and product markets have been flooded with claims involving the combustion of lithium-ion battery products or lithium-ion battery cells. While this technology is not new to the U.S. or foreign product markets, product lines are increasingly transitioning to rechargeable battery-powered technology. Even in the transportation industry, state and federal legislatures are incentivizing personal and commercial vehicle owners and operators to use battery-powered vehicles. The growth in this technology is exponential, with many manufacturers promising "greener" product alternatives within the next decade.

While this technology is rapidly growing, many claims related to the batteries can be catastrophic. For example, some lithium-ion battery products (including electric vehicles) can reach temperatures

above 4,900 degrees Fahrenheit. The extreme temperatures and rapid combustion potential make for a complex defense and preservation list.

With the inclusion of lithium-ion battery-powered products, which can lead to several different property and injury claims, counsel must be prepared to encounter unique preservation issues and overseas supplier difficulties and develop strategies to defend against these claims. This article hopes to identify a few key concepts to best defend claims involving lithium-ion battery combustion and poses key questions to manufacturers.

DETERMINING THE CAUSE OF FAILURE

Lithium-ion batteries have many potential methods of failure as a result of the materials, electrolytes, and gases associated with their core components. Common reasons for failure include, but are not limited to, the ignition of electrolyte liquid inside the device, thermal runaway events where a self-heating combustion leads to an explosion, auto reignition combustions of earlier events, physical damage to the component parts or cells, and temperature exposure. Each individual combustion event has a direct impact on how counsel and manufacturers can identify the cause of the event—what specifically triggered the combustion and which component part was involved. This determination also assists counsel with determining the scope of potential inspections, identities of parts suppliers, and the scope of eventual discovery (depending on the existing evidence on exam).

Identifying the failure method should be performed at the direction of an expert. After all, this technology is relatively new and requires a specific level of expertise to evaluate the potential combustion sources and failures. Investigating agencies may not have the capabilities to do certain testing or investigation, so if defense counsel has an expert able to assist and provide the relevant data, this could lead to a favorable position. Having a voice early in the process and providing evidence to support that the combustion event was not caused by your product may result in a preferable report or investigative outcome. Company knowledge and in-house specialists are also assets since they likely have experience investigating these types of events and can offer expertise and guidance.

WHAT SHOULD BE PRESERVED?

Early investigation is one of your best defenses against potential claims arising from lithium-ion products. During a post-incident investigation, it is imperative to preserve the lithium-ion battery for testing. If there is a combustion event, the battery may be stored in sand or a special container. Depending on the potential size of the claim, enlisting a third party to ensure preservation of the battery may be a good idea.

Lithium-ion batteries do not combust like alkaline batteries. For example, in a thermal runaway event, the cells within a particular lithium ion-based product can overheat and cause a chain reaction, causing the cells to explode and potentially cause fires. Counsel may not be able to dictate what is retained to assist with preservation and defense of a particular claim. However, manufacturers and vehicle owners should take reasonable steps to preserve the battery, scene evidence related to the combustion, last known charging station or outlet, packaging or product materials that accompanied the product, and any video evidence. These can assist the experts with identifying the source of the combustion.

Counsel or a business representative should be present for any post-incident inspections so that procedures are followed and evidence helpful to the defense is collected—something other parties may not consider. Being present for the inspections ensures a company's best interests are protected. Sending notices to all potential interested parties to participate in early testing and inspection may be a way to establish that a company or manufacturer's product was not involved in the incident and allows the opportunity to get ahead of any potential future claim or lawsuit. This is a time where offense can be the best defense.

WHICH SUPPLIERS SHOULD BE INVOLVED?

Many of the lithium-ion battery cell manufacturers are located outside the United States. Identifying and notifying an overseas manufacturer about a potential claim can present a litany of issues. However, other manufacturers may wish to be put on notice of the claim to join in the inspection efforts and potentially assist in defending the claim. Potentially interested and related parties may include: shipping, cargo, or storage companies, which may have stored the batteries before purchase; parts supplier for the cells; manufacturer for the charging station or battery charger; designers of any safety, cooling, or fire suppression features associated with the battery; and third-party testing companies, which may have performed tests on the product before distribution.

REVIEW YOUR INSURANCE POLICIES AND CONTRACTS

It is important to take the steps necessary to protect companies and their products. Businesses should review the insurance coverage in place as it is important to determine whether they will be protected if a lithium-ion battery fails. For example, a motor carrier that hauls lithium-ion batteries—or products containing them—should determine whether there is an exception for hauling this type of cargo or whether additional coverage is needed. Other considerations regarding potential claims should also be kept in mind. These include: Is there coverage if an electric vehicle's lithium-ion battery fails and causes property damage? What if there is a motor vehicle accident with an electric vehicle whose lithium-ion battery combusted?

Contracts should also be reviewed for burden-shifting provisions or indemnification requirements to see who holds responsibility for a lithium-ion battery failure—whether it is a claim for product liability, personal injuries from a motor vehicle accident, or property damage. This also goes for business relationships and determining when it makes sense to push back on liability or agreeing to accept the shifting of risk.

Lithium-ion battery claims present a challenging world of defense strategy and preservation. With the right preservation, expert retention, inspection, and review, defense counsel and manufacturers can ensure that they possess the information necessary to build a strong defense to both property and injury claims.

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Best Practices to Avoid Nuclear Employment Verdicts

Melisa C. Zwilling and **Alison H. Sausaman** Carr Allison

There has been a significant increase in nuclear verdicts across all industries post-COVID, but some of the most staggering awards have been in employment lawsuits. This can largely be attributed to the same factors driving nuclear verdicts in the general liability context—distrust of corporations, prolific advertising by plaintiffs' attorneys resulting in juror desensitization to large monetary awards, and young jurors. There is also an apparent desire to "send a message" or punish the corporate defendant, especially when there is suspected malfeasance or even perceived inaction and tolerance of "bad behavior." In the employment context, the confluence of these factors is further compounded by the availability of punitive damages, as evidenced by numerous recent discrimination and retaliation verdicts with nine-figure punitive damages awards.

Though many of the recent nuclear employment verdicts come out of California, they are certainly not limited to that state. In July 2024, a North Carolina jury awarded an employee with bladder and colon issues $22 million after his employer refused to let him continue to work from home post-pandemic. In April 2024, a Pennsylvania jury awarded $20.5 million to a woman who had allegedly been harassed by others using racial slurs against her. In December 2023, a Washington state jury awarded $16 million to university officers who claimed to have suffered discrimination, including racist remarks. A deaf truck driver in Nebraska, who was not hired for a driving job because he would not have been able to look away from the road to communicate with his trainer, was awarded $36 million for claimed Americans with Disabilities Act (ADA) violations.

Some of the most staggering recent employment verdicts have come from the South. In November 2022, a Texas jury awarded a saleswoman $366 million after finding she was fired for making complaints about racial discrimination. Also in November 2022, a Tennessee jury awarded $365 million to a plaintiff who was fired after she complained about discrimination. Importantly, the jury found in favor of the defendant on the underlying discrimination claim but found in favor of the plaintiff on the retaliation claim. These are just a few examples of recent employment verdicts that very clearly demonstrate the need for employers to be proactive in trying to prevent situations that could lead to these shockingly high verdicts.

Below are some actions employers can take to help reduce the likelihood of a nuclear employment verdict.

1. Employee Handbooks

Employers should ensure their employee handbooks are up to date and that they have adequate policies in place. All forms of discrimination, harassment and retaliation should be unequivocally prohibited. Employees should be given instructions on how, to whom and when complaints of discrimination or harassment should be reported. Employers should identify at least three individuals in management who will receive those complaints and make sure they know what to do and say in response. The handbook should also let employees know that all complaints will be taken very seriously and appropriate action will be taken.

It is equally important to enforce the

policies in handbooks and apply them consistently and uniformly across the board. Documentation regarding the enforcement of policies is often the best defense an employer has against employment-related lawsuits. As such, the documentation should clearly set out the facts, describe the steps of the investigation, set forth the investigation findings and discuss any discipline that was imposed if a policy violation was found. Finally, it is vital that employers conduct a comprehensive review of their handbook language - at least annually - and revise when necessary to reflect changes in the law. Employers should ensure that they receive and maintain signed acknowledgments of receipt and understanding of updated handbooks from all employees. Within the past year, multiple employment-related laws were passed, including the Pregnant Workers' Fairness Act (PWFA) and the PUMP Act. Employers must include policies concerning those new laws in their handbooks. There has also been an uptick in the number of cases filed under the ADA and Family and Medical Leave Act (FMLA). Handbooks should clearly explain how leave or accommodations should be requested. Outdated provisions, such as prohibitions on employees discussing their salary or complaining about the terms and conditions of the workplace, should be removed.

2. Arbitration Agreements

Depending on the jurisdiction, employers should consider requiring arbitration agreements and waivers of jury trials. While such agreements would not apply to sexual harassment claims, they would limit the availability of jury trials for other employment claims, thereby insulating employers from nuclear jury verdicts.

3. Training

Employers should consider training both employees and managers separately to reduce harassment and discrimination claims. The best practice is often to bring in outside counsel or human resources specialists to provide the training.

Employees should be trained on what is appropriate workplace behavior. They should also be informed about the discrimination and harassment policies, reporting policies, and disciplinary policies. Documentation of their attendance at the training should be made a part of employees' personnel files.

Managers and supervisors also need to be trained in recognizing problematic behavior and responding appropriately to complaints about discrimination or harassment. They should be given guidance to help them understand that a casual comment from a production employee that he cannot move as fast as he could when he was younger and before he had knee surgery could provide the basis for a claim of age or disability discrimination. A comment from a Black female employee that her supervisor treats her worse than her coworkers, who are all white males, could provide the basis for a sex and race discrimination case. A comment from an employee about another employee following her around and commenting on her looks could be a sexual harassment claim in the making. Supervisors and managers need to be able to recognize potential claims and respond appropriately. They should refrain from responding with comments encouraging employees to just work harder, try to get along or not pay attention to someone making inappropriate comments. Managers should also be instructed to treat all employees in a fair and consistent manner.

Keep in mind that, in many cases, the underlying "bad behavior" is not nearly as problematic as the employer's response (or lack thereof) to the bad behavior. One of the common issues with some of the recent nuclear verdicts was employers failing to investigate complaints or being complacent and allowing an offensive culture to persist.

4. Social Media and Texting

Employers should think hard about letting employees access and post on social media or send personal, non-work-related text messages from company-owned equipment. Employers can be held liable for actions of employees who use company equipment to send harassing, discriminatory or otherwise unlawful messages to others. Employers should also notify employees that, while the employer respects an employee's right to privacy outside of the workplace, if an employee uses social media or any public platform to harass, discriminate, or retaliate against a coworker, that could result in the termination of employment.

5. Investigations

Prompt investigation of all employee complaints is another important way to avoid nuclear employment verdicts. All complaints should be taken seriously and investigated thoroughly. Interviews should be conducted, and witness statements should be taken by the appropriate officials. In the case of serious accusations, employers should consider placing the alleged bad actors on paid leave pending the results of the investigation.

A common theme in many of the recent nuclear employment verdicts is the claim that the employer did not investigate complaints thoroughly or stuck its head in the sand. Any perception of willful ignorance or blind tolerance of corporate malfeasance poses a potential threat of angering the jury, which can culminate in the jury wanting to send a message by way of a nuclear verdict.

6. Document Just Enough

As important as handbooks, policies, training, uniform implementation of policies, and thorough investigations are, they hold little evidentiary weight if there is no documentary proof of such events. One important way to avoid a nuclear employment verdict, or ideally, to avoid employment lawsuits entirely, is to document important events carefully. Employers need to exercise great caution in not only crafting thoughtful policies and implementing them uniformly but also maintaining documents to show every step of the process: receipt and acknowledgment of the company handbook and policies, receipt of the job description and offer letter, employment agreement (if applicable), training, disciplinary efforts (including documentation memorializing any verbal counseling), and investigations.

Along with the general recommendation to document well comes a word of caution. Employers should resist the urge to ask all employees who were witnesses to potentially inappropriate workplace behavior to draft a written statement before knowing what those employees will say. Sometimes, co-worker statements turn out to be great evidence in a plaintiff's case.

CONCLUSION

The best defense is a good offense. While implementing the above steps will not guarantee an employer will never be sued, the odds of such lawsuits should decrease. If a lawsuit is filed, an employer who has taken all of these steps is likely to have a much more favorable outcome.

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Balancing Risks in European Distribution Agreements

Sébastien Popijn Delsol Avocats

As U.S. companies seek to expand their presence on the global stage, Europe stands out as a region teeming with opportunities. Among European nations, Belgium has emerged as a prominent entry point for U.S. businesses. Its central location, robust economy, widespread use of English and diverse linguistic communities create an attractive landscape for expansion. As a result, many significant brands have already established franchise operations in Belgium and throughout Europe.

For U.S. companies aiming to expand into the European Union (EU), appointing a distributor or agent is a practical and common approach. Franchising is also gaining traction as a preferred method for expansion. Both strategies tend to be more cost-effective than establishing a business presence in Europe and hiring full-time employees. Furthermore, franchisees, distributors, and agents possess a deeper understanding of local markets and business practices, making them valuable partners for foreign businesses.

This contribution will specifically explore the rules and regulations applicable in Belgium regarding distribution agreements, agency contracts, and franchising.

COMMERCIAL AGENT VS DISTRIBUTOR VS FRANCHISEE

The key distinction between a distributor and an agent lies in their respective roles: a distributor buys and sells products in its own name and for its own account whereas a commercial agent is appointed to negotiate and execute agreements in the name and for the account of the principal and does not bear any financial or commercial risk itself. In Europe commercial agents are protected at a pan-European level by the European Agency Directive (EC/86/653). This Directive has been implemented in Belgium where the local legislation provides various forms of legal protection to commercial agents, including the right, upon termination of the agency agreement, to required minimum notice and the right, upon termination or expiry of the agreement, to a goodwill indemnity of an amount up to the average annual commission or fee earned by the agent over the last five years preceding the expiry or termination of the agreement.

By contrast, there is no equivalent European Directive for distributor agree-

ments. The laws regulating distribution agreements vary from country to country. Some countries offer protection similar to that granted to commercial agents via mandatory laws, while others just refer to general contract law principles. To add to the complexity, distribution and agency agreements can be re-characterized as agency or distribution contracts if, de facto, the distributor or agent acts as a commercial agent or as a distributor.

Franchising is a form of distribution that has been on the rise in Europe in recent years. The franchisee is granted the right to use a commercial formula or production system to sell products or services. This commercial formula or production system may include a common brand name, a common trade name, transfer of know-how or commercial or technical assistance. In exchange for the use of the formula, the franchisee pays a fee to the franchisor. The franchisee works in its own name and for its own account, and there is no employer-employee relationship between the franchisor and the franchisee.

DISTRIBUTION AGREEMENT

A distribution agreement serves to set out the framework of the commercial relationship between a principal supplier or manufacturer and a distributor. This document grants the distributor the right to market and sell the principal's products within a specified territory. It outlines the responsibilities, rights, and obligations of both parties.

PRE-DISTRIBUTION AGREEMENT PHASE

Before entering into a distribution agreement, comprehensive due diligence should be conducted on potential distributors. This includes but is not limited to a Financial Health Analysis: reviewing financial statements, credit ratings, and past performance metrics; assessing the Market Position: investigating the distributor's position within their industry, including market share and competitive advantages; and checking Reputation and Track Record: checking what is the distributor's history of reliability and whether they have had any past bankruptcies or financial difficulties.

DISTRIBUTION AGREEMENT ESSENTIALS

While there are no legal obligations to use a written agreement for distribution and agency contracts – they can be concluded orally – it is highly advisable to have a signed written agreement outlining the duties, rights, and obligations of the parties.

NON-COMPETE CLAUSE

Non-compete clauses are valid subject to EU competition law. When both parties hold market shares below 30%, non-compete agreements are valid as long as they are geographically restricted, proportionate to the parties' interests, and do not exceed five years. Post-contractual non-compete provisions cannot exceed one year in duration.

EXCLUSIVITY

The distribution agreement should indicate whether the contract is exclusive or non-exclusive. In an exclusive distribution agreement, it is agreed that the distributor is the only party with the right to sell the products in a specified territory. Many distributors want exclusivity as this means less competition from other distributors and higher prices for the products.

BELGIAN EXCLUSIVE DISTRIBUTION LAW

Contrary to many other European countries, Belgium has specific legislation protecting distributors in the event of termination of their agreement by the principal. This legislation is mandatory law, and parties are not free to exclude the application of the statutory provisions in their contract.

Unless the distributor has committed a serious breach of contract, it may claim compensation in the event of a unilateral termination of the agreement by the principal. Depending on the circumstances, including notably the overall length of the commercial relationship and the amount of the distributor's total business represented by the distribution agreement, this compensation can amount to a goodwill indemnity of up to 18 months of gross profit, with a required notice period that, in extreme cases, can extend up to 36 months. Additionally, severance costs relating to employee layoffs resulting from the loss of the distribution agreement may be recovered by the distributor.

Given the extent of mandatory protection afforded to distributors in Belgium, U.S. companies, before entering into any distribution relationship involving Belgium, should take advice on the possibility of using a choice of law and/or arbitration clauses in order to diminish the effect of such protection.

FRANCHISE

In Belgium, apart from legislation laying out the requirements as to pre-contractual information to be provided to the future franchisee, there is currently no specific law governing franchise agreements. Due to the significant economic impact of franchising, the European Franchise Federation has created a self-regulatory code for the sector. This code offers a set of guidelines aimed at ensuring stability within franchise networks while protecting the interests of both franchisors and franchisees. This framework is known as the European Code of Ethics for Franchising.

Both franchisors and franchisees need to be aware of local legal frameworks, including regulations concerning the pre-contractual phase (such as the duty to inform), legislation on unfair terms and business practices, as well as laws governing Exclusive Sales Concessions, Commercial Lease Law, Trademark Law, the Law on Market Practices and Consumer Protection, and, last but not least, EU Competition Regulation.

CONCLUSION

Distribution agreements, agency contracts and franchise agreements are essential tools for businesses expanding into international markets. These contracts define the relationship between the supplier (manufacturer or wholesaler) and the distributor, who purchases goods to sell them independently in a specific territory, between the principal and the commercial agent, who acts on behalf of the principal, or between the franchisor and franchisee. These agreements are typically governed by the laws of the country where they are performed, but this can lead to complications when dealing with cross-border transactions in the EU. Each country may have its own mandatory legal protection that must be taken into account when drafting and enforcing such agreements.

As U.S. companies venture into the Belgian market and beyond, understanding the distinct roles and regulations governing distribution agreements, agency contracts, and franchising will be key to successfully navigating the intricacies of the European business landscape. By leveraging local partners who are familiar with these regulations, U.S. businesses can enhance their chances of success in the European market.

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WHERE IS THE GOVERNMENT WHEN YOU NEED THEM?

John C. Krawczyk Fee, Smith & Sharp, LLP.

Federal and state constitutions contemplate and honor the doctrine of sovereign immunity, which broadly states that a governmental entity cannot be sued in federal and/or state court without its consent. Notably, in its own state court, a state can invoke immunity even when sued under an otherwise valid federal law. Additionally, the state has full authority to define the scope of its immunity from suits based on its own state law and statutes. The purpose of this doctrine is to protect taxpayer-funded government entities from the time and resources caused by lawsuits and prevent governments from being exploited by fraudulent or frivolous lawsuits that otherwise may arise because of the perceived "deep pockets" of various government agencies.

Thus, these protections are strong and broadly construed by the legislature in almost all instances. For example, immunity under these statutes is jurisdictional, meaning that an entity asserting immunity under one of these provisions may file a pleading with the court arguing that the court has no subject matter jurisdiction over the claim itself, and, as a result, cannot even hear the plaintiff's claims.

For the most part, identifying whether state immunity might be an issue in a case involving your client is simple: ask yourself, is my client a branch, department, commission or authority of the government? If yes, move forward and avail yourself of whatever protections your particular state statute provides. But what if that identification of whether immunity or its protections might apply to your client is more difficult? What if, as a practicing attorney who represents an entity seemingly unaffiliated with state or local government, you fail to identify the fact that your state statute permits your client additional protections and rights under the law?

This is an issue that impacts attorneys dealing with the Texas state statute, the Texas Tort Claims Act ("TTCA"), but may also impact other attorneys in separate jurisdictions as well. Remarkably, many attorneys and judges are unfamiliar with the application of the TTCA and its benefits to qualified governmental entities. I have seen initial pleadings where the plaintiff's counsel is unaware that the case has no value due to the TTCA. Conversely, I have seen responsive pleadings that do not assert the protection of the TTCA where it may be applicable.

So, as counsel with a new client, how do you identify whether this issue is relevant to your case and whether you should assert the protections of the TTCA (or a similar statute in another jurisdiction)? The first step in any analysis of the application of the doctrine is: does my client qualify for immunity or other protections under the TTCA?

DO YOU QUALIFY?

In Texas, the issue of immunity and whether it applies to a civil lawsuit is largely governed by the TTCA. The TTCA was passed in 1969 to define who benefits from the immunity granted government agencies from civil litigation. The statute also seeks to define under what circumstances a governmental entity may waive their immunity, such that a private citizen or corporation may sue them in state court. Most often, this doctrine is utilized in cases of officer assault or misconduct; however, it can play a more important role in a litigator's life depending on the client. The scope of the waiver and the benefits afforded to a governmental entity are specifically defined by the statute. In particular, the TTCA defines qualified entities as "governmental units," which also include non-profit emergency services organizations as well as public hospitals. That section specifically states that immunity is only waived "to the extent of liability created by this chapter."

Thus, unless under a specifically enumerated reason outlined in the TTCA, a person may not sue a governmental unit for civil damages in state court. Interestingly, the list of covered entities expands more than simple government offices, such as the police department or improvement commissions. In addition, seemingly non-governmental entities that perform

EXAMINING SOVEREIGN IMMUNITY STATUTES AND THE TEXAS TORT CLAIMS ACT IN CIVIL PRACTICE

government functions, such as some EMS providers, also qualify if they are operated by their members and exempt from state taxes. By mere virtue of operating in a typically governmental space (providing emergency care/transportation), these entities may be provided similar protections.

Additionally, public hospitals may qualify as long as they are a hospital district given authority by the municipality under the Texas Constitution. For example, if you represented Ward Memorial Hospital, you would not, necessarily from its name, identify it as a public hospital or know that it is publicly funded by the municipality. Similarly, you might not also know that this hospital is afforded the protection of governmental units under the statute. However, if you did fail to recognize this affiliation, you would prevent your client from being afforded the multiple protections that the statute provides.

WHAT PROTECTIONS EXIST?

On the one hand, we have identified that, in certain circumstances, total immunity from civil suits can exist. However, the TTCA also provides other protections where immunity does not exist, such as caps to damages, immediate elections as to whether to sue the individual or the entity (not both) and notice deadlines. The main shield of the TTCA is a cap on damages in the amount of $100,000, which acts as an offset to any verdict against a qualifying entity. In this scenario, the Plaintiff could present an amazing claim against the qualifying governmental unit and obtain a verdict in the amount of $1,000,000. Unfortunately for the litigant, the court would be statutorily obligated to offset the $900,000 in excess of the cap and enter a fashioned award of $100,000 in damages. A plaintiff unaware of these protections could seriously overvalue their case and set unreasonable expectations for their client.

Similarly, many plaintiffs seek to sue both the entity and its employees under a theory of vicarious liability. The TTCA does not allow this. Rather, a plaintiff must, at the time of pleading, elect whether they are suing the entity for the acts of its employees or the individual for its independent actions outside the scope of their employment (not both). This election must be made at the time of pleading. If you sue the entity, you can no longer assert a claim later against the employee for any conduct outside the scope of their employment. If you sue the individual, you can no longer sue the entity under a theory of vicarious liability.

Lastly, a claimant must provide notice to a governmental unit within 180 days of the date of the alleged occurrence, giving rise to the claim, or the right to suit may be waived. That notice must also describe the suit with particularity, including (1) the damage, (2) the time and place of the incident, and (3) a description of the incident. The proper compliance with these notice provisions is jurisdictional, and thus could prevent a court from even hearing your claims if not followed.

These secondary protections are significant and important to identify and address at the very beginning of a litigation. It is extremely important that an attorney reduces the litigation costs of their client by identifying these issues at the outset of litigation or even beforehand.

SO, WHAT DO YOU DO?

If you are representing a new client in Texas, make sure that you familiarize yourself with the TTCA and whether your client might be afforded the protections therein. Your clients will thank you, and the potential cost savings can be significant.

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BUT IS IT A JUDGMENT?

Navigating Foreign Judgment Recognition Jurisprudence

Jordan Cohen Wicker Smith

Working in a global city, we regularly encounter cross border issues. While certain fact patterns tend to repeat themselves (e.g., a payment dispute involving an ex-U.S. supplier or customer), occasionally we get the chance to work on something "new." We don't mean to suggest that enforcement of a foreign judgment is a new or novel concept. But this recent matter arising like a phoenix from the ashes, presented a unique opportunity to dig deep into foreign judgment recognition jurisprudence. And in doing so we were surprised to learn how few judicial opinions have been published evaluating this foundational issue: what is a final judgment under the Model Act?

The facts: your company is headquartered in the U.S. but certain aspects of your business operations cross country lines. In this case, you are a distributor based in Miami. You identify goods manufactured in Brazil and arrange to have them shipped in containers to your customer in Puerto Rico, but instead, the containers are delivered to a port in Mexico, where they're stolen. You ultimately track down the successor in interest to the shipping company, file a lawsuit in Louisiana, the shipping company files for bankruptcy, and you obtain a partial recovery through the bankruptcy estate.

Meanwhile, you come to learn that the supplier had filed a lawsuit against you in Brazil that was served on your former registered agent in Brazil (who may or may not have been on the take). Did I mention that he was your former registered agent in Brazil? He does not give you notice of the lawsuit. No defense is entered on your behalf. In 2004, on the supplier's motion, the Court enters an order "converting" the lawsuit to an enforcement action. You continue to go about your business.

Seventeen years later, you receive a notice. A petition has been filed in your local trial court seeking to domesticate a "Judgment" that had been entered against you in Brazil. The petition attaches two documents: (1) the 2004 Order and (2) a recent Brazilian notice from the clerk of court stating that you are indebted in the amount that had been sought in the Brazilian lawsuit, plus attorney's fees, costs, a 10% "penalty," and 17 years of interest. According to this clerk's notice, you are indebted for millions

of dollars. The petition seeks enforcement under the Uniform Enforcement of Foreign Judgments Act ("UEFJA") as enacted by the Florida legislature, Fla. Stat. §§ 55.601 – 55.607. What now?

THE MODEL ACT

At common law, a party seeking to enforce a foreign judgment was to bring an independent action on the judgment. For judgments of courts in foreign nations, this would typically be styled as a claim for the foreign judgment to be recognized under the doctrine of comity. Comity was equal parts flexible and unpredictable. The UEFJA sought to provide a more objective and predictable standard for the enforcement of foreign judgments.

The UEFJA has been enacted by 48 states, the District of Columbia, the Northern Mariana Islands, and the U.S. Virgin Islands. Per the Florida Supreme Court, the Recognition Act "replaced common law principles of comity relating to the recognition of [out of country] foreign judgments."[1] *Nadd v. Le Credit Lyonnais, S.A.,* 804 So. 2d 1226 (Fla. 2001). However, comity could still be employed to seek the recognition of certain non-final orders of foreign courts. *See Amezcua v. Cortez,* 314 So. 3d 666 (Fla. 3d DCA 2021).

The procedures for recognition of a foreign judgment are straightforward and intended to provide for a streamlined process.[2] First, the petitioner must file the foreign judgment with the clerk of court (of a court with *in personam* jurisdiction over the defendant) and mail it to the defendant. Fla. Stat. § 55.604(1)(a),(b). The defendant then has 30 days to file a notice of objection specifying the grounds for "nonrecognition" or "nonenforceability" under the Act. Fla. Stat. § 55.604(2). The petitioner has the initial burden of providing that the judgment that was filed is actually an "out-of-country foreign judgment" under the Act. If the petitioner meets its burden, then the defendant must prove a ground for non-recognition.

An "out-of-country foreign judgment" is "any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine, or other penalty." Fla. Stat. § 55.602(2). The judgment must be "final and conclusive and enforceable where rendered." Fla. Stat. § 55.603. A pending appeal in the foreign country does not stay or delay recognition proceedings. Id.

CHALLENGES ARE LIMITED

Limited grounds exist for nonrecognition. Mandatory nonrecognition is restricted to three scenarios: (1) the foreign country does not have impartial tribunals or procedures compatible with due process, (2) the court lacks personal jurisdiction, or (3) the court lacks subject matter jurisdiction. Fla. Stat. § 55.605(1)(a)-(c). That's all. Beyond that, a defendant can seek *permissive* nonrecognition, but again, only based on certain, limited scenarios. *See* Fla. Stat. § 55.605(2)(a)-(j). These include, *inter alia*, that the judgment was obtained by fraud, that the claim on which the judgment was based is repugnant to the forum state's public policy, or that the judgment conflicts with another final and conclusive order. Fla. Stat. § 55.605(2)(b),(c),(d). These are permissive bases for nonrecognition. So, a trial court correctly applying the model act can enforce an out-of-country judgment that is based on a claim. violates public policy, expressly conflicts with another final order, and was procured by fraud. What's a defendant to do?

SHOW ME THE JUDGMENT

In our case, we asserted that the petitioner could not meet its burden of proof to establish that the 2004 Order and the clerk's notice constituted an out-of-country foreign judgment. Both the trial court and the intermediate appellate court agreed. *F.V. de Araujo S.A. Madeira v. Dantzler Lumber,* –So. 3d –, 2024 WL 3351556 (Fla. 3rd DCA 2024).

Petitioner: but I have an order from a Brazilian court that says I win, and a notice from the clerk's office setting forth exactly how much money you owe me. How is that not a judgment?

It's not a judgment or enforceable because:

- The 2004 Order did not award a specific sum of money on its face. With limited exceptions, the specific sum of money must be set forth on the face of the judgment, without reference to any other documents. *Compare National Aluminum Co., Ltd. V.. Peak Chemical Corp., Inc.*, 132 F. Supp. 3d 990 (N.D. Ill. 2015) (enforcing an order from the High Court of India that affirmed a 22-page arbitration award that awarded specific damages and interest calculations) with N*icor Int'l Corp. v. El Paso Corp.*, 292 F. Supp. 2d 1357 (S.D. Fla. 2003) (declining enforcement under Florida Act); *Bianchi v. Savino Del Bene Int'l Freight Forwarders, Inc.,* 770 N.E. 2d 684 (Ill. App. 2002) (declining enforcement under Illinois Act).
- The 2004 Order contained a reference to a "10% penalty," but a "penalty" is not enforceable as a final judgment. *See* Fla. Stat. § 55.602(2).
- The 2004 Order could not be enforced through comity either, as comity had been preempted by the Act for final judgments, and the Florida court could not enforce this order "converting" the Brazilian lawsuit from a monitory (collection) action to an enforcement action[3] on an interlocutory basis. *Cf. Amezcua,* 314 So. 3d at 669 (enforcing injunction entered in Mexico prohibiting the transfer of a condominium unit in Florida).
- The clerk's notice purported to concern a judgment, but not be a judgment itself. Such a document, like a letter rogatory, is not enforceable as a judgment. *See, e.g., Osario v. Harza Engineering Co.*, 890 F. Supp. 750 (N.D. Ill. 1995) (applying Illinios law).

LESSONS LEARNED

A copy of a petition received in the mail purporting to enforce a foreign judgment may not look concerning at first glance. It is. Service standards are low, deadlines are firm and move quickly, and defenses are limited. You didn't know that the underlying lawsuit even existed. And it appears to have been procured through fraud. Great, now you have the right to ask the court to exercise its discretion in your favor, and elect not to recognize the judgment.

But all hope is not lost. Before you start to lose sleep, ask yourself (or your lawyer): is this actually, technically a judgment? You'll never know if you don't ask the question.

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1 While technically "foreign" judgments, judgments entered in sister states are entitled to full faith and credit per the U.S. constitution.

2 The UEFJA as enacted in Florida is discussed for exemplar purposes. As this concerns a model act, court will regularly look to opinions entered in other states applying the model act as enacted in that state for guidance. While case citations have been limited for this article, we also briefed and relied on model act opinions of courts sitting in Massachusetts, Delaware, and the District of Columbia.

3 Directly analogous procedures do not exist in Florida (or other states, to our knowledge). While we never had to litigate *that* issue to conclusion as we prevailed on our threshold argument, according to our counsel in Brazil a "monitory action" is an expedited process whereby a debt can be liquidated for enforcement against assets located in Brazil.

Smith v. Spizzirri: ROADBLOCK TO EXPEDITING ARBITRATION OR PATH TO A SOLUTION?

Scott Mason Plauché Maselli Parkerson LLP

Arbitration has long been considered a faster, more cost-effective alternative to litigation. There is data to support this impression. According to a 2017 study by economic research firm Micronomics, on average arbitration takes slightly less than one year to resolve. By contrast, litigation takes about two years to resolve through trial, and almost three years to resolve through appeal. Litigation delays can impose substantial costs on businesses, including increased attorney fees and costs, and prolonged lack of access to disputed funds.

If arbitrations were consistently commenced by plaintiffs filing arbitration demands, arbitration would be consistently faster than litigation. Unfortunately, that is not always the case. Plaintiffs frequently commence arbitrable claims by filing their claims in court. If defendants want to force those claims to arbitration, they typically move to stay the cases pending arbitration or move to dismiss the cases.

When defendants move to stay cases pending arbitration, the faster pace of arbitration can be undermined if the plaintiffs do not promptly pursue their claims in arbitration. It can be easy for plaintiffs to delay because sometimes courts do not set deadlines by which plaintiffs must initiate arbitration. With stayed cases pending, plaintiffs typically need not worry about statutes of limitations. Plaintiffs are often not motivated to pursue arbitrations promptly, most likely due to the higher filing fees or the perception that arbitration

can be a less favorable forum for plaintiffs.

If excessive delay becomes a problem, defendants can usually ask the staying court to dismiss plaintiffs' claims. Courts have regularly dismissed such cases. Typically, courts have justified dismissals based on the rules governing failure to prosecute and the courts' inherent power to control their dockets. Such dismissals have been known to take place after months or even years of delays by plaintiffs.

A recent decision by the Supreme Court of the United States, *Smith v. Spizzirri*, 601 U.S. 472 (2024), seemingly calls into question whether defendants can still seek dismissal when plaintiffs attempt to litigate claims subject to arbitration, at least when the Federal Arbitration Act (FAA) applies. In *Smith*, several employees of an on-demand delivery service sued their employer in state court, alleging violations of various employment laws. The employer removed the case to federal court and then moved to dismiss the claims. The federal district court dismissed the claims, and the court of appeal affirmed. The plaintiffs then sought relief from the Supreme Court, which granted their writ application.

The Supreme Court reversed the decision of the court of appeal and remanded the case for further proceedings. In its decision, the Court held that in cases governed by the FAA, if a party requests a stay, the case must be stayed rather than dismissed. The Court based its decision on the plain text of the FAA. The relevant provision of the FAA, 9 U.S.C. § 3, states in pertinent part that when "any issue" in a suit is subject to arbitration, the court "shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement."

The relevant language of the FAA is straightforward, and the *Smith* court disposed of the issue in a brief, unanimous opinion. However, this seemingly simple issue called for the Court's attention because a circuit split had developed regarding the interpretation of the relevant language of the FAA. Previously, several courts of appeal had determined that "shall" meant precisely what it said, and that courts had no alternative but to stay claims that were subject to arbitration. However, other courts had found that they could still dismiss such claims. Those courts recognized the mandatory nature of the term "shall" in the FAA. However, they focused on the "any issue" language and found that if "all issues" in the case are subject to arbitration, then the case can be dismissed.

Notably, neither Smith nor the cases at issue in the circuit split involved the situation discussed herein, in which a court had previously stayed a case that was subject to arbitration, but a plaintiff delayed proceeding with arbitration. Under those circumstances, can a court still dismiss a plaintiff's claim if it is governed by the FAA? Based on language in Smith and one post-*Smith* case involving that situation, the answer appears to be yes.

At the conclusion of its opinion, the *Smith* Court noted that courts retain supervisory roles for cases in arbitration. For example, courts have powers to appoint arbitrators, enforce subpoenas, and enforce arbitration awards. The Court also noted that district courts can adopt practices to minimize any administrative burdens caused by the stays that the FAA requires.

Since *Smith*, at least one district court has found that such practices can include the dismissal of the claims of a plaintiff who delays proceeding with arbitration after a stay. The case in question, *Yanez v. Dish Network*, 21-cv-00129 (W.D. Tex. 2024), involved a plaintiff's claim against his employer, which was originally filed in October 2020. In April 2021, the Court granted a stay pending arbitration. Starting in October 2021, the Court began issuing orders requiring status reports.

According to the status reports, the arbitration was filed in November 2021, and it was originally set for a hearing in January 2023. Several months after the scheduled hearing date, the parties had not submitted a new status report, which prompted the Court to issue an order requiring another report. In the next status report, the parties advised that the hearing had been continued, an arbitrator had been recused, and the parties were briefing an objection to a new arbitrator. In response, the Court issued an order requiring a report every 90 days, failing which the Court would dismiss the action for failure to prosecute. When the parties failed to file a status report by one of the 90-day deadlines, the Court dismissed the claim. Evidently, the Court was frustrated with the pace of the arbitration, as the order stated that "the parties' leash of leniency has now run out."

After the dismissal, the plaintiff moved for a new trial or, alternatively, to amend the judgment. At the time, the *Smith* opinion had not yet been issued. In a brief in support of the motion, the plaintiff invoked *Smith* and asked that the case be reinstated pending the decision. The Court waited until the *Smith* opinion was issued before rendering its decision. However, the Court found that it could dismiss the plaintiff's claims, notwithstanding *Smith*.

To support its decision, the Court relied on two key passages in the *Smith* opinion. First, the Court cited the language in *Smith* regarding district courts' powers to adopt practices to minimize any administrative burden caused by arbitration stays. The Court noted that its requirement of periodic status reports, and dismissal for failure to comply with its deadline, were examples of such practices. Second, the Court referred to a footnote in *Smith* which stated that its decision would not preclude dismissal when there is a "separate reason to dismiss, unrelated to the fact that an issue in the case is subject to arbitration." The Court found that a valid "separate reason" for dismissal included the parties' failure to comply with the Court's deadlines and prosecute the arbitration. The *Yanez* ruling is currently on appeal.

Prior to *Smith*, courts consistently dismissed claims for failure to prosecute if plaintiffs failed to proceed with arbitration following the stay of a case. The *Yanez* court found that *Smith* did not preclude that practice. Although arbitration stays are now initially required in cases governed by the FAA, as things currently stand, nothing in *Smith* precludes dismissal if a plaintiff fails to make reasonable efforts to expedite arbitration following a stay.

Arbitration's utility as a faster alternative to litigation is thwarted if plaintiffs inordinately delay arbitration while cases remain stayed. With its mandate that cases referred to arbitration must be stayed rather than dismissed, the *Smith* Court seemingly created an opportunity for plaintiffs to avoid dismissals, even if they delay after a case is stayed. However, courts still retain the power to expedite matters on their dockets, which includes dismissing actions for failure to prosecute or comply with court orders. The *Smith* Court expressly recognized those powers with its comment about minimizing administrative burdens. Therefore, following the *Smith* decision, if defendants are confronted with unreasonable delays after arbitration stays, they may still advocate for dismissal based on plaintiffs' failure to prosecute their claims.

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FROM SCHRÖDINGER TO PYRRHUS: WHAT JUDICIAL ANALOGIES MEAN FOR BUSINESS

Douglas W. Lytle Klinedinst PC

When complex disputes reach the courtroom, judges often turn to creative analogies - from quantum physics to Greek mythology - to explain their decisions. While legal opinions can appear dense and technical, these judicial metaphors offer business leaders valuable insights into how courts analyze problems and approach challenging issues. By understanding these common analogies, business leaders can better anticipate judicial reactions, structure their affairs accordingly, and avoid costly mistakes.

HOW JUDGES USE ANALOGIES TO SOLVE BUSINESS PROBLEMS

Consider a recent California case, Mueller v. Mueller (2024), where a collaborative law (divorce) agreement stated it created no legally binding rights while simultaneously attempting to create enforceable confidentiality obligations. The court called this contradiction a "contractual version of Schrödinger's cat" - referring to the famous physics thought experiment where a cat in a sealed box is simultaneously alive and dead, until observed. While this reference to quantum physics might seem academic, it reveals something crucial about how courts view contradictory business agreements: They won't enforce contracts that try to have it both ways. When courts reach for such analogies, they're often signaling fundamental problems that business leaders need to understand.

POPULAR JUDICIAL ANALOGIES AND THEIR BUSINESS IMPLICATIONS

1. Schrödinger's Cat: Contradictions and Uncertainty

Courts nationwide have used this analogy to flag logical impossibilities in business situations:

- A tax return that's simultaneously timely and late.
- A contract that's both binding and non-binding.
- A claim that damages occurred from both the happening and non-happening of an event.

Business Impact: When courts invoke Schrödinger's cat, they're warning that they won't accept contradictory positions. This has practical implications for:

- Contract drafting
- Legal strategy development
- Risk assessment
- Settlement negotiations

2. Rube Goldberg Machines: Overcomplicated Solutions

Courts use this analogy to criticize unnecessarily complex business arrangements or legal arguments. A Rube Goldberg machine is an overly elaborate device that performs a simple task in an indirect, convoluted way or through a complex chain of events.

Business Impact: When courts mention a Rube Goldberg machine, they're often suggesting simpler solutions exist. This affects:

- Corporate structure decisions
- Transaction design
- Compliance programs
- Operating procedures

For instance, courts have criticized:

- Multi-layer holding company structures designed to avoid straightforward obligations.
- Convoluted contract provisions that could be stated simply.
- Complex compliance procedures that overlook basic safeguards.
- Elaborate corporate mechanisms that mask simple transactions.

3. Pandora's Box: Unintended Consequences

Courts invoke this mythology-based analogy when warning about decisions that could have far-reaching, uncontrollable consequences.

Business Impact: This analogy signals judicial concern about precedent-setting decisions that could affect:

- Industry-wide practices
- Market expectations
- Future litigation risk
- Regulatory compliance

4. Pyrrhic Victory: Winning at Too High a Cost

Courts use this analogy, based on King Pyrrhus's costly victory against the Romans, to describe wins that are effectively losses due to their extreme cost or consequences.

Business Impact: This analogy signals judicial recognition that some legal victories can be counterproductive, affecting:

- Cost-benefit analysis of litigation
- Business relationship preservation
- Market reputation management
- Resource allocation decisions

For example, courts have used this analogy when a company:

- Wins a contract dispute but destroys a valuable long-term relationship.
- Prevails in litigation but creates harmful industry precedent.
- Succeeds in enforcing a right but incurs huge costs.
- Achieves a technical victory that damages market reputation.

STRATEGIC ADVANTAGES OF UNDERSTANDING JUDICIAL REASONING

1. Risk Assessment

Understanding how judges think helps business leaders:

- Identify potential legal vulnerabilities

before they become problems.
- Evaluate litigation risks more accurately.
- Make more informed settlement decisions.
- Structure transactions to avoid common pitfalls.
- Evaluate true costs of "winning" beyond immediate legal expenses.
- Consider long-term relationship impacts of aggressive positions.

2. Contract Design

When judges flag problematic patterns through analogies, they're providing valuable guidance for:
- Drafting clearer agreements.
- Avoiding contradictory terms.
- Structuring enforceable obligations.
- Managing relationship expectations.

3. Dispute Resolution

Knowledge of judicial reasoning patterns helps in:
- Evaluating settlement positions.
- Structuring mediation strategies.
- Preparing for litigation.
- Managing stakeholder expectations.

PRACTICAL APPLICATIONS FOR BUSINESS LEADERS

1. Contract Review Strategy

Before finalizing important agreements, ask:
- Does this try to have things both ways?
- Are we creating our own Schrödinger's cat?
- Have we made something needlessly complex?
- Are we opening a Pandora's box?

2. Risk Management Protocols

Implement review processes that check for:
- Internal contradictions
- Unnecessary complexity
- Potential unintended consequences
- Logical impossibilities

3. Legal Strategy Development

When disputes arise, consider:
- How would a judge view our position?
- Are we taking contradictory stances?
- Can we simplify our argument?
- What analogies might a court use?
- Will winning this battle cost us the war?
- What business relationships might be damaged?
- Are there less destructive paths to our goal?

While these analogies appear across many business contexts, certain situations consistently attract judicial scrutiny and metaphorical analysis. Understanding how courts apply these analogies in common business scenarios helps leaders anticipate potential problems and structure their affairs appropriately.

COMMON BUSINESS SITUATIONS WHERE JUDICIAL ANALOGIES MATTER

1. Employment Agreements
- Avoid contradicting at-will employment with fixed terms.
- Ensure consistent treatment of similar situations.
- Maintain logical coherence in policies.

2. Commercial Contracts
- Clear hierarchies of documents
- Consistent enforcement mechanisms
- Logical termination provisions
- Compatible warranty terms

3. Corporate Governance
- Clear reporting structures
- Consistent authority delegations
- Logical decision-making processes
- Compatible policy frameworks

4. Dispute Resolution Decisions
- Balance enforcement costs against relationship value.
- Consider industry reputation impact.
- Evaluate precedent-setting risks.
- Assess market-relationship consequences.

PREVENTIVE MEASURES AND BEST PRACTICES

1. Regular Agreement Audits
- Review standard contracts for contradictions.
- Check policy compatibility.
- Assess procedural logic.
- Evaluate enforcement consistency.

2. Training Programs
- Educate teams about common judicial concerns.
- Share relevant court decisions and analogies.
- Develop consistent drafting practices.
- Build awareness of logical pitfalls.
- Train in alternative dispute resolution.

3. Risk Management Procedures
- Implement multi-level review processes.
- Maintain central document repositories.
- Create clear escalation protocols.
- Establish regular review cycles.

KEY TAKEAWAYS FOR BUSINESS LEADERS

1. Strategic Understanding
- Judicial analogies reveal how courts approach problems.
- Understanding these patterns provides competitive advantages.
- Clear thinking leads to better outcomes.
- Sometimes, walking away preserves more value.
- Consider the full cost of victory beyond legal expenses.

2. Practical Application
- Review agreements for logical consistency.
- Simplify complex arrangements.
- Anticipate unintended consequences.
- Document clear reasoning.

3. Risk Management
- Identify problems before they reach courts.
- Structure clearer agreements.
- Maintain consistent positions.
- Prepare stronger arguments.
- Balance legal rights against business relationships.
- Consider alternative dispute resolution paths.

THE GROWING IMPORTANCE OF UNDERSTANDING JUDICIAL REASONING

As business becomes increasingly complex, understanding judicial reasoning through analogies becomes more critical:

1. Technology and Innovation
- Novel business models challenge traditional legal frameworks.
- Courts increasingly use analogies to apply established principles to new situations.
- Understanding judicial reasoning helps predict how courts will view emerging technologies.

2. Global Business Environment
- Cross-border transactions create more complex legal scenarios.
- Courts seek universal ways to explain complicated international issues.
- Familiar analogies help bridge cultural and legal differences.

3. Regulatory Complexity
- Growing regulatory requirements increase compliance challenges.
- Courts use analogies to explain interactions between different regulatory schemes.
- Understanding judicial patterns helps navigate regulatory overlap.

These emerging trends make it increasingly valuable for business leaders to understand and anticipate judicial reasoning patterns.

CONCLUSION

As business arrangements grow more sophisticated and courts continue to grapple with novel situations, judicial analogies provide valuable guideposts for decision-making. Whether preventing contradictory positions (Schrödinger's cat), avoiding unnecessary complexity (Rube Goldberg), considering unintended consequences (Pandora's box), or evaluating true victory costs (Pyrrhic victory), these analogies offer practical frameworks for business decision-making. By incorporating these insights into their planning and risk management processes, business leaders can better navigate legal challenges and protect their interests.

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PHYSICS 101 MEETS DELAWARE CORPORATE LAW:

Irresistible Market Force vs. Immovable Object!

John D. Cromie and **Amanda Kelly** Connell Foley LLP

Legislative backlash to a February 23, 2024, Delaware Court of Chancery decision that invalidated provisions of a stockholder agreement may have far-reaching consequences for corporations – and their lawyers – throughout the United States.

In the controversial opinion, *West Palm Beach Firefighters' Pension Fund v. Moelis & Co.*, the Court of Chancery struck down parts of a stockholder agreement that heavily constrained the authority of the company's board of directors.[1] Critics of the decision contend that it flies in the face of long-established market practice, which permits corporations to contractually bind themselves via internal governance arrangements. In response to the outcry, the Delaware legislature enacted several consequential amendments to the Delaware General Corporation Law (the "DGCL") that authorize Delaware corporations to enter into agreements – without a charter amendment – granting governance rights typically handled directly by corporate boards and stockholders. These amendments were signed into law on July 17, 2024, and became effective on August 11, 2024. Because Delaware holds an influential position at the forefront of U.S. corporate law developments, businesspeople and legal practitioners across the country should stay alert to the possibility that other states will follow suit.

THE *MOELIS* CASE: IMMOVABLE OBJECT VERSUS IRRESISTIBLE FORCE

The global investment bank Moelis & Company (the "Company") and its founder, CEO, and Chairman, Ken Moelis, lie at the center of the case. One day before taking the company public, Moelis, three affiliated entities, and the Company entered into a stockholder agreement that granted "expansive rights" to Moelis. These rights included 18 "pre-approval requirements," which, taken as a whole, meant that the Company's board of directors could take effectively no action unless Moelis approved it himself. For example, without approval from Moelis, the board was prohibited from incurring debt in excess of $20 million, issuing any preferred stock, entering into a new line of business that required an investment of $20 million or more, appointing or removing certain Company officers, adopting the Company budget, or entering into a material contract (the "Pre-Approval Requirements").

In addition to the Pre-Approval Requirements, the stockholder agreement allowed Moelis to select a majority of the directors and prevented the board from adding more than 11 seats on the board. The stockholder agreement required the board to recommend that stockholders vote for the candidates Moelis nominated to run for board positions. Finally, the board was required to ensure that any committee was filled by a certain proportion of Moelis' designees. At the time of the lawsuit, Moelis owned less than a majority of the Company's outstanding voting power but was nonetheless able to exert significant control over the board of directors and the Company as a whole.

The plaintiff, another shareholder, argued that the stockholder agreement was an internal governance arrangement that violated DGCL § 141(a) and (c). Section 141(a) is a cornerstone of Delaware corporate law that requires every corporation to

be managed by a board of directors. Section 141(c) allows the board to create committees and select committee members.

The plaintiff contended that the Pre-Approval Requirements and the other challenged provisions impermissibly limited the authority granted to the board by the statute. In defense of the stockholder agreement, the Company claimed that it had broad freedom to contract and that the challenged agreement was no different than an exclusive supply contract, which would also constrain the authority of a corporate board.

The Court was skeptical of the Company's arguments, writing that the challenged provisions of the stockholder agreement resembled "something a law professor dreamed up for students to use as a prototypical Section 141(a) violation."[2] Further, the Court distinguished contracts that bind the Company, like an exclusive supply contract, from contracts that are designed to bind the board itself.

The Court applied the "Abercrombie Test," from the landmark case of *Abercrombie v. Davies*, which states that governance restrictions violate DGCL § 141(a) when they prevent directors from using their best judgment to manage the corporation or substantially limit directors' freedom to make decisions about management policy.[3]

The Court also seriously considered the fact that internal governance arrangements are common market practice, framing the conflict at the heart of the case as one between the "traditionally immovable statutory object," Section 141(a), and a "seemingly irresistible force of market practice."[4] Ultimately, the Court wrote that although Delaware law "favors private ordering" and freedom of contract principles, the statute took precedence over market practice. As a result, the Court invalidated the Company's stockholder agreement.

A MODERNIZING SAVE OR RUSHED REACTION?

The *Moelis* decision generated significant pushback from businesspeople and practitioners who argued that Delaware corporate law should reflect prevailing market practice, not rely on rigid statutory construction. In the aftermath of the *Moelis* ruling, the Delaware State Bar Association drafted amendments to the DGCL to bring the law in line with market practice. The proposed amendments were quickly submitted to the Delaware Legislature, despite mounting criticism from supporters of Section 141(a) in its longstanding form. Significantly, Chancellor Kathaleen McCormick also waded into the debate, writing in *a private letter to the Delaware State Bar Association* that the expediated process of drafting the proposed amendments was "flawed."[5] She also called the proposal "the broadest set of substantive amendments since the 1960s" and cautioned that, although market practice is an important consideration, it is not the only or most important one. Instead, Chancellor McCormick suggested the most important consideration should be "whether the market is operating in a manner that is good for corporate law."[6]

Fifty law professors also submitted *a letter to the Harvard Law School Forum on Corporate Governance*, writing that the amendments were premature and that the proper course of action would be to allow the appellate process to proceed within the Delaware courts. More specifically, the academics argued that the courts should be trusted to weigh the "complex interplay between Delaware's commitment to contractual freedom and its equal commitment to protecting shareholders through an empowered and accountable board of directors."[7] They also wrote that the amendments went too far and "would allow corporate boards to unilaterally contract away their powers without any shareholder input."[8] The letter also argued that the stockholder agreement in *Moelis* was not as typical as the Company claimed. *A second letter from two other corporate law professors* went further, warning that "Delaware is on the verge of gutting DGCL § 141(a)'s iconic principle of board-centricity."[9]

NEW SECTION 122(18) AND THE FUTURE OF BOARD GOVERNANCE

Despite the controversy, the Delaware Legislature enacted and the Governor approved the proposed amendments, including new subsection (18) to Section 122, which explicitly permits corporate governance arrangements like the one found in *Moelis* regardless of Section 141(a)'s apparently clear support of the contrary position. Such arrangements are lawful, even for minimum consideration, if authorized by a board, and so long as the agreement does not otherwise violate the Company's charter or Delaware laws.

In the wake of this legislative remedy, the following provisions would likely be permitted in shareholder agreements: (i) restrictions or prohibitions on future corporate action specified in the agreement; (ii) provisions requiring the approval or consent of third parties before an action can be taken; and (iii) agreements requiring the corporation or the board/shareholders to take or refrain from taking a specific action. It should be noted, however, that the new amendments' legislative history indicates that subsection (18) was not intended to address the fiduciary duties of officers, directors and stockholders.

Time will tell whether, as Chancellor McCormick opined, the seemingly market-friendly amendments are "good for corporate law."[10] However, the Delaware Legislature's rush to enshrine market practice into law may be a sign that other jurisdictions will also refuse to "wait and see." Thus, businesspeople and practitioners should be aware that these "market practice" amendments may soon be arriving at a state capitol near you. Commercial litigators are also well advised to take note of these developments as these apparently salutary legislative fixes may foster more litigation.

1 W. Palm Beach Firefighters' Pension Fund v. Moelis & Co., 311 A.3d 809 (Del. Ch. Ct. 2024).
2 Id. at 820.
3 Id. at 819 (Del. Ch. Ct. 2024) (quoting Abercrombie v. Davies, 130 A.2d 338 (Del. 1957)).
4 Id.
5 Jordan Howell, Top Delaware Judge Calls for More Debate Over Contentious Corporate Amendments, Delaware Call (May 29, 2024) https://delawarecall.com/2024/05/29/top-delaware-judge-calls-for-more-debate-over-contentious-corporate-amendments/.
6 Id.
7 Sarath Sanga, Letter in Opposition to the Proposed Amendment to the DGCL (June 7, 2024) https://corpgov.law.harvard.edu/2024/06/07/letter-in-opposition-to-the-proposed-amendment-to-the-dgcl/#more-165603.
8 Id.
9 Marcel Kahan & Edward B. Rock, Proposed DGCL § 122(18), Long Term Investors, and the Hollowing Out of DGCL § 141(a) https://corpgov.law.harvard.edu/2024/05/21/proposed-dgcl-%C2%A7-12218-long-term-investors-and-the-hollowing-out-of-dgcl-%C2%A7-141a/.
10 Howell, supra n. 5.

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MITIGATING RISKS:

Fail-Safe Design Principles in Modern Automated Facilities

Robert van Akelijen, P.E., CFEI S-E-A

In 2005, there was an explosion at a Texas City refinery, which resulted in 15 deaths, 180 injuries and 43,000 people were ordered to shelter in place. The plant was going through a startup process and an instrument mounted on a chemical separation tank was not properly calibrated, resulting in an improper hazardous liquid level reading in the tank. This led the operators to believe the liquid level was much lower than it actually was. A secondary level-sensing switch on the tank failed to trigger a high-level alarm that began a chain of events, which ultimately led to the explosion.

How often do we turn on the news and the lead story is similar to this scenario about an explosion, fire, spill or chemical release from a manufacturing/process facility? The results of the event can be devastating with consequences such as poisonous gasses being released into the atmosphere, land being polluted, fish and wildlife endangered or killed, or people being evacuated from their homes. No one wants to experience the fallout of such an event, and no one ever intends for something like this to happen. Within almost every manufacturing/process facility is an automation system designed and programmed to control the process and mitigate the likelihood of a catastrophic event. Automation and control systems are used in power plants, wastewater treatment plants, oil refineries, pulp and paper, pharmaceuticals and many more. Fail-safe is defined as, "incorporating some feature for automatically counteract-

ing the effect of an anticipated possible source of failure." How can a fail-safe design and configuration help potentially mitigate and prevent these scenarios?

Automation and control systems consist of devices that gather information about how the process is operating and make decisions about how to control the process safely and efficiently. Another requirement of these systems is to identify when the process is wandering outside normal operating parameters towards a hazardous situation and to make major corrections or terminate the process if and when that occurs. The information gathered from the system might consist of pressures, flow rates, temperatures or some other measurable characteristic. These are the inputs to the system. The control or shutdown of the process may be opening or closing valves, turning on or off heaters, or starting and stopping pumps. These are the outputs of the system. Both the inputs and outputs are considered the first level of the automation and control system. The next level is the controller, which is programmed to manage the outputs based on the status of the inputs. This is typically an industrial computer referred to as a programmable logic controller (PLC). For a given system, there may be multiple PLCs based on the size and complexity of the facility. The next level in an automation and control system is the visualization of the system. This is achieved by presenting the information via graphical representations and alarms to the person operating the process that details how the process is proceeding and what corrections the PLC is making to keep the process running.

Fail-safe automation should be considered at all levels, starting at the design phase. During this phase, automated equipment should be specified such that it is fail-safe, i.e., so that in a failure event such as when energy is removed, the equipment is able to move to its safest state. The failure may be a power outage, a loss of instrument air pressure, a tripped circuit breaker, a blown fuse or anything that prevents the PLC from controlling the end output devices.

An example of a device that can have a fail-safe design is an air-operated valve. Air-operated valves are typically specified as fail-closed (air to open) or fail-open (air to close) (See Figure 1). The system designer must determine the safest position of the valve if system air is lost and specify the valve so that it moves to that position when there is a loss of control. A common assumption would be that the default specification is fail-closed as that should be the safest position, but what if that valve was providing cooling fluid to an engine? A fail-close valve would close on the loss of system air, preventing cooling fluid from getting to the engine to keep it cool.

Think of the valve that supplies water to our refrigerator ice maker. These products require electrical power to open the valve (fail-closed) to provide water to the ice maker, but what if the ice maker requires electrical power to close the valve (fail-open) and there is a power outage? In the event of a loss of power, the valve would open, allowing water to flow, which would cause potential flood damage to our homes. This example would not be a fail-safe design of the refrigerator ice maker. In a simple system such as this, it may be easy to specify the correct fail position of the valve, but in complex process plants, that design decision may not be so clear.

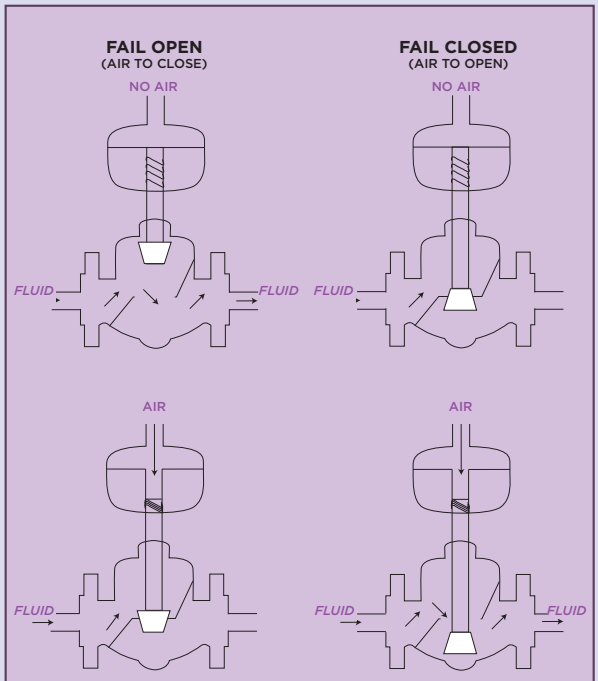

FIGURE 1 – Valve positions without air and with air for fail open & fail close configurations

All input signals should be wired in a manner that the PLC is receiving an input signal when the process is normal. This is considered fail-safe because in the event of a tripped breaker, blown fuse or severed signal wire, the loss of the normal input signal would trigger the PLC to take an action. This action may simply be to generate an alarm to an operator, or it may be critical enough to shut down part or all of the process entirely.

Everything discussed so far is part of the normal design of an automation and control system, but what else can be done to make the system safer from failures? Building redundancy into the design is one of the ways in which a system can be made safer. Redundancy is defined as, "serving as a duplicate for preventing failure of an entire system upon failure of a single component." Every component in an automation and control system can be designed with redundancy. The PLC can also be designed in a redundant configuration. In this scenario, a second PLC is synchronized with the controlling PLC and can seamlessly take over control of the system in the event of a failure of the controlling PLC. Power supplies that provide power to the PLC and to field instrumentation can be redundant, so one power supply failure does not shut down the system. The actual field instrumentation can be redundant as well. The system designers of the automation and control system need to analyze what components are critical enough to warrant redundancy to make the system safer in the event of a particular failure.

An Uninterrupted Power Supply (UPS) can also play a useful role in allowing the PLC extra time to shut down the system processes to a safe state. A PLC with backup UPS power can be programmed to recognize a power outage and take the control action necessary to shut down the process to its safest state. Additionally, while motors and pumps will stop and air compressors will no longer deliver pneumatic air to systems during a power outage, the PLC should be programmed with a safe shutdown sequence. The PLC should also be programmed with a safe startup sequence after any shutdown to prevent equipment from starting prematurely.

Even with our best efforts, failures are still possible. A properly specified air-operated valve may not move to its fail-safe position due to an unknown internal or mechanical failure. However, a properly designed, installed, configured and maintained fail-safe automation and control system can help a facility prevent the loss of life, environmental damage and/or damage to equipment resulting from these unexpected failures.

Robert van Akelijen, PE, CFEI is an electrical engineer with S-E-A. He is an experienced automation specialist with a demonstrated history of working in the oil and energy industry. At S-E-A, he investigates electrical faults and malfunctions and analyzes and evaluates a wide array of automation systems to determine the cause of loss, malfunction, and/or poor performance.

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Nuclear Verdicts & Hurricanes

A PLAN IS A MUST

Charles F. Carr Carr Allison

Nuclear verdicts and hurricanes - they have a lot in common. Both are devastating. Both are costing this country billions in economic losses. Both have increased in severity over the last 15 years. Both have impacted areas traditionally considered safe havens from disaster. Finally, and most importantly, protections exist to minimize the risk from both, many of which have not been implemented.

I turned 74 years old this year. I began practicing law in 1977 in Birmingham, Alabama, at a litigation defense firm. I tried my first jury case the week I was notified that I had passed the Alabama bar exam! Over the next three years, I tried an average of eight cases a year, trying my 50th to a jury shortly after my fifth year of practice.

In 2014, I was one of the first to use the term "Nuclear Verdict." I authored a paper presented to the American College of Transportation Attorneys titled "Nuclear Verdicts: Confirming, Predicting and Preventing." This year is the 10th anniversary of that publication. If you Google "nuclear verdicts" today, you can find hundreds of sources referencing the term – not so in 2014.

Bill Burns, my longtime mentor and best transportation-client friend, gave me the idea for the Nuclear Verdict thesis. Bill headed the risk management team for Landstar, a top-10 trucking company in the United States. By 2011, Bill oversaw hundreds of claims for Landstar in some of the worst jurisdictions in the country. None was nuclear, but Bill followed many prevention techniques I discussed in the Nuclear Verdicts White Paper.

In 2010 and 2011, Bill was focused on a death case stemming from an accident in Cobb County, Georgia. One of the best-known defense attorneys in Atlanta said Cobb County "has never had a verdict of more than $10 million to date, and I don't believe it will in my lifetime." The acting excess carrier agreed and refused to settle the case for an amount within that $10 million; the Cobb County jury awarded a verdict of $40.175 million.

That verdict took an enormous toll on Bill. Though I was not involved in the trial, he called me weekly before the trial and after the case's mediation. We both agreed the excess carrier probably took the wrong position. The Nuclear Verdicts White Paper was written to warn of this coming problem, list some common features to alert motor carriers and their lawyers of a nuclear verdict's potential, and explain how to avoid its risk.

Today, $40 million verdicts in the transportation field are hardly highlighted. Every county in and around Atlanta has been the scene of larger verdicts. Even in Georgia's hinterlands, verdicts have overshadowed 2014's $40 million verdict in Cobb County. For instance, in Columbus, Georgia, more than 100 miles from Atlanta, a jury returned a verdict for $280 million against a steel-hauling motor carrier in 2019.

A year earlier, Werner Enterprises, another top-10 motor carrier, was tagged with a verdict of $90 million in Harris County, Texas. Not only was this verdict twice the size of the Cobb County case, but it was awarded even though the plaintiffs' vehicle crossed an interstate median and collided with Werner's vehicle, which was operating well within the posted speed limit. This verdict signaled the beginning of juries combining nuclear amounts with questionable liability.

So, where are we today? No state or county offers immunity from nuclear verdicts. Earlier this year, Kroger's transportation unit was hit for over $100 million in a death case in Arkansas, a state that seemed immune to runaway verdicts. $100 million of that verdict was for the value of "loss of life." More amazing is an award of $10 mil-

lion to another Arkansas plaintiff who sustained a single-surgery shoulder injury!

In 2014, most of these nuclear verdicts occurred in California, Texas's border region, Louisiana, Florida, Philadelphia, and Chicago. Ten years later, areas considered more immune than Arkansas are "hellholes" for these verdicts. Take Upshur County, Texas, just off Interstate 20 between Shreveport, Louisiana and Dallas, Texas. Its population is 40,892. In 2020, Upshur County voted 83.7% for the Republican ticket and only 15.2% for the Democratic ticket. Yet, since 2014, no county in America has, per capita, seen more nuclear verdicts and settlements than Upshur.

Upshur is a microcosm for what is happening around the country. Republican counties are no longer safe havens from nuclear verdicts. Plaintiffs' lawyers have learned to develop themes that are suggestive of conspiracies to these jurors. In the Arkansas-Kroger case, they suggested Kroger knew or should have known of its driver's vision history, which plaintiffs claimed led to the vehicular accident. In the Werner case, they highlighted evidence to argue that Werner knew or should have known the roads were too icy for its trucks to be operating and failed to shut them down.

Plaintiffs' lawyers send their cases to focus groups 10 times to our one, constantly searching for themes that resonate with the jury. It is often one month before a trial begins before the defense lawyer and client realize the theme. That theme is sometimes hidden until the opening statement.

Since 2014, hundreds of clients have asked me to provide them with the Nuclear Verdicts White Paper, which forms the basis of this article. Every bullet point for identification and prevention detailed in that paper applies equally today. For instance (and in a brief nutshell):

Predictability: The following commonalities of most nuclear verdicts were discussed in detail:

1. **A Catastrophic Injury** (or Death).
2. **Driver Misconduct:** Drug/alcohol issues; cell phone use; other distracted-driver issues; hours of service; prior accidents/violations; driver training/failure to train.
3. **Demographics/Small County Anomalies:** In 2014, predictability was often associated with venue issues perhaps involving racial or socio-economic issues, but we also saw the rise of verdicts in low-population counties commonly controlled by one or two plaintiffs' lawyers, like Upshur County, Texas.
4. **High-Risk Plaintiffs' Lawyers:** Refusal by incredibly profitable plaintiffs' firms to settle cases for previously perceived reasonable settlement offers and a new wave philosophy of asking juries to return sums formerly considered overreaching.
5. **Judicial Hellholes**: As mentioned earlier, nuclear verdicts had not yet arrived in counties previously considered "regularly conservative." There were 20 to 30 counties in the country, most in state, not federal, courts, where outlier verdicts were more likely. This provided some baseline predictability based on the venue.
6. **Defense Lawyers Fueling the Fire**: In my early days sitting at the feet of master defense lawyers, I learned a secret – an angry and indignant defense lawyer does well when representing an individual defendant but not so well when representing corporate America. An angry and indignant plaintiff's lawyer seldom alienates a jury that dislikes corporate America.

The article then detailed several key principles for defending potentially explosive jury verdicts. None has been violated more than this commandment: "Thou shalt settle the potentially nuclear verdict before the first deposition is taken." That commandment has been violated primarily because risk managers learned this commandment very early: "Thou shalt not pay big money in a case until every stone is left unturned."

I was national counsel for a top-10 motor carrier. We abided by the "settle early" philosophy, inventing ways to get the most nonresponsive plaintiffs' lawyers to discuss reasonable settlements early. We consulted realistic focus groups early, used the first-chair defense lawyer to handle the plaintiff's side, and used the second-chair defense lawyer to focus on the defense's presentation. If you think the plaintiff's attorney lacks the advantage in a case's trial, you are living in Fantasyland. I could spend days describing other things we did to resolve cases before the first deposition was taken.

At age 74, I have sworn off the addiction of trying cases to a jury verdict. I have limited my practice to strategy and finding the right counsel on regional and national levels to defend the worst cases. Clients tell me they face trouble, and I pair them with the right lawyers to deliver defenses.

For those of you still reading this, do not expect any differences over the next 20 years. Absent the many "prerequisites for nuclear avoidance" described in that paper 10 years ago, things will not change. Just as Hurricane Helene unexpectedly produced horrific damage across North Carolina, conservative strongholds are unexpectedly producing nuclear verdicts ranging into the tens of millions of dollars. Do you believe hurricane damage will subside over the next 20 years? You, too, are in Fantasyland. Speaking of hurricanes, I am now something of an expert in avoiding "Nuclear Hurricanes" and "Nuclear Verdicts." When I was 70, my youngest child (of five) became a yacht broker. My law career paid to educate a combination of lawyers, doctors and engineers – and then came the yacht broker. He wanted to encourage me to retire and knew that was unlikely. He was a salesman – a good one – and convinced me to buy a 60-foot boat I could learn to operate! Lloyd's of London would not insure me until I had a lengthy training session with an approved captain, but today, I am insured by State Farm with a substantial discount over Lloyd's.

Twice, we have fled from menacing hurricanes on the horizon. Once, we moved rapidly from Sarasota (actually, Anna Maria Island) to Stuart, Florida (on the Atlantic) by crossing the peninsula cut-through that joins Lake Okeechobee, Florida. More recently, we waited for all the spaghetti models to encourage us to head north from Anna Maria Island to Orange Beach, Alabama.

So, my final piece of advice – avoid buying houses or condos along beaches in the southern United States. It is difficult – if not impossible – to find insurance there, and the emotional heartbreak I have seen from residents who lost most, or all, of their homes is just too great. Buy a yacht! They are less expensive, and instead of losing everything or quickly packing your belongings in a U-Haul to escape, you simply refuel and find another idyllic location to dock - Colby Carr is waiting for your call.

It's been 45 years since Charles Carr tried his first jury case. A lifetime adventure seeking judicial fairness in over 30 U.S. states also enabled him to be national coordinating counsel for several major insurers, motor carriers and retail organizations. He is proud to have co-founded the Carr Allison firm, now in several southeastern states, USLAW NETWORK and the American College of Transportation Attorneys. He and his wife, Lyn, now spend much of their time being proud of five children and eight (soon to be nine) grandchildren.

LIABILITY INSURANCE COVERAGE FOR CLAIMS RELATED TO SEXUAL ASSAULT: WHAT HAPPENS WHEN THE INSURED IS NOT THE ALLEGED ASSAILANT?

Erica M. Baumgras Flaherty Sensabaugh Bonasso PLLC

Sexual assault claims have become increasingly common, and in recent years, a number of jurisdictions have removed procedural obstacles for victims to come forward with these claims, even years later. High-profile cases alleging sexual assault have been covered extensively in the media, and insurance coverage claims involving those cases have been litigated extensively as well.

But what about sexual assault claims when the insured is not the assailant but is alleged to have facilitated the assault in some manner, for example, owning or operating the vehicle or the residence in which the assault occurred, failing to prevent or intervene in the assault, failing to contact law enforcement about the assault, or failing to obtain medical care for the victim as a result of the assault? Will the tortfeasor's policy afford a defense or indemnification? While the answers to these questions vary depending upon the particular allegations against the insured, the policy provisions, and the jurisdiction, this article addresses some of the reasons claims arising out of or related to sexual assault may not be covered under a homeowner's policy, an auto policy, or a commercial general liability ("CGL") policy.

One reason is that a claim arising out of a sexual assault may not constitute an "occurrence," defined by a liability insurance policy as an accident, including continuous or repeated exposure to substantially the same general harmful conditions. Courts have held that an accident is a chance event or event arising from an unknown cause, and to be an accident, both the means and the result must be unforeseen, involuntary,

unexpected, and unusual. *See State Bancorp, Inc. v. U.S. Fidelity and Guar.,* 199 W.Va. 99, 103, 483 S.E.2d 228 (1997); *Harrison Plumbing & Heating, Inc. v. N.H. Ins. Grp.,* 681 P.2d 875, 878 (Wash. App. 1984). In a liability insurance policy, a claim based on sexual misconduct does not come within the definition of occurrence, and even the inclusion of a negligence allegation or theory of recovery against the insured does not alter the essence of the claim for the purpose of insurance coverage. *See Smith v. Animal Urgent Care, Inc.,* 208 W.Va. 664, 542 S.E.2d 827 (2000); *GATX Leasing Corp. v. National Union Fire Ins. Co.,* 64 F.3d 1112, 1118 (7th Circ. 1995). Courts reason that the insured's failure to prevent the intentional act does not constitute an occurrence because the volitional act does not become an accident simply because the insured's negligence prompted the act.

Another reason is that liability insurance policies often contain an exclusion for bodily injury, which is expected or intended by an insured. The majority rule rejects the duty to defend an insured or to pay for damages allegedly caused by the sexual misconduct of the insured when the liability insurance policy contains this exclusion. *Allstate Ins. Co. v. Thomas*, 684 F.Supp. 1056, 1059-60 (W.D.Okla. 1988). Some courts have held that in such cases, the intent of the insured to cause some injury will be inferred as a matter of law. *Horace Mann Ins. Co. v. Leeber*, 180 W.Va. 375, 376 S.E.2d 581 (1988).

In addition, allegations of negligence in a complaint for sexual assault may not trigger insurance coverage. *Harpy v. Nationwide Mut. Fire Ins. Co.,* 76 Md.App. 474, 487, 545 A.2d 718, 725 (1988). *See West Virginia Fire & Cas. Co. v. Stanley*, 216 W.Va. 40, 54, 602 S.E.2d 483 (2004) (although the word negligent was used in the allegations against the parents of a young man accused of assault, the exclusion applied because the parents would have at least expected harm to result to the victim as a result of their conduct); *Westfield Ins. Co. v. Matulis,* 421 F.Supp.3d 331, 347-49 (S.D.W.Va. 2019) (pleading negligent supervision claims against the insured - the employer of a physician accused of assaulting his patients - was insufficient to invoke coverage under a policy with this exclusion when the claimants alleged the insured knew of the misconduct and did nothing about it, because the insured would have at least expected harm to befall the claimants); *Allstate Ins. Co. v. S.F.,* 518 N.W.2d 37, 38 (Minn. 1994) (although the complaint alleged the insured negligently abandoned the plaintiff when he left her alone with two other men who assaulted her, the insurer did not have a duty to defend or indemnify the insured for a negligence claim arising out of an alleged assault because the exclusion applied); *Perkins v. King*, 358 So.3d 538 (La. Ct. App. 2023) (coverage for the assault of a wedding guest by other guests was excluded by an intentional acts exclusion in the homeowners policy, even though the complaint alleged the homeowners were negligent in allowing others to foreseeably assault the plaintiff); *Hawaiian Ins. and Guaranty Co., Ltd. v. Brooks*, 686 P.2d 23 (Haw. 1984), overruled on other grounds by *Dairy Road Partner v. Island Ins. Co., Ltd.,* 992 P.2d 93 (Haw. 2000) (auto policy extending coverage for injury neither expected nor intended from the standpoint of the insured did not impose a duty to defend the driver for injuries to a female passenger assaulted in the vehicle, and it was unreasonable for the driver who witnessed the assault but did nothing to prevent or mitigate the harm to expect the liability insurer to defend him).

Moreover, coverage may be precluded by a criminal acts exclusion. If the conduct alleged against the insured is criminal in nature and was either allegedly committed by the insured, or aided and assisted by the insured, this exclusion could apply. The exclusion may be applicable even if the insured has not been charged with or convicted of a crime in connection with their conduct. Also, if the claim does not assert any injury to the plaintiff caused by or resulting from an action independent of criminal conduct, this exclusion may apply. *Canutillo Independent School Dist. v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 99 F.3d 695 (5th Cir. 1996) (exclusion for criminal acts precluded coverage for the school district and other insureds for claims that would not have existed but for the conduct of a teacher who sexually abused students, even though the insureds themselves did not engage in the excluded acts).

Further, a liability insurance policy may contain an exclusion for bodily injury arising out of sexual molestation, physical or mental abuse, or harassment. If all the injuries alleged arise out of the sexual assault or the physical or mental abuse of the complainant, coverage may be excluded. *See Westfield Ins. Co. v. Merrifield*, No. 2:07-cv-00034, 2008 WL 336789 (S.D.W.Va. Feb. 5, 2008), quoting *Allstate Ins. Co. v. Bates*, 185 F.Supp.2d 607, 613 (E.D.N.C. 2000) (in case alleging negligence and civil conspiracy against woman arising out of death of her grandchild from injuries caused by physical and sexual abuse of her son, court rejected argument that injury and death of child arose not from abuse but from her alleged negligence and held that policy language specifically tied exclusion to nature of injury, and without molestation there would be no injury and no basis for negligence claim); *Westfield Ins. Co. v. Hill*, 790 F.Supp.2d 855 (N.D.Ill. 2011) (claims that insureds negligently failed to supervise social functions at their lake house, to inspect and maintain the house, or to warn guests, which resulted in the minor being assaulted by another invitee, were subject to exclusion in homeowners policy for bodily injury arising out of sexual molestation, corporal punishment, or physical or mental abuse); *Auto Club Group Ins. Co. v. Worthey*, No. 315715, 2014 WL 3844083 (Mich. Ct. App. Aug. 5, 2014) (abuse or molestation exclusion barred coverage for action against homeowner for sexual assault committed by house guest).

Additionally, if an insured vehicle was used in the commission of an assault, the claim may not be covered under the auto policy because the assault was not an act arising out of the ownership, maintenance, operation, or use of the vehicle. Courts have almost unanimously found no causal relation between the use of a vehicle and injuries caused by an assault of any kind. *See Baber v. Fortner*, 186 W.Va. 413, 412 S.E.2d 814 (1991); *Nationwide Mut. Ins. Co. v. Brown*, 779 F.2d 984, 988 (4th Cir. 1985); *Detroit Auto. Inter-Insurance Exchange v. Higginbotham*, 95 Mich.App. 213, 290 N.W.2d 414, 419 (1980); *SCR Medical Transp. Services, Inc. v. Browne*, 335 Ill. App.3d 585, 781 N.E.2d 564 (Ill. Ct. App. 2002) (sexual assault did not constitute an accident arising from the use of the insured vehicle, so the insurer had no duty to defend).

Courts throughout the country have found liability insurance coverage for sexual assault claims concerning the same or similar policy language. Courts have also denied coverage on different or additional policy provisions. However, this article is intended to address some of the grounds on which coverage may be denied, even when the insured is not alleged to have committed the actual assault.

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Copyright and Design Protection in the EU

Joost Becker Dirkzwager N.V.

Copyright and design protection are increasingly important topics in the European Union (EU). Recent legislative initiatives and court rulings across various EU jurisdictions, particularly regarding the protectability and enforcement of these intellectual property (IP) rights, have been the focus of ongoing developments. And there's more to come.

COPYRIGHT PROTECTION

In the EU, copyright is harmonized to a great extent. Copyright protection can be invoked by the 'author' of a 'work' that is an own intellectual creation. The threshold for copyright protection—originality— is to be applied by EU courts in legal proceedings. The standard for originality is generally considered to be low, with copyright being granted to a wide range of works, including texts, photographs, online content (such as websites and advertisements), apps, consumer product designs, packaging, logos, computer programs, and more.

Enforcing copyright in the EU is relatively straightforward. The copyright owner (rightsholder) has the exclusive right to authorize or prohibit any communication, including the making available, and distribution of its original work, as well as copies thereof.

Under EU copyright law, no formalities are required to protect works; thus, affixing a copyright notice is not necessary for obtaining protection. However, such notices can still be useful for evidentiary purposes.

Very recently, in October 2024, the Court of Justice EU ruled in the *Vitra Dining Chair* case that copyrightable material originating from outside the EU—specifically from the United States—is protected in the EU under the Copyright Directive, without any restriction. The Court confirmed that the principle of reciprocity does not apply, meaning U.S.-based copyright owners who seek to protect their work in the EU no longer need to demonstrate that their work enjoys copyright protection in the U.S. The EU Copyright Directive harmonizes copyright protection across all EU Member States and does not impose any restrictions based on the origin of the work or the nationality of the author. If the requirements for copyright protection are met (see above), the work must be protected throughout the entirety of the EU. This judgment is significant because it allows U.S.-based copyright owners to bring claims for copyright infringement in EU courts more easily. In principle, this protection is granted to all types of works, including industrial designs and works of applied art. It is also worth noting that while U.S. copyright registration from the U.S. Copyright Office is not a requirement for protection in the EU, invoking such a registration in copyright infringement cases may still be advantageous.

The term of copyright depends primarily on the date of creation by the author and, in some cases, the date of the first publication of the work. As a general rule, copyright protection lasts for the life of the author plus an additional 70 years.

DESIGN RIGHTS

In the EU, design protection can be obtained through either registered or unregistered design rights. Both options are available to U.S.-based companies or individuals on a pan-European basis, either as a Registered EU Design or an Unregistered EU Design. The latter, however, offers a shorter protection term of three years, while the former provides a maximum of 25 years, subject to renewals every five years.

The EU has very recently accepted substantive reforms to the design right system (October 2024), known as the 'Design Package'. Under the current EU Design Directive and Regulation, a protected design may also be eligible for protection under copyright law, although this is generally to be determined by each Member State. Under the new Design Package, a design protected as an EU design shall also

be eligible for protection by copyright from the date on which the design was created or fixed in any form, provided that the requirements of European Union copyright law are met.

A new design notice featuring the letter "D" enclosed within a circle is also set to be introduced, which rightsholders can apply to their products, packaging and/or advertising.

Originality is not required for EU design protection. Courts need to assess whether the design has novelty and individual character, required for design protection, which is primarily based on answering the question whether identical designs already exist in the current design corpus and whether the design creates a distinctly different overall impression. Previous disclosures of the design, either within or outside the EU (which may include the U.S.), may counteract the required novelty. However, a one-year grace period exists after the first disclosure, during which registration of an EU design is still possible.

Although design registration is also possible in each individual European country (and international design registrations are also possible), registering with the European Union Intellectual Property Office (EUIPO) is recommended in most cases to ensure protection across all EU Member States at once. It is expected that design protection fees and renewal fees will go down in the future.

INFRINGEMENT AND DEFENSES

As discussed above, copyright protection grants the owner the right to prohibit reproductions of the work, distributing copies or derivatives thereof and/or the making available of works to the public. Unauthorized acts of this nature generally constitute copyright infringement, allowing the copyright owner to take legal action, including various legal measures (outlined below).

Certain exceptions to copyright infringement (which can be invoked as legal defenses) may apply, such as private use, the right to quotation, text and data mining, and parody. However, all exceptions are exhaustively prescribed by law, and there is no fair use principle in the EU. Moreover, specific legal measures apply to technological protection measures, rights management information, and software protection. The Dutch Copyright Act, for instance, also contains provisions for moral rights protection, such as for architects, designers, and portrait rights.

EU design right provides the rights holder with the exclusive right to use the design, which includes the ability to prohibit the manufacture, sale, import, export, exhibition, and stocking of goods using the design without permission. Certain exceptions are in place, such as private, non-commercial use. The Design Package introduces some new exceptions, such as use in the context of citing or teaching, referential use and use for commentary, criticism and parody, which are, in principle, permitted. Under the Design Package, a more specific 'repair clause' is introduced as well (it previously was included only in the Regulation on designs; shortly, it will be in the Directive), with new rules regarding exceptions from design protection for spare parts used for repair of complex products, such as cars.

Next to the above, under EU copyright and design rights, the principle of exhaustion of Intellectual Property rights applies. IP rights are considered exhausted for goods first sold in the EU/European Economic Area (EEA); however, no exhaustion of rights occurs for goods placed on the market in a third country (such as the U.S.). This means that rightsholders can still make claims for infringement if goods that were first put on the market outside of Europe are re-sold here without the permission of the rightsholder.

LEGAL MEASURES IN LITIGATION

Under the EU Directive on the Enforcement of Intellectual Property Rights, a wide variety of legal measures are available, including:

- **Provisional measures**: These are measures used to preserve evidence, seize infringing goods (including counterfeit goods), and make attachments to those goods.
- **Injunctions**: Prohibitions are enforceable, and injunctions concerning copyrights and designs can be obtained in both summary proceedings and proceedings on the merits.
- **Right of information**: The right to obtain precise information about the origin of infringing goods or services, distribution channels, and the identity of third parties involved in the infringement, etc.
- **Recall**: The right to recall infringing goods placed on the market.

The general objective of the Enforcement Directive is to provide measures, procedures, and remedies, that are effective, proportionate, and dissuasive. For that reason, legal measures are, in principle, awarded at the infringer's expense. As such, rightsholders may also apply for judicially imposed penalties against infringers to enforce injunctions and other legal measures effectively.

In the EU, the Dutch provisional summary proceedings system (the so-called 'kort geding') is well-known for its efficiency, allowing injunctions and judicially imposed penalties to be obtained quickly. In these proceedings, rightsholders can also request information to further curtail the infringement. Initiating summary proceedings in the Netherlands for copyright and design protection has clear advantages, including the ability to act against infringing activities in a (very) short timeframe. In infringement proceedings, rightsholders may also seek information about distribution channels, sales figures, examples of the infringing work or derivatives, and make other ancillary claims. Additionally, it is possible to apply for a pan-European injunction in the Netherlands for copyright and design infringement, which will become more common as harmonization progresses.

In most cases, a cease-and-desist letter (along with a cease-and-desist declaration) is sent to the infringing party as the first step, although ex parte injunctions may be granted in case of flagrant infringement in matters of extreme urgency.

LEGAL COSTS REGIME

Finally, under EU and specifically Dutch procedural rules the winning party in intellectual property proceedings—including copyright and design infringement cases—may request that the court orders the losing party to pay the reasonable and proportionate legal costs and other expenses incurred by the winning party. This allows rightsholders to recover a substantial portion of their costs spent on IP-cases.

CONCLUSION

In conclusion, copyright and design rights are considered strong forms of IP protection in the EU. The Netherlands, in particular, offers relatively straightforward options for obtaining legal measures, including EU-wide injunctions. While this contribution to the *USLAW Magazine* highlights the opportunities and benefits of pursuing such copyright and design protection in the EU and the Netherlands, future contributions will focus on other areas of IP protection in the same territories, including trademarks, trade names, unfair competition, advertising and counterfeit. So stay tuned!

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THE WATER'S FINE? NAVIGATING WATER CONTAMINATION LITIGATION

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Perhaps one of the most quintessential concerns for corporate defendants in the last decade is that of nuclear verdicts. In just a decade, from 2013 to 2022, there were 115 verdicts of $100 million or more. The Institute for Legal Reform showed record-breaking years for verdicts in 2022 and 2023.[1]

With the end of 2024 in sight, it is key to examine nuclear verdicts as they pertain to water contamination litigation. After all, several high-profile cases have awarded astronomical amounts, including a $750 million settlement in Pennsylvania[2] and an astounding $3 billion in punitive damages in Las Vegas.[3] In a world where product liability cases involving serious or fatal injuries seem omnipresent, what was it about these cases that led to such high verdicts—and seemingly created such juror vitriol?

Perhaps even more than most toxic tort litigation, it is water contamination cases that seem capable of provoking such high emotions and high damages. For fair reason, water is universal and essential. The idea that it could be tainted is frightening, and the thought that a company could be responsible for that tainting is infuriating.

With such elevated emotional stakes, corporate defendants and attorneys must navigate all stages of water contamination litigation with particular care if they seek to limit their exposure.

PROBLEMATIC JUROR ATTITUDES

Every juror, in every case type, comes in with preexisting attitudes and experiences that cause them to filter information in a way that comports with those sensibilities. However, it is safetyist beliefs among jurors—the belief that corporations should eliminate all possible risks—that present the most significant defense challenge in toxic tort litigation.[4] Jurors with safetyist beliefs are increasingly intolerant of even minimal risk, especially in matters involving consumer products, environmental hazards, and water contamination.

Of course, defense attorneys representing corporate defendants also must navigate a jury pool influenced by anti-corporate attitudes and related distrust. Though these opinions are usually formed in response to media coverage of corporate wrongdoing among the largest institutions, the effects of these opinions are often felt by any company defendant bigger than a

mom-and-pop shop.

Even beyond affecting jurors' evaluations of duty and causation, safetyist and anti-corporate attitudes can intertwine when jurors consider damages awards, often to shocking effect. Upon hearing about the defendants' conduct, those jurors who are primed to believe the worst (and who extrapolate plaintiffs' risk and harm to themselves and their communities) may experience intense fear and anger—a combination that can result in extreme damages. This is especially true when jurors are led to believe that punishing a defendant will send a loud, preventative message to an industry or to corporations in general. Massive verdicts like those in recent news make it clear: today's jurors are willing to deliver nuclear verdicts.

As defense attorneys develop their case strategy, they must address these interconnected issues. Doing so will require a departure from solely relying on the defense that the corporation abided by applicable government standards, particularly given jurors' declining trust in regulatory agencies (e.g., EPA, FDA, NHTSA, etc.)[5]. Instead, counsel can effectively advocate for their clients and mitigate the impact of adverse juror attitudes in water contamination cases by imbuing thematic frameworks that confront anti-corporate biases, combat safetyism, acknowledge and address safety concerns, and navigate the terrain of diminished trust in government agencies.

OPTIMIZING THE OUTCOME

Gone are the days when certain jurisdictions were the only source of nuclear verdicts. The potential for punitive damages further underscores the need for a comprehensive approach to mitigate exposure.

Beyond developing a narrative and case framing to bring down the temperature and humanize the corporate entity, defendants in water contamination and other high-risk product liability/personal injury cases must approach jury selection with an eye toward leveling the playing field. This includes tailoring voir dire and jury selection strategies to be proactive about achieving a favorable outcome and/or minimizing potential damages. Below are four key steps in this process.

1. Control Damages from the Outset

It is important to deploy pre-trial strategies aimed at limiting discussions on specific damage amounts during voir dire. This may involve filing motions in limine to narrow the scope of damages explored in jury selection. By controlling the damages narrative early on, defendants can mitigate the risk of inflated jury awards by restricting plaintiffs' ability to eliminate for cause or use peremptory strikes on jurors who are hesitant to give a pre-commitment before hearing any evidence.

2. Develop a Juror Profile

Among other things, a juror profile highlights predictive characteristics held by pro-plaintiff and high-damages jurors. Generally speaking, the defense should watch out for jurors who: 1) strongly avoid risk, 2) endorse the tenets of safetyism, 3) rely on emotional thinking, 4) have experienced illness shared by plaintiffs as a result of any type of contamination (or are close to someone who has), and 5) harbor anti-corporate sentiments.

A supplemental jury questionnaire can reveal these risky attitudes in advance of voir dire. Questions should focus on identifying the most dangerous potential plaintiff supporters. Analyzing jurors' responses will help counsel prepare for voir dire with a targeted approach, which is crucial given potential time constraints.

3. Maximize Cause Challenges

Counsel should also develop voir dire questions that encourage jurors to freely and openly discuss their beliefs, experiences, and potential biases. Through strategic questioning, defendants can uncover prejudices early, informing cause challenges and subsequent peremptory strikes. For example:

- "By a show of hands, who here has a negative opinion of companies that bottle and sell water?"
- "Please raise your hand if you or a loved one is currently caring for someone who is under medical care or treatment for a serious illness or disease."
- "Have you, or has anyone close to you, ever been seriously injured because of exposure to chemicals, toxins, or any other hazardous substance?"

Depending on the jurisdiction, defendants—particularly in water contamination cases—should obtain at least two to three times the number of cause challenges as plaintiffs. On a basic level, anti-corporate sentiment, sympathy for those experiencing serious health issues, and general human empathy mean that there are generally more jurors biased against corporate defendants than there are jurors biased against plaintiff individuals. Obtaining more cause challenges requires practice, asking the right questions, savvy cause sequencing, and, of course, a judge willing to grant your requests—but with precious few peremptory strikes, reaching a good result in cases like these demands plentiful challenges.

4. Research Jurors' Social Media and Internet Presence

Consider examining jurors' online presence for additional insights into their interests, affiliations, and potential biases. Attorneys can glean information through this approach that may not be readily apparent during voir dire due to time constraints or jurors' reluctance to disclose their true attitudes. For instance, if you find that a juror posted about a family member's illness from a few years ago, has volunteered for organizations that help those suffering from terminal diseases, or holds strong negative views about corporate entities in the water industry, those social media postings can inform the need to compose general questions asking the panel about those who have had such experiences.

IN CONCLUSION

Water contamination cases pose significant challenges for corporate defendants due to prevailing beliefs that go hand-in-hand with traditional plaintiff themes and tactics. Pre-existing biases can start the defense at a disadvantage, underscoring the need for effective themes and strategies to counteract them. To navigate today's litigation environment, counsel must understand how jurors perceive these types of cases and know which questions will uncover their most problematic attitudes.

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STRATEGIES FOR MULTINATIONAL COMPANIES TO MEET ANTI-CORRUPTION REQUIREMENTS IN CHINA'S MEDICAL AND PHARMACEUTICAL INDUSTRIES

George Wang Duan & Duan

In recent years, the medical and pharmaceutical industries have grown rapidly, and China's anti-corruption regulations have become increasingly stringent. Multinational companies in China need to be aware of anti-corruption laws and ensure compliance while remaining flexible to the changing legal environment. This dual pressure requires companies to follow strict anti-corruption policies in their internal management and external cooperation and to establish a comprehensive compliance system.

This article will discuss the current laws and regulations in China's healthcare and pharmaceutical industries and explore strategies and approaches for companies to respond to anti-corruption requirements. Multinational companies operating in China must comply with local anti-corruption laws while addressing global regulatory challenges. In recent years, anti-corruption regulations have been frequently updated, penalties have increased, and the focus of regulation has been progressively concentrated on key positions and critical processes. The Chinese government has continued to introduce new anti-corruption policies and strengthened regulation of the healthcare sector. For example, the recently introduced "two-invoice system" policy requires medicine to go through only two invoices from production to hospitals in order to reduce corruption in the distribution process. As the policy has been strengthened, the penalties faced by non-compliant companies have become harsher, including not only financial fines but also business restrictions and administrative penalties, which have had a significant impact on market operations. Regulators have paid particular attention to key positions such as senior hospital managers and procurement officials, as well as key aspects of medicine procurement, pricing and project applications.

LAWS, REGULATIONS AND POLICIES IN CHINA ON COMMERCIAL BRIBERY IN THE MEDICAL INDUSTRY

In China, the anti-corruption regulations in the medical and pharmaceutical industries are becoming increasingly strict. The government has implemented a comprehensive framework of laws and regulations designed to combat commercial bribery and ensure fair market competition, as well as to protect public health safety. Key legislation, such as the Anti-Unfair Competition Law and specific provisions within the Criminal Law, have been put in place to address and penalize corrupt practices within these sectors.

If a company is found to have bribed hospital staff or engaged in unfair competition in medicine procurement, the consequences can be severe. Economic penalties are substantial, including hefty fines that can significantly impact a company's financial standing. These penalties are often accompanied by contract losses, where companies may lose lucrative contracts or be disqualified from future procurement opportunities. This not only affects the immediate revenue but also damages the company's long-term business prospects.

Additionally, companies may face administrative punishments for engaging in commercial bribery. Such administrative actions can include the confiscation of illegal gains, which strips the company of any profits made through corrupt means. Fines imposed in these cases can be considerable, further straining the company's resources. In extreme cases where the violations are particularly egregious, the company's business license may be revoked, effectively barring it from operating within the market. This represents a significant risk, as it can lead to the company's permanent exit from the industry.

Moreover, individual accountability is also a critical component of China's anti-corruption measures. If a company is found to have bribed government officials or hospital staff, the individuals responsible for these actions may face severe criminal penalties. These penalties include substantial fines and, in serious cases, imprisonment. Such criminal charges can result in long-term imprisonment, severely affecting the individuals' lives and careers. The prospect of criminal charges serves as a powerful deterrent, emphasizing the serious personal risks involved in engaging in corrupt activities.

THE TWO-INVOICE SYSTEM

The tightening of anti-corruption measures is a direct response to widespread concerns about unethical practices in the industry. Historically, the medical and pharmaceutical sectors have been bothered by issues such as kickbacks, under-the-table deals, and other forms of bribery. These practices not only undermine the integrity of the healthcare system but also put patient safety at risk by potentially prioritizing profit over care quality. By enacting stringent anti-corruption regulations, the Chinese government aims to establish a more transparent and fair environment that promotes healthy competition and ensures that patient care remains the top priority.

One significant example of these stringent regulations is the "two-invoices system" policy, which aims to simplify the pharmaceutical supply chain. The two-invoice system refers to the fact that medicines can only be invoiced twice from the pharmaceutical company to the hospital. This means that only one invoice is issued from the pharmaceutical manufacturer to the distributor, and only one invoice is issued from the distributor to the hospital, and no other invoices are allowed in the process. The "two-invoice system" will reduce the intermediate links in the circulation of medicines, lower distribution costs and significantly reduce the price of medicines.

By reducing the number of transactions, the policy seeks to minimize opportunities for corruption and make the entire process more transparent. This policy is particularly important because it directly addresses one of the critical areas where corruption has been most rampant – the distribution of medicine. With fewer steps involved, it becomes easier to trace the path of medicine from pharmaceutical companies to hospitals, thereby reducing the likelihood of illicit activities.

HOW MNCS CONTROL AND MINIMIZE COMMERCIAL BRIBERY RISKS

For multinational companies operating in China, understanding and adapting to these local regulations is crucial. These companies often face additional challenges due to the need to comply with both local and international anti-corruption laws. This dual compliance requirement can be complex, but it is essential for maintaining good standing in all markets where the company operates.

(1) Strategies for Effective Compliance Construction

To effectively address anti-corruption challenges, multinational companies can engage in compliance construction to meet the requirements of the non-prosecution compliance system. First, admitting guilt and accepting punishment is a prerequisite for applying the non-prosecution compliance system. Multinational companies need to confront their violations of laws and regulations, actively admit mistakes, and accept corresponding penalties. This is not only a legal requirement but also an important reflection of the company's commitment to honest operations. Second, the company must be in normal production and operation status. This means that the company's operations should comply with relevant laws and regulations, with no major violations, and should be able to perform its business functions normally. This condition ensures that during compliance construction, the company can maintain stable business activities without being affected by compliance issues.

Additionally, voluntarily applying for a third-party compliance supervision mechanism is also a key aspect of compliance construction. A third-party mechanism can provide objective and fair supervision and guidance for a company's compliance construction, helping to identify and resolve compliance risks and ensuring the effectiveness and transparency of compliance construction. Multinational companies need to proactively apply for and accept third-party supervision to enhance external trust in their compliance construction. The government encourages companies to voluntarily apply for third-party compliance supervision mechanisms. These mechanisms provide objective and fair oversight, helping companies identify and resolve compliance risks. By embracing third-party supervision, companies can enhance the transparency and effectiveness of their compliance programs, thereby building greater trust with regulators and the public.

Finally, companies must have sufficient funds for compliance construction. Compliance construction is a long-term task that requires significant resource investment, including formulating and implementing compliance policies, training employees, and monitoring and evaluating compliance status. Therefore, multinational companies need to ensure they have enough financial resources to support these activities, achieve compliance goals, and continuously improve compliance levels.

(2) Investing in Human Resources and Technology for Enhanced Compliance

Moreover, companies should invest in human resources to build a strong compliance team. This team should be equipped with the knowledge and skills necessary to navigate the complex regulatory landscape. Regular training sessions and workshops can help employees at all levels understand the importance of compliance and the specific requirements they need to meet. A well-informed workforce is crucial for the effective implementation of compliance policies and procedures. Also, leveraging technology can significantly enhance compliance efforts. Advanced software solutions can help monitor transactions, flag suspicious activities, and ensure that all processes adhere to regulatory standards. By integrating technology into their compliance strategies, companies can streamline their operations and reduce the risk of human error. This not only improves efficiency but also provides a robust framework for continuous monitoring and improvement.

In conclusion, anti-corruption in China's medical and pharmaceutical industries is not only a legal requirement but also an important guarantee for maintaining market competitiveness and corporate reputation. Multinational companies need to deeply understand Chinese laws and regulations, establish a sound compliance system, and ensure the transparency and legality of business operations. Through these measures, companies can effectively control and reduce business risks and safeguard their long-term development.

Ultimately, the goal of anti-corruption efforts is to create a fair and ethical business environment that benefits all stakeholders, from patients and healthcare providers to pharmaceutical companies and regulators. By committing to high standards of integrity and compliance, companies can build trust with their partners and customers, ensuring sustainable growth and success in the long run. As the regulatory landscape continues to evolve, staying proactive and adaptive will be key to navigating the challenges and seizing the opportunities that lie ahead.

George Wang is the managing partner of Duan & Duan Law Firm in Shanghai, China. He holds a Magister of Juris from Oxford University and was awarded a Chevening Scholarship from the UK government. He has represented foreign investors, including multiple Fortune 500 companies, to handle over 100 FDI and M&A projects. He serves as a member of the Foreign Affairs Committee of the Shanghai Bar Association and legal counsel of the Shanghai Foreign Investment Association. He was also awarded as Foreign Leading Talent, the "A-List" 100 Lawyers of China Business Law Journal, and Chambers "Leading Lawyer" in Corporate & Commercial Practice 2022.

THE VALUE OF HUMAN INVESTIGATORS IN THE AI AGE

Tyler Turner Marshall Investigative Group

HAS AI ADVANCED TO PRESS THE BUTTON AND GET AN INVESTIGATION? NOT QUITE.

The steady progression of generative artificial intelligence models, such as ChatGPT, Co-Pilot, Apple Intelligence, and Gemini, have revolutionized many aspects of modern life for both work and play. These tools can organize massive amounts of data, perform intricate calculations, and even mimic human-like responses in communication. They can also organize your recipes by ingredient cost, manage your stock portfolio, and create a photo of an African elephant skiing in Aspen.

THE FUTURE IS HERE, FOLKS, AND IT IS TRULY ASTOUNDING.

However, when it comes to the realm of conducting accurate investigations, the role of human involvement can't be overstated. While AI has proven to be a valuable ally, it is no substitute for the nuanced understanding and experience that skilled human investigators bring to the table.

Fraudulent or suspicious claims are often embedded with interpersonal dynamics, emotionally charged decisions, and financial hardships due to medical or employment complications stemming from the loss. Unpacking these layers requires a level of understanding and interpretation that no AI can achieve at this time.

With all their amazing capabilities, it's important to remember that current AI models only operate based on the data

they are provided or "trained on." Simply put, they are only as effective as the algorithms and training info that underpin them. Have you ever heard of Garbage In, Garbage Out? Artificial Intelligence, in its current iteration, will never have the original thoughts or ideas that push an investigation further or generate new leads to follow. That only exists in the realm of Artificial General Intelligence or AGI, which does not currently exist. Most experts agree that functional AGI for the consumer is at least 30+ years away, and that is an ambitious estimate.

All AI models that are currently available perform exceptionally in situations with clear parameters and structured data, but struggle in environments that require adaptability or creativity. You may notice this when a written prompt that most elementary-aged humans would understand is misunderstood by the Copilot or GPT in your browser. This could be due to grammatical errors, typos, or the query is simply too abstract for the bot to understand. "Outside the box" thinking is not one of AI's strong suits.

We have all seen the AI investigative services out there on Google. A nominal fee and a click of a button are all it takes to get the whole claimant's internet presence or criminal history. Does it sound too good to be true? Then it probably is. Humans make errors. Pretty regularly, in fact. Whether it's a law enforcement officer (LEO) misspelling something on a crash report or a court clerk transposing the month and day for a date of birth, errors are all but guaranteed. If your AI bot is looking for criminal or civil records on a "John Smith" in "Lafayette, LA," it will not catch the "Jon Smith" or "Jhon Smith" that happen to share similar address history. A simple and forgivable typo by a clerk or LEO could result in your AI missing a key piece to the puzzle. Even if it could aggregate all associated records for John Smith, what it would produce for a client would be an unorganized and, more importantly, unconfirmed mess of records.

Now, don't get me wrong, I'm not here to denigrate this new technology. AI's utility in any sort of investigation is undeniable. The ability to sift through vast data sets at break-neck speed. Uncovering dozens of social media accounts under a specific username in seconds. Instantaneously locating one or two specific points of information in dense legal documents, which would take humans weeks or even months to uncover, those advantages are unparalleled. Take this specific example. You find 40 criminal, civil, and traffic cases for a subject in Decatur County, Georgia. After the due diligence to confirm each case belongs to your subject, you now have the tedious task of moving all these cases into a document and formatting. We can now copy all these cases into an AI bot, prompt it to organize them by county in chronological order and output them directly into the desired format. Extremely easy to do if you know the correct prompts to input. The time that's saved just from that specific example can add up to be enormous over the course of a year.

When clients ask about the significance of human investigators in an AI-dominated world, the answer not only exists in the above scenarios but also in three key attributes: empathy, intuition, and critical thinking.

Empathy is the cornerstone of human interaction. Clients frequently do not have complete information, or the information they have may not make any sense, even to them. You need an empathetic and carefully crafted approach to those situations. A skilled investigator knows how to build trust with sources, ask the right questions, and obtain enough information to identify the missing pieces in the puzzle. AI lacks the emotional and social intelligence to adapt its approach, nor can it build the kind of rapport that encourages transparency between you and the client, or you and a potential source.

A critical element of successful investigations is knowing when to dig deeper and when to pivot to a new source or line of questioning. This "sixth sense" of intuition can only be developed through years of experience, careful observation, and repetition through casework. A skilled investigator reviewing a previously recorded interview might notice a minor inconsistency in a witness's statement or odd phrasing that an AI model would dismiss as inconsequential noise. Subtle cues such as tone of voice, body language, or hesitation while answering questions can provide valuable insights into a person's intentions. While AI can transcribe and analyze speech samples, it cannot interpret these physical signals and adjust its methods appropriately to the situation.

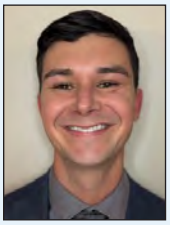
At its core, investigation is not merely about collecting data; it is about identifying patterns, contextualizing evidence, and unraveling truths within a web of complexity. AI can gather most types of data instantaneously, but what happens after it's compiled? A core belief of ours is that the essence of investigation extends far beyond data gathering. It requires critical thought, processed in real time, which can guide the direction of the investigation as it progresses. Critical thinking throughout each step of the gathering process not only provides the greatest outcomes but also reduces waste and, in turn, cost to our clients. The crucial part is interpretation of the data as it applies to the specific case.

It should be understood that clients are not only looking for answers but also for explanations that make sense in the context of their unique circumstance. This ability to connect the dots and present findings in a way that is both logical and relatable is something that's uniquely human and demands the application of empathy, intuition and critical thought.

Beyond the technical aspects of casework, clients value the peace of mind that comes from knowing their case is in capable *human* hands. Human investigators will always offer the highest level of dedication, judgment, and accountability. They are not only problem-solvers but also advisors who guide clients through every step of the investigative process. Having a human on the other end provides an open line of dialogue, another aspect of service that AI can't yet match.

As AI continues to evolve, its role in fraud investigations will undoubtedly expand. Rather than replacing human investigators, AI should be viewed as a complementary tool that enhances their capabilities. This collaborative approach between human and artificial intelligence should be the platinum standard of the investigative industry. It maximizes the strengths of both the human investigators and AI models, creating a powerful discovery system that is greater than the sum of its parts. We leverage AI to complete repetitive tasks and quickly find a plethora of content while relying on our own expertise to interpret findings and interact with clients, witnesses, and subjects.

While these incredible new tools have transformed the way we process, gather, and analyze information for investigations, they cannot and should not replace the human being in the driver's seat. Reducing and eliminating fraud is as much about understanding human behavior and the "why?" as it is about analyzing data. It is the human element that ensures clarity, accuracy, and amazing outcomes for our clients.



Tyler Turner is a research manager at Marshall Investigative Group, Inc. (MIG), and one of the company pioneers in using AI assistance in investigations. He joined MIG as a part-time surveillance agent in 2018, transitioned to the research department full-time in 2020, and was promoted to lead his own team in 2023.

FACES of USLAW

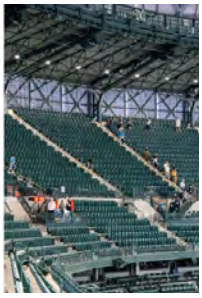
Safron inducted into SOICA

Amundsen Davis attorney Jonathan Safron (center) was inducted into the Society of Illinois Construction Attorneys (SOICA). The purpose of the society is to facilitate and encourage the association of outstanding Illinois lawyers who are distinguished for their skill, experience, and professional conduct in the practicing or teaching of construction law, dedicated to excellence in the practice of construction law, and subscribe to the goals and ideals of the society. Membership is by invitation only.

Amundsen Davis attorneys receive Outstanding Defense Verdict Award

Amundsen Davis partners Michael Schlechtweg and Margaret Firnstein Gebhardt were honored with the Outstanding Defense Verdict Award by the Jury Verdict Reporter (JVR), a division of Law Bulletin Media, for a workplace injury case. The award was presented on October 16, 2024, at the 13th annual JVR Trial Lawyer Excellence Awards ceremony.

AMUNDSEN DAVIS



Team Williams Kastner makes every step count

In September, a team from Williams Kastner in Washington participated in the Cystic Fibrosis Foundation's CF Climb at T-Mobile Park in Seattle. Together, they raised $535 and climbed 1,258 steps in just 18 minutes and 35 seconds. The CF Climb is a nationwide event where participants race up stadium stairs to help support the foundation's mission.

WILLIAMS KASTNER

BMS supports Feeding Westchester

The Black Marjieh & Sanford LLP team once again donated their time and effort to support Feeding Westchester, a non-profit organization dedicated to helping food-insecure residents of Westchester County, New York. This marks another year of BM&S's ongoing commitment to making a meaningful impact in the community.

BLACK MARJIEH & SANFORD LLP

Day of service makes an impact

Simmons Perrine Moyer Bergman PLC in Iowa participated in the Cady Day of Service by preparing care packages and serving a meal to the patients at the Russell and Ann Gerdin American Cancer Society Hope Lodge in Iowa City. The Cady Day of Service is dedicated to the late Iowa Supreme Court Chief Justice Mark Cady. The event brings communities together to honor and celebrate the life and legacy of Justice Cady and his commitment to public service, access to justice, and civil rights.

SIMMONS PERRINE MOYER BERGMAN PLC

Supporting breast cancer awareness initiatives

Simmons Perrine Moyer Bergman PLC participated in the Especially for You® Race Against Breast Cancer in Cedar Rapids on Oct. 6. The Race supports free mammograms and breast-care services to individuals in need.

In October, attorneys and staff at Baird Holm held a canned food drive that collected 185 pounds of food for the Omaha Food Bank. Baird Holm also had the honor of hosting the 4th Annual Midlands Bar Association Fall Welcome Event, where students from Creighton University School of Law and the University of Nebraska College of Law got to connect with members of the local legal community.

Coleman Chavez and Associates LLP supports and fundraises for local communities

In 2024, the firm participated in several charitable and volunteering events to benefit local communities. On March 6, 2024, CCA participated in Public Counsel's 2024 Run for Justice in Los Angeles, raising strong monies to help support families, veterans, and immigrants in need of legal services. CCA supported the Placer Food Bank, packing 574 boxes of food for local families in just two hours. On June 1, 2024, CCA volunteered at the Los Angeles Regional Food Bank, helping sort and pack 39,273 pounds of produce for the hungry. On October 4, 2024, CCA participated in the Walk to End Alzheimer's held in Irvine, exceeding fundraising goal and was one of the top corporate donors, raising strong funds.

Richard E. Day Client Counseling Competition

Williams, Porter, Day & Neville P.C. (WPDN) in Wyoming serves as the annual sponsor of the Richard E. Day Client Counseling Competition at the University of Wyoming College of Law. The event is named after Day, one of the founding members of WPDN. The annual competition evaluates students based on their knowledge of the law, their ability to ask the right questions and their listening skills. Stuart Day, Richard's son, is a partner at WPDN and was one of the judges at the 2024 event, pictured in the center, with the law students who won the competition.

St. Augustine Prep's Mock Interview Day

Matthew Dellinger of Sweeney & Sheehan, P.C. in Philadelphia, Pennsylvania, volunteered his time at the St. Augustine Prep's Mock Interview Day, which assisted high school seniors with the opportunity to fine-tune their interview skills, preparing them for the next steps of the college admissions process and beyond.

Making Strides Against Breast Cancer

Jim Cronin of Rivkin Radler LLP in Uniondale, New York, and his son, Sean, along with 40 other family friends, attended the "Making Strides Against Breast Cancer" walk at Jones Beach in support of his cousin, Mary O'Brien.

Rivkin supports Pink Aid

Rivkin Radler LLP was a proud sponsor of Pink Aid's Long Island Annual Event & Fashion Show fundraiser—this year's theme being "Pink Rocks Broadway." The charity is dedicated to providing screening and financial assistance to breast cancer patients and survivors.

Valverde raises funds for the Tunnel to Towers Foundation

Rivkin Radler LLP's Frank Valverde participated in the 2024 Tunnel to Towers 5K Run & Walk this past weekend. His team raised nearly $13,000 towards the cause.

Rivkin Supports Contractors for Kids

Rivkin Radler LLP's Michael Impellizeri, Frank Valverde, and Aaron Zerykier attended a cocktail reception for the nonprofit Contractors for Kids, founded for the purpose of providing assistance to families in their communities.

Golfing for a cause

Bill Savino, Chris Kutner, Jeff Rust, and Sean Simensky of Rivkin Radler LLP attended the NCBA WE CARE Annual Golf and Tennis Classic, where they came in first place at 13 under par.

RIVKIN RADLER

Members of the USLAW Board of Directors at the Fall Member Meeting

USLAW Chair Ken Wingate (right) from Sweeny, Wingate & Barrow in South Carolina recognizes Oscar Cabanas of Wicker Smith (South Florida) as his term as USLAW Chair concludes.

*Chris Martin, divisional vice president, innovation and special projects at Great American Custom Insurance Services, Inc. (GACIS) (pictured left with Oscar Cabanas, immediate past chair of USLAW NETWORK) is the **2024 USLAW NETWORK Champions Award** recipient. The award annually recognizes an individual/organization who has shown outstanding service and dedication to the philanthropic efforts of the USLAW NETWORK Foundation.*

*Anne M. Umberger, director, associate general counsel at Nordstrom, Inc., is the **2024 USLAW NETWORK Bill Burns Award** recipient (pictured with Oscar Cabanas, immediate past chair of USLAW NETWORK). USLAW created the award to annually recognize a client who has shown outstanding service and dedication to USLAW. The award is named after Bill Burns, a longtime transportation risk management and litigation leader for Landstar System, a Jacksonville, Florida-based transportation company.*

*USLAW NETWORK names Edward G. Hochuli, past chair of USLAW NETWORK and a founding partner of Jones, Skelton & Hochuli as the **2024 O'Hagan-Carr Award** recipient. The award is named after Jim O'Hagan and Charles Carr, co-founding members of USLAW, and is given annually by the USLAW Chair to a USLAW member(s) who demonstrates outstanding service and commitment to the organization's guiding principles, mission, and objectives.*

Lew Bricker of Amundsen Davis** in Illinois (pictured left with Oscar Cabanas, immediate past chair of USLAW NETWORK) was recognized at the Fall 2024 USLAW NETWORK Member Meeting for his **15 years of service and leadership as a member of the USLAW NETWORK Board of Directors.

***2024 USLAW NETWORK Foundation Law School Diversity Scholarship recipients and members of the USLAW NETWORK Board of Directors and Diversity Advisory Committee** at the Fall 2024 USLAW NETWORK Client Conference in Vancouver, B.C., Canada.*

*USLAW NETWORK **Chair Ken Wingate** from Sweeny, Wingate & Barrow in South Carolina with Fall 2024 Client Conference **keynote speaker Jessica Buchanan.***

DELSOL Avocats (with Sébastien Popijn as lead counsel) advised ABC Companies in the context of Belgian Company Van Hool's bankruptcy. ABC Companies is the leader in motorcoach and transit equipment sales and service in the USA and Canada and the exclusive distributor of the motor coaches produced by the Belgian Company Van Hool. DELSOL Avocats – alongside other TELFA firms: the Dutch law firm Dirkzwager, the Swiss Law firm MLL, and the Portuguese law firm Carvalho, Matias & Associados - assisted ABC Companies throughout a complex and particularly urgent process in acquiring the shares held by Van Hool in ABC Companies and played a key role in securing a new distributor agreement with the purchaser of Van Hool's assets, the Dutch manufacturer VDL. This strategic transaction strengthens ABC Companies' position in the North American market and opens new opportunities for collaboration with VDL. Pictured left to right: Antonio Alfaia de Carvalho (Carvalho, Matias & Associados), Tom DeMatteo (ABC Companies) and Sébastien Popijn (DELSOL Avocats).

Faces from around the USLAW circuit...

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

Jacqueline Bushwack, Rivkin Radler (Uniondale, NY); Jennifer Cuculich, IMS Legal Strategies (Columbus, OH); Meghan M. Goodwin, Thorndal Armstrong (Las Vegas, NV)

Bryan N. Price, Flaherty Sensabaugh Bonasso, PLLC (Charleston, WV); Nick Polavin, IMS Legal Strategies; Maryalyce Cox, MehaffyWeber (Houston, TX)

Nicholas P. Resetar, Roetzel & Andress (Cleveland, OH); Margot N. Wilensky, Connell Foley LLP (New York, NY)

Adam C. Grafton, Bovis Kyle Burch & Medlin, LLC (Atlanta, GA); Albert B. Randall, Jr., Franklin & Prokopik, P.C. (Baltimore, MD)

Thomas S. Thornton, III, Carr Allison (Birmingham, AL); Jacqueline Bushwack, Rivkin Radler (Uniondale, NY)

Kim M. Jackson, Bovis Kyle Burch & Medlin LLC (Atlanta, GA); Bret A. Sanders, Fee, Smith & Sharp L.L.P. (Austin, TX)

Matthew C. Bouchard, Poyner Spruill LLP (Raleigh, NC); Christy E. Mahon, Sweeny Wingate & Barrow, P.A. (Columbia, SC)

Joseph F. Moore, Hanson Bridgett LLP (San Francisco, CA); Caryn A. Boisen, Larson King, LLP (St. Paul, MN)

Jason A. Webber; Jacob J. Liro, Wicker Smith (South Florida); Louis J. Vogel, Sweeney & Sheehan, P.C. (Philadelphia, PA)

Nicholas A. Rauch, Larson King LLP (St. Paul, MN); Catherine G. Bryan, Connell Foley LLP (Newark, NJ); Keely E. Duke, Duke Evett, PLLC (Boise, ID)

James D. Snyder, Klinedinst PC (San Diego, CA); Jan Tibor Lelley, BUSE (Germany)

Moira H. Pietrowski, Roetzel & Andress (Akron, OH); Dr. Tom Lewandowski, Gradient Corporation (Seattle, WA); Merton A. Howard, Hanson Bridgett LLP (San Francisco, CA)

Sandra L. Rappaport, Hanson Bridgett LLP (San Francisco, CA); Julie A. Proscia, Amundsen Davis LLC (Chicago, IL)

Nichole Koford, Wicker Smith (Tampa, FL); Molly Arranz, Amundsen Davis LLC (Chicago, IL)

Jeffrey A. Dretler; David M. Wilk, Larson King LLP (St. Paul, MN); Barbara Barron, MehaffyWeber (Houston, TX)

Joseph S. Goode, Laffey, Leitner & Goode LLC (Milwaukee, WI); Bryan P. Couch, Connell Foley LLP (Newark, NJ)

Douglas W. Clarke, Therrien Couture Joli-Coeur L.L.P. (Montreal, Quebec, Canada); Lisa Langevin, Kelly Santini LLP (Ottawa, Ontario, Canada)

Mark E. Hardin, Pierce Couch Hendrickson Baysinger & Green, L.L.P. (Tulsa, OK); Merton A. Howard, Hanson Bridgett LLP (San Francisco, CA)

Stella Lellos, Rivkin Radler LLP (Uniondale, NY); Ariadna Caulfield

Steven A. Rowe, Poyner Spruill LLP (Rocky Mount, NC); Aretta K. Bernard, Roetzel & Andress (Akron, OH)

Stephen J. Marshall, Franklin & Prokopik, P.C. (Baltimore, MD); Nick Polavin, IMS Legal Strategies, Senior Jury Consultant (Charlotte, NC); J. Tyler Dinsmore, Flaherty Sensabaugh Bonasso PLLC (Charleston, WV); C. Dewayne Lonas, Moran Reeves & Conn PC (Richmond, VA)

Sheryl J. Willert, Williams Kastner (Seattle, WA); Greg A. Garbacz. Klinedinst PC (Irvine, CA)

Patrick J. Hughes, Connell Foley LLP (Cherry Hill, NJ); J. Michael Kunsch, Sweeney & Sheehan, P.C. (Philadelphia, PA); Christopher M. Cotter, Snyder Burnett Egerer, LLP (Santa Barbara, CA)

John D. Cromie, Connell Foley LLP (Roseland, NJ); Lisa A. Zaccardelli, Hinckley Allen (Hartford, CT); Jonathan S. Storper, Hanson Bridgett LLP (San Francisco, CA)

Jordan S. Cohen, Wicker Smith (Ft. Lauderdale, FL); Mark M. Leitner, Laffey, Leitner & Goode LLC (Milwaukee, WI); Kevin J. Visser, Simmons Perrine Moyer Bergman PLC (Cedar Rapids, IA)

Kathryn T. Alsobrook, Dysart Taylor (Kansas City, MO); Barbara Barron, MehaffyWeber (Houston, TX)

USLAW

On the Road with USLAW

Once the sessions end, USLAW event attendees enjoy fun times and network together in various host cities, including time with The Ohio State University Marching Band at The Shoe, The Ohio State University's iconic stadium, whale watching in Vancouver, B.C., curling, e-bike tours, culinary exploration, ziplining, craft beer sampling and more.

firms ON THE MOVE

Wingate named USLAW Chair

Kenneth B. Wingate
USLAW Chair

Jennifer D. Tricker
USLAW Vice Chair

Tamara B. Goorevitz
USLAW Secretary/ Treasurer

During the Fall 2024 USLAW NETWORK Member Meeting, USLAW membership elected the 2024-25 USLAW NETWORK Board of Directors. The new leadership includes *Kenneth B. Wingate*, chair, from *Sweeny, Wingate & Barrow, P.A.* in Columbia, South Carolina; *Jennifer D. Tricker*, vice chair, from *Baird Holm LLP* in Omaha, Nebraska; and *Tamara B. Goorevitz*, secretary/treasurer, from *Franklin & Prokopik, P.C.* in Baltimore, Maryland.

Earl W. Houston, II, of *Martin, Tate, Morrow & Marston, P.C.* in Memphis, Tennessee, has been selected to move to the USLAW Executive Committee. *Dan L. Longo* from *Murchison & Cumming LLP* in Los Angeles moves off the USLAW Executive Committee to the board as chair emeritus. New members of the board include *Sandra L. Rappaport* of *Hanson Bridgett LLP* in San Francisco and *David S. Wilck* of *Rivkin Radler LLP* in Uniondale, New York.

For a full listing of the Board, *visit uslaw.org/board-of-directors*.

Angel Taveras of *Adler Pollock & Sheehan, P.C.* in Rhode Island is among the list of 100 Hispanic Board Members Making a Difference who represent a sample of the breadth of talent and experience within the Hispanic community. In honor of National Hispanic Month, Board Recruitment, a publication of BoardProspects, has featured 100 Hispanic Board Members Making a Difference, developed in partnership with the Latino Corporate Directors Association (LCDA). This feature highlights the outstanding contributions of Hispanic directors across industries, showcasing the depth of leadership and expertise they bring to the boardroom.

Baird Holm Partner *Morgan Kreiser* has been elected a Fellow of the American Bar Foundation (ABF). ABF is an honorary society of lawyers, judges, legal scholars and law faculty who have demonstrated outstanding dedication to the highest principles of the legal profession. Foundation membership is by invitation only and is strictly limited to 1% of attorneys and judges.

Partner *Scott S. Moore* has been elected as the 2025 Chairman of the Board of Directors for the Children's Respite Care Center (CRCC). In this role, Moore will champion CRCC's commitment to fostering children's growth through innovative care that prioritizes their physical, mental, emotional, and intellectual well-being.

Partner *Vickie Ahlers* has been elected to the Board of Directors for the Nebraska Chapter of the Make-A-Wish America Foundation.

Partner *Scott P. Moore* has been elected to the Board of Directors at Inclusive Communities, a nonprofit that, through human relations work, provides education and advocacy related to the topics of diversity and inclusion.

Associate *Addison McCauley* has been elected to join the Holy Name Housing Corporation Board of Directors. Holy Name Housing Corporation provides quality, affordable housing options and homeownership education in Omaha and surrounding communities.

Associate *Spencer A. Hosch* has joined the Institute for Energy Law (IEL) as an IEL Young Energy Professional Member. The IEL at The Center for American and International Law (CAIL) is one of the world's oldest continuing legal education providers.

Pamela S. Hallford of *Carr Allison* in Alabama was elected to the TIDA Board of Directors at its annual seminar. She will serve a three-year term.

Karen Painter Randall, a partner at *Connell Foley LLP* in New Jersey, where she chairs the Cybersecurity, Data Privacy, and Incident Response Group, has been named a "Leading Woman in Business" by the publication NJBIZ, New Jersey's leading business journal; and has been appointed co-chair of the New Jersey State Bar Association's (NJSBA's) inaugural Cybersecurity and Data Privacy Committee and as a member of the NJSBA's AI Committee for 2024-2025. These committees play a vital role in advancing the interests of the legal profession and the communities they serve and emphasize the significance of cybersecurity, data privacy, and the legal and ethical implications of AI.

HansonBridgett

David Casarrubias-Gonzalez of *Hanson Bridgett LLP* in San Francisco was sworn in as the Regional President for the Hispanic National Bar Association's Region 17, covering Northern California and Hawaii.

Laffey, Leitner & Goode LLC

Joe Goode of *Laffey, Leitner & Goode LLC* in Wisconsin has been elected to the American Bar Association's (ABA) Forum On Franchising Governing Committee. Goode is recognized as national leader in U.S. franchise and distribution law. For the last 15 years, Goode has been an active member of the ABA's Forum on Franchising. Celebrating its 47th year, the Forum strives to be the preeminent group for the study and discussion of franchise and distribution law.

p.s. Poyner Spruill LLP ATTORNEYS AT LAW

Poyner Spruill LLP partner *Kelsey Mayo* was honored with the Thomas J. Finnegan III Educator of the Year Award at the American Society of Pension Professionals & Actuaries (ASPPA) Annual Conference. This award is given annually to an ASPPA member who is dedicated to furthering retirement plan education. Mayo has been a long-time volunteer for ASPPA and the American Retirement Association (ARA), previously serving as the co-chair of the APPA Administrative Relations Committee, the Chair of the ASPPA IRS Subcommittee, and the Chair of the ASPPA asap Committee. She is currently ARA's Director of Regulatory Policy. Mayo focuses her practice on employee benefits and executive compensation.

Poyner Spruill LLP attorney *David Long* was honored with the North Carolina State Bar's John B. McMillan Distinguished Service Award. This award is given to attorneys who have enhanced legal knowledge and education, promoted public confidence in the justice system, and ensured equal access to justice for those facing economic or social barriers through pro bono work.

QG&T QUATTLEBAUM, GROOMS & TULL PLLC

J. Cliff McKinney of *Quattlebaum, Grooms & Tull PLLC* in Arkansas was inducted as a Fellow of the American College of Mortgage Attorneys (ACMA) during its annual meeting in Chicago, Illinois. Fellows are dedicated to contributing to their profession by enhancing laws and procedures related to real estate-secured transactions and elevating the standards of practice among attorneys in this field. A Managing Member of the law firm, McKinney concentrates his practice on real estate, land use, and business transactions.

Thomas H. Wyatt of *Quattlebaum, Grooms & Tull PLLC* in Arkansas has been named president of the Arkansas Association of Defense Counsel (AADC). He assumed the role at the 2024 AADC Annual Meeting & Seminar. Wyatt is a Member of the firm and focuses his practice on commercial litigation, property litigation, and products liability.

Sweeney & Sheehan Attorneys at Law

Patrick J. Sweeney of *Sweeney & Sheehan, P.C.* in Philadelphia, Pennsylvania, successfully completed his term as president of the Defense Research Institute (DRI) in October and is now serving as immediate past president on its board of directors. DRI is the largest international membership organization of attorneys defending the interests of businesses and individuals in civil litigation.

successful RECENT USLAW LAW FIRM VERDICTS & TRANSACTIONS

Duke Evett PLLC (Boise, ID)

Hesse and Arend prevail in Motion for Summary Judgment; Duke and Brakes prevailed in medical malpractice action

Christina Hesse and Chesney Arend of *Duke Evett* in Idaho prevailed on a Motion for Summary Judgment involving a 42 U.S.C. § 1983 civil rights claim alleging a medical provider acted with deliberate indifference to Plaintiff's medical needs, in violation of the Eighth Amendment. Hesse and Arend argued the defendant medical provider did not violate Plaintiff's Eighth Amendment right to adequate medical treatment because Plaintiff was, in fact, offered medical care that he declined, "to show the courts" the extent of his claimed injury. The U.S. District Court granted the Motion for Summary Judgment and dismissed the entire action, holding that the Plaintiff's constitutional right to adequate prison medical treatment was not violated because "[Plaintiff], like all individuals, had a right to refuse the recommendation for surgery, but [] cannot then complain to this Court that he did not receive the treatment he refused."

In an unrelated matter, Keely Duke and Marissa Brakes prevailed on a Motion for Summary Judgment involving a claim for medical malpractice, where they argued that Plaintiff's standard of care expert did not meet the statutory foundational requirements of Idaho Code §§ 6-1012 and 6-1013. The District Court agreed that Plaintiff's expert witness testimony was inadmissible and dismissed Plaintiff's action, with prejudice.

Dysart Taylor (Kansas City, MO)

Dysart Taylor's Wilcox and Litecky obtain summary judgment for a client in a negligence action

Dysart Taylor directors John Wilcox and Meghan Litecky obtained summary judgment in favor of a motor carrier and its driver in a negligence action in which Plaintiff claimed damages of $20M.

In 2020, Plaintiff was a passenger in a vehicle driven by her roommate ("Driver"). The two were traveling on I-70 from Colorado to their apartment in Wichita. Near Hays, Kansas, their vehicle was pulled over by a highway patrolman for suspected traffic violations. During this encounter, the trooper announced that he smelled marijuana coming from the vehicle. Shortly thereafter, Driver and Plaintiff sped off. This resulted in a high-speed chase on eastbound I-70, involving several troopers, that reached speeds of 120 mph.

Thirty-eight miles into the chase, Driver attempted to avoid a tire deflation device and crossed the median, where she entered westbound I-70. Driver and Plaintiff did not stop but continued to flee, traveling east on westbound I-70. After nearly colliding head-on with several vehicles, Driver lost control of her vehicle, which then began spinning before striking the westbound tractor-trailer. Plaintiff sustained catastrophic injuries.

Plaintiff brought suit in Kansas state court. She alleged that the truck driver, who was delivering a shipment from Kansas to Washington, was negligent for failing to avoid the rental car. She alleged that the motor carrier was vicariously liable for the negligence of its driver and was further liable under theories of negligent hiring, supervision and training.

Plaintiff relied heavily on the opinion of her "expert," who opined that according to "industry standard" the truck driver should have veered to his right rather than his left.

Dysart Taylor's team of John Wilcox and Meghan Litecky filed a motion for summary judgment. In granting the motion, the court accepted the argument that there was no foundation for the expert's opinion. Further, the court accepted the argument that Plaintiff was engaged in a joint enterprise and criminal conspiracy at the time of the wreck. Given this, the court concluded that Plaintiff's actions and the imputed negligence of Driver were the proximate or legal cause of the accident.

Hanson Bridgett LLP (San Francisco, CA)

Hanson Bridgett trial team secures another major arbitration victory

The trial attorneys at *Hanson Bridgett LLP* have secured a major victory in a significant win for contractor client, Smith-Hyder, Inc. The complex dispute was against the owner and representative of a synagogue (Owner) in Palo Alto, California, over its $20 million construction and development. Following a two-week evidentiary arbitration hearing, Hanson Bridgett obtained a complete defense of the Owner's $4.9 million delay and defect claim and went on to achieve a $5.2 million award for Smith-Hyder for non-payment, attorneys' fees, and costs. This was a total win for Smith-Hyder, Inc.

In her award, the arbitrator stated: "In this case, the evidence persuasively established that [the Owner] wrongfully terminated Smith-Hyder. Instead of negotiating a fair price for the work, they added to the project, failed to pay Smith-Hyder for its work, failed to negotiate reasonable additional costs and time, and then sent a termination letter wrongfully asserting that Smith-Hyder was responsible for delays and cost overruns justifying its termination. This was a breach for which Smith-Hyder is entitled to recover its damages."

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Partner Andrew Giacomini explained that Smith-Hyder took on the challenging and innovative project based on its care for the community.

"Smith-Hyder wanted to build something meaningful based on the trusting relationship with the project's owner," he explained. "Our client accommodated numerous design and work requests that fundamentally altered the cost, timing, and scope of the project. Ultimately, our client was not treated fairly – the owner concealed changes made to the plans, failed to negotiate reasonable additional costs and time, and then egregiously, wrongfully terminated them, falsely asserting that Smith-Hyder was responsible for delays and cost overruns."

The arbitration award secured is a complete vindication of Smith-Hyder as a company, the conduct of its principals, and the quality of its work. The arbitrator awarded the entire amount of Smith Hyder's claim along with interest and attorney's fees.

The Hanson Bridgett team included partners Andrew Giacomini and Brian Schnarr, and associate Tom Li.

Murchison & Cumming (Los Angeles, CA)

Long and Maxwell earn victory in medical malpractice case

Dan L. Longo and Kelsey L. Maxwell of Murchison & Cumming LLP successfully defended a Physician's Assistant in a case where the plaintiff claimed medical negligence and medical battery following a gym injury. The jury found in favor of the defense, determining that the Physician's Assistant was not negligent and had acted within the standard of care.

The case began when the plaintiff tripped while walking up a flight of stairs at a gym, causing her glass water bottle to break, resulting in two cuts on her palm. Seeking immediate medical attention, she went to a nearby hospital, where the Physician's Assistant provided treatment, including examination and imaging. The lacerations were repaired, and before discharge, the Physician's Assistant coordinated a follow-up consultation with a hand surgeon. Three days after the incident, the plaintiff underwent surgery where two small pieces of glass were removed from her wound, followed by nerve and tendon repairs.

The plaintiff contended that the Physician's Assistant's treatment fell below the standard of care, alleging that the wound was closed despite the suspicion of retained glass. She also claimed that the nerve and tendon damage resulted from the retained glass, not the initial fall. Additionally, the plaintiff accused the Physician's Assistant of closing the wound against her wishes, which she labeled as medical battery, and later asserted that she now suffers from Complex Regional Pain Syndrome due to the injuries.

The Physician's Assistant served a C.C.P. 998 offer in January of 2024 to encourage settlement, but the offer was rejected.

The trial was bifurcated between liability and damages. The jury ultimately concluded that the Physician's Assistant was not negligent in the care provided and confirmed that all medical procedures were performed with the plaintiff's consent, leading to a favorable verdict for the defense.

Pierce Couch (Oklahoma City, OK)

Pierce Couch obtains unanimous defense verdict in medical-negligence jury trial

Pierce Couch partners Rusty Hendrickson and Jeffrey Hendrickson recently defended a local hospitalist team, including an internal medicine physician and nurse practitioner, in a medical-negligence jury trial in Oklahoma County District Court before Judge Aletia Haynes Timmons. Plaintiff alleged that the hospitalist team prematurely discharged a patient from the hospital, leading to the patient's death several days later. During the seven-day jury trial, the defendants obtained directed verdicts on punitive damages, informed consent, loss-of-chance, and res ipsa loquitur. At the close of trial and following a jury demand of $10,000,000, the jury returned a unanimous defense verdict for the firm's clients and co-defendant clients on Plaintiff's negligence claim.

Rivkin Radler LLP (Albany, NY)

John Queenan and Jeff Ehrhardt win motion for summary judgment in civil rights, Fourth Amendment case

Rivkin Radler represented two New York State Troopers, who were individually sued via 42 U.S.C. 1983, in the Southern District of New York, for alleged violations of the plaintiff's Fourth Amendment rights, including alleged wrongful seizure/excessive force, wrongful death, failure to intervene, and related state claims as a result of a fatal encounter. The Troopers received a call of a man menacing someone with a knife in a restaurant parking lot, who turned out to be the plaintiff/deceased. When they arrived, the Troopers found the plaintiff in the back of the building, which also had security cameras that recorded much of the encounter.

The New York State Attorney General conducted an investigation under the Executive Law and cleared the Trooper of any wrongdoing. AG Report: https://ag.ny.gov/sites/default/files/oag_report_-_lopez-cabrera.pdf).

The defense primarily relied upon by the Troopers was that the interaction and resulting encounter was a justified response to

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the deceased's repeated aggressive and threatening behavior, continuous refusals to remove his hands from his pockets, which were concealing a weapon, and approaching the Troopers contrary to lawful direction. Police practice and use of force experts were also engaged. Rivkin Radler moved for summary judgment in March 2024. On September 9, 2024, Judge Colleen McMahon granted the motion for summary judgment in full. *Lopez v. Wolensky*, No. 20-CV-7798 (CM), 2024 WL 4123524 (S.D.N.Y. Sept. 9, 2024). The Court found that the Troopers' actions were justified under the Fourth Amendment, that lesser means of force were not required under the law on the facts, and that there was no constitutional violation. Additionally, the court accepted Rivkin Radler's arguments that the plaintiff's expert opined on legally irrelevant and, therefore, inadmissible issues and that the Troopers established entitlement to qualified immunity.

Williams Kastner (Seattle, WA)

WILLIAMS KASTNER

Williams Kastner trial team obtains defense verdict in traumatic brain injury trial and a full defense arbitration ruling on a Lemon Law arbitration

Williams Kastner attorneys Rodney Umberger and Ryan Vollans recently obtained a defense verdict in a jury trial that lasted nearly four weeks. The case was one of admitted liability following a rear-end collision involving a commercial vehicle owned and operated by Williams Kastner's client, a Fortune 200 company. The plaintiff, who was seeking millions of dollars, alleged that he sustained a life-altering traumatic brain injury (TBI) in the collision, and supported his brain injury claims with four medical experts from differing specialties, including a neurologist (with a focus on alleged pituitary injuries and endocrine issues), another nationally-recognized physician/expert witness who focuses on brain injuries and treatment, a neuroradiologist, and a neuropsychologist (whom Umberger and Vollans were able to get excluded during the trial).

The plaintiff, a successful attorney, alleged that the impact of his brain injury diminished his ability to work, and he supported his economic damages of over $2.7M with a vocational expert/life care planner and an economist. In addition to these experts, Plaintiff also presented numerous fact witnesses (family, friends and colleagues) who testified in support of his alleged brain injury. In closing argument, Plaintiff's lead trial attorney, who was from the Los Angeles area, asked the jury to award between $10M and $12M for non-economic damages in addition to the $2.7M in economic losses. The defense argued that the collision was not the proximate cause of a traumatic brain injury, and the jury agreed. The jury returned a defense verdict finding that the defendant's negligence was not a proximate cause of injury to the plaintiff.

In a separate matter, Williams Kastner Seattle attorneys Kenna Duckworth and Eddy Silverman recently obtained a full defense arbitration ruling on a Lemon Law arbitration wherein a motor home was alleged to have eight defects and to have been out-of-service more than the statutory 60-day time period. Duckworth argued that the defects were not covered under the pro-consumer Lemon Laws because the defects pertained to the dwelling portion of the motor home. Duckworth and Silverman obtain this victory on behalf of Tiffin Motor Homes.

TRANSACTIONS

Oberhammer Rechtsanwälte (Austria), *Delsol Avocats* (Belgium and France) and *Dirkzwager* (The Netherlands)

Oberhammer Rechtsanwälte (Austria), Delsol Avocats (Belgium and France) and Dirkzwager (The Netherlands) assist PBS Holding AG in the acquisition of ADVEO Benelux.

Oberhammer Rechtsanwälte, together with its co-members of TELFA - Trans European Law Firms Alliance, Delsol Avocats and Dirkzwager have assisted PBS Holding AG in the cross-border M&A transaction pursuant to which PBS Holding AG acquired 100% of the share capital of Adveo Belgium, including its subsidiary Adveo Netherlands (together Adveo Benelux) from the seller Adveo France.

PBS Holding AG and Adveo Benelux operate in the trade and distribution of stationery materials. PBS Holding AG is the Austrian parent company of an international group of companies (together PBS). PBS is one of the leading office supplies distributors and resellers in Central and Eastern Europe. Local sales and logistics teams in 10 countries serve more than 200,000 customers. More than 1,400 employees generated an annual turnover of more than EUR 430 million in 2023. PBS is multi-channel, which means taking a leading role in wholesale and direct sales in the respective countries.

The buyer, PBS Holding AG, was assisted by (lead): Oberhammer Rechtsanwälte with Christian Pindeus (Partner) and Moritz Pöttinger (Associate); Delsol Avocats with Sébastien Popijn and David Lohisse; Dirkzwager with Claudia van der Most and Mike van de Graaf, as well as further team members.

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Poyner Spruill LLP (Rocky Mount, NC)

Nick Ellis served as legal counsel for the owner of a rare official signed ratification copy of the United States Constitution

Poyner Spruill's Nick Ellis served as legal counsel for the owner of a rare official signed ratification copy of the United States Constitution, which was found at the historic Hayes Farm House located in Edenton, N.C. and sold at an auction in Asheville, N.C.

When this copy of the United States Constitution was found in 2023, the issue of whether it was an "out-of-custody public record" and, therefore, property of North Carolina had to be addressed. Ellis began a painstakingly thorough process of determining the legal provenance of the document and worked closely with the N.C. Department of Archives, as it also had a signed copy. In this process, the State concluded there was no verifiable tie between Poyner Spruill's client's copy of the Constitution and "any official State business or enterprise."

This pronouncement finalized the firm's clients' ability to auction their copy of the United States Constitution. With a goal of putting the Constitution in the hands of someone who would have the ability to not only preserve this historical document but to share it with the public, it came up for auction on October 17, 2024. And, when the hammer dropped, it sold for $9,000,000. Additionally, a rare copy of the Articles of Confederation, which had to undergo the same out-of-custody public record analysis, sold for $1,000,000.

Poyner Spruill's clients will always value their link to Hayes, the library, and their connection to Colonial and early American history. They are excited about this new opportunity for – "We the People of the United States" – to get a close-up look at the United States Constitution, the foundation of our democratic form of government, and where the liberties it and the Bill of Rights created for its citizens were first written.

Rivkin Radler (Uniondale, NY)

Sinensky leads team in acquisition for manufacturer client and Rivkin Radler Corporate Team assists with acquisition

Avi Sinensky led a *Rivkin Radler* team in connection with the acquisition by the firm's client, Fabuwood Cabinetry, of Plain N' Fancy Custom Cabinetry, a Pennsylvania-based custom cabinet manufacturer. The transaction totaled $8.5 million in cash for the assets of Plain N' Fancy and closed on September 3. Fabuwood's principal was also under contract to acquire the real estate in which the target business is located, a transaction that closed in early September 2024. The Rivkin team also featured Jenson Wang, Bernadette Kasnicki, Michael Heller, Kate Heptig, Amy Silver, John Diviney, Paul Schwabe and Nancy Del Pizzo.

In a separate transaction, Avi Sinensky and Jenson Wang represented FCF Advisors LLC (FCF), a New York-based asset manager and index provider with approximately $600 million in assets under management, in connection with a definitive agreement pursuant to which FCF is being acquired by Abacus Life, Inc. (NASDAQ: ABL). Based in Orlando, Florida, Abacus is an asset manager specializing in longevity and actuarial technology.

The transaction is subject to customary closing conditions and is expected to close on December 1, 2024. Rivkin Radler collaborated as part of a robust seller-side deal team.

Simmons Perrine Moyer Bergman PLC (Cedar Rapids, IA)

SPMB team assists client during acquisition

EVO Transportation & Energy Services, a dedicated truckload carrier and ground transportation supplier to the United States Postal Service, announced the acquisition of Cedar Rapids-based West Side Transport. The team of *Simmons Perrine Moyer Bergman PLC* attorneys assisting West Side Transport with this transaction were: *Randy Scholer*, *Tom DeBoom*, *Matt Hektoen*, Amanda D'Amico and Stephen Larson.

DIVERSITY AND INCLUSION

On October 3rd, **Hanson Bridgett LLP** in San Francisco received a Unity in Action Award from JPMorgan Chase. The award is meant to recognize exceptional leadership, steadfast commitment to inclusivity, and profound community impact in a number of different categories. The award was given in the category of DEI.

Amundsen Davis celebrates Hispanic Heritage Month

Amundsen Davis's Diversity, Equity, and Inclusion Committee organized and helped the firm celebrate Hispanic Heritage Month by inviting guest speaker Anita Alvarez, who presented her life story in our Chicago office and via webcast firmwide. Alvarez shared her inspiring story and the journey that led her to become the first Hispanic woman elected as Cook County state attorney from 2008-2016. (pictured left-to-right: Edna McLain, Amundsen Davis DEI co-chair; Anita Alvarez; Paola Villarreal, Amundsen Davis director of facilities)

2024 LGBT Network Workplace Summit

Aurelia Sanchez, Ann Burkowsky, and Tracey McIntyre attended the 2024 LGBT Network Workplace Summit to represent **Rivkin Radler**, a proud sponsor of the event. McIntyre was recognized for her work on the event committee.

Celebrating Hispanic Heritage Month

In celebration of Hispanic Heritage Month, **Rivkin Radler** hosted the CLE panel discussion, "Latinos in Law," featuring speakers Maribel Gomez, Frank Torres, and Frank Valverde which centered around Latinos in the practice of law. The program was moderated by Edwin Maldonado and Michele Chavez. The event was organized by Andre Oge, Edwin Maldonado, and Michele Chavez.

Rivkin Participates in LGBT Network Job Fair

Tracey McIntyre represented **Rivkin Radler** at the LGBT Network's 2024 Career Fair. Pictured with Tracey is Brian Rosen, Chief Development Officer the Network.

Rivkin Supports UnitedHealth Group Diversity Day

Keith Grover and Sahil Sharma represented **Rivkin Radler** at the 2024 UnitedHealth Group Diversity Day.

Mansfield Certification

Hanson Bridgett LLP in San Francisco has again achieved Mansfield Plus Certification – the fourth consecutive year the firm has earned the prestigious recognition for its evolving commitment to DEI. The accomplishment underscores the firm's steadfast dedication to promoting an inclusive and equitable workplace environment.

Baird Holm LLP in Nebraska also has achieved Mansfield Plus Certification for 2023-2024 and has reaffirmed the firm's efforts towards inclusion as it continues its commitment to Mansfield Certification for 2024-2025.

As part of its ongoing efforts to foster a diverse leadership team, **Roetzel & Andress** in Ohio has been awarded 2023-24 Mansfield Certification. This certification, granted by Diversity Lab, recognizes Roetzel's commitment to ensuring that all qualified talent within the firm has equal access to advancement opportunities.

Klinedinst PC has achieved the Mid-Size Mansfield Certification for 2023-2024. This marks the second year that Diversity Lab has recognized the firm for the work it has done to ensure equity and consistency in advancement across all seven offices.

The Mansfield Certification framework is a science-backed and data-driven solution that helps boost inclusivity, access, and diversity in leadership at participating law firms. Mansfield is a year-long structured certification process designed to ensure all qualified talent at participating law firms have a fair and equal opportunity to advance in leadership. Mansfield focuses on equal treatment, equal opportunity, and equal access.

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about USLAW NETWORK

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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.

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The commitment remains the same as originally envisioned. To provide the highest quality legal representation and seamless cross-jurisdictional service to major corporations, insurance carriers, and to both large and small businesses alike, through a network of professional, innovative law firms dedicated to their client's legal success. Now as a diverse network with more than 6,000 attorneys from more than 80 independent, full practice firms across the U.S., Canada, Latin America and Asia, and with affiliations with TELFA in Europe, USLAW NETWORK remains a responsive, agile legal alternative to the mega-firms.

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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.

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USLAW NETWORK firms go way beyond providing quality legal services to their clients. Unlike other legal networks, USLAW is organized around client expectations, not around the member law firms. Clients receive ongoing educational and programming opportunities – onsite and virtual – and online resources, including webinars, jurisdictional updates, *USLAW Magazine* and compendia of law. 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.

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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.

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

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the complete USLAW SOURCEBOOK

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

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

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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.

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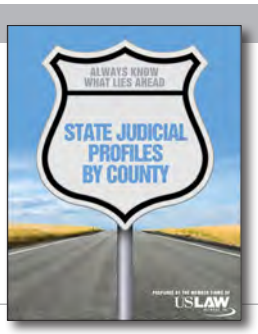
USLAW regularly produces new and updates existing Compendia providing multi-state resources that permit users to easily access state common and statutory law. Compendia are easily sourced on a state-by-state basis and are developed by the member firms of USLAW. Some of the current compendia include: 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 Toolkit 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 today's corporate leaders and legal decision-makers. Recent topics have covered cyber-security & data privacy, artificial intelligence, medical marijuana & employer drug policies, management liability issues in the face of a cyberattack, defending motor carriers performing oversized load & heavy haul operations, nuclear verdicts, employee wellness programs, social media & the law, effects of electronic healthcare records, allocating risk by contract and much more.

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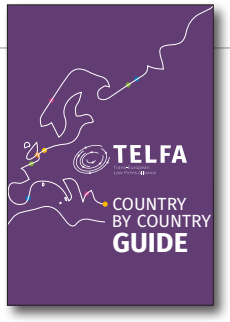
In today's digital world there are many ways to connect, share, communicate, engage, interact and collaborate. Through any one of our various communication channels, sign on, ask a question, offer insight, share comments, and collaborate with others connected to USLAW. Please connect with us via LinkedIn,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

TELFA CORPORATE PRACTICE GROUP COUNTRY-BY-COUNTRY GUIDE

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

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

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



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

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

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

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

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MEMBER SINCE 2024 At Plauché Maselli Parkerson, we specialize in the defense of corporate entities, individuals, and insurers in state and federal courts. With decades of experience, we have earned a reputation for efficient and knowledgeable handling of individual cases, complex multi-party cases, and cases with industry wide importance.

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

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MEMBER SINCE 2001 Carr Allison is one of the fastest growing firms in the Southeast. Why? Our clients tell us the fact that we have lawyers with a lifetime of ties in the seven cities in Alabama, Florida and Mississippi where our offices are located is the primary reason they come to us for legal problems in those areas. In Mississippi, we provide litigation services to national clients in the southern part of Mississippi from our office in Gulfport.When clients face litigation exposure in Mississippi they often hear the horror stories involving the imposition of punitive damages. We like to think we "wrote the book" on the subject of punitive damages in Mississippi. With the resources of more than 120 lawyers in Alabama, Florida and Mississippi behind it, the Carr Allison office in Gulfport, Mississippi stands ready to serve the national and international client faced with legal exposure in southern Mississippi.

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MEMBER SINCE 2004 Copeland, Cook, Taylor and Bush, P.A. is a full-service AV-rated law firm based in the Metro Jackson area of Mississippi. Founded in 1985 by the four named shareholders, the firm's original practice was based principally on Commercial Litigation, Oil and Gas, and Insurance Defense. The firm's growth has resulted from strategic planning in direct response to the diverse needs of our clients.

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

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MEMBER SINCE 2002 Lashly & Baer, P.C. is a mid-size Missouri law firm with deep roots in St. Louis and surrounding areas. As a full-service firm, we have been fortunate to develop a very diverse and extremely loyal base of national, regional and local clients. Our clients have learned to expect a high level of service and a great degree of satisfaction, regardless of their size. Whether it's a publicly-owned or private business, government institution, hospital or an individual – to each client, there is no more important legal matter than theirs. We know this and work hard to achieve results and help our clients reach their goals. Given the complexities of today's business environment, lawyers develop experience in specific practice areas, such as: civil litigation, corporate, product liability, retail, transportation, professional liability, labor and employment, education, estate planning, government, health care, medical malpractice defense, personal injury, toxic tort and real estate.

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

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

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

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We provide strong representation and build even stronger client relationships. Many clients have been placing their trust in us for more than 30 years. Our unwavering commitment to total client satisfaction is the driving force behind our firm. We are the advisor-of-choice to successful individuals, middle-market companies and large corporations.

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

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

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

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MEMBER SINCE 2024 As a nationally recognized firm with an enviable track record of success, Larson • King delivers high quality legal services through a nimble and cost-effective team, without strict or overpriced fee structures. Our firm is capable of efficiently managing dispersed litigation resources and our attorneys provide seamless integration and rapid response times. Larson • King partners work directly with clients, and are closely involved with all aspects of a dispute. Whether it is finding the right expert testimony in a construction case, or retaining local counsel in a remote jurisdiction, Larson • King attorneys hand-select the right team to achieve client objectives. With these resources, Larson • King stands ready to take a case to the highest court – there are times when this fact alone can deter the opposition.

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MEMBER SINCE 2002 Pierce Couch Hendrickson Baysinger & Green, L.L.P. was founded in 1923 and is the largest litigation defense firm in the state of Oklahoma. The Firm has offices in Oklahoma City and Tulsa and is engaged in the representation of clients in all 77 Oklahoma Counties and all three federal district courts. Our attorneys have expertise in the areas listed below and prides itself in developing strategies for the defense of its clients, delivering advice and counsel to deal with claims ranging from the defensible to the catastrophic. Our attorneys have tried hundreds of cases to jury verdict and have mediated and/or arbitrated thousands of disputes. We attribute the success and longevity of our firm to our steadfast philosophy of combining the best in cost-efficient legal services with client-tailored strategies.

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

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

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

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

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

Among the firm's more than 60 attorneys are several former leaders of the Rhode Island legislature as well as former senior members of state administrations who are able to provide a unique understanding of governmental processes for clients. The firm's client base includes Fortune 500 and 100 companies, small and medium-sized businesses, individuals, public and quasi-public agencies, and private not for- profit organizations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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MEMBER SINCE 2019 Relentless. Inspired. Committed. Authentic. Our team of professionals share an almost fanatical commitment to practicing Law as a means of balancing the unbalanced, leveling the unleveled, and bringing big-time results to you, our client.

We want the hardest problems you can throw at us. There is nothing we love more than diving deep into complex litigation and disputes. We will solve your problems, no matter how large or how small. This team thrives under pressure, so pile it on. Our team of battle-tested attorneys brings an unmatched drive and determination to every client. We don't rest on our laurels. We innovate and create new solutions to produce winning results. We bring order and symmetry to chaos and complexity. We love what we do.

Lots of firms talk about being responsive; we live it. Our commitment to serving our clients fundamentally shapes how we view and practice law.

We are human beings. While we thrive under incredible challenges and difficult circumstances, we also care deeply about the people we work with and represent. Being authentic also means that we recognize our clients are people too. We understand them, and we know them.

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Clients of the firm benefit from its knowledge and experience in all areas of corporate life and our commitment to excellence. The firm`s work philosophy, combined with the integration among its offices, practice groups and lawyers, put the firm in a privileged position to assist its clients with the highest quality in legal services.

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Our insurance defence team is amongst the largest in the region and is recognized in the Lexpert Legal Directory for Canada as a 'leading litigation firm in eastern Ontario' in the area of commercial insurance. The group regularly acts for leading insurers on insurance defence and subrogation.

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