

Trump's Emergency Declaration Echoes Harry Truman Failed Attempt

President Trump has declared a national emergency to finance the building of a border wall, adding fuel to the controversial issue that closed the federal government for more than three weeks.

In a post on the website of [Androvett Legal Media & Marketing](#), Lynn Pinker Cox & Hurst constitutional law expert David Coale says Trump's emergency declaration is similar to President Harry Truman's takeover of the steel industry to avoid a strike during the Korean War by the United Steelworkers of America.

The U.S. Supreme Court rejected the takeover in 1952's *Youngstown Sheet and Tube Co. v. Sawyer* decision, largely because the president acted without congressional approval. Today's situation, where Congress has repeatedly refused to fund the president's border wall, has strong echoes of the Youngstown case, Coale says.

"As for defense spending, both the House and Senate, have the power to overrule a claim of emergency," says Coale. "If the president can clear that hurdle, there probably are billions of dollars in 'undesignated' defense and homeland security money that he could try to access. But 'undesignated' does not mean 'free to take, no strings attached,' and defense contractors who expect to get paid from that money will likely sue from all directions, as will private landowners in the way of the wall's path."

One of Apple's Former Top Lawyers Faces Criminal Charges for Insider Trading

Gene Levoff – who was senior director of corporate law and corporate secretary until September 2018 – has been charged by the SEC with trading “on material nonpublic information about Apple’s earnings three times during 2015 and 2016,” according to the lawsuit filed in the U.S. District Court of New Jersey, [reports Forbes](#).

Forbes contributor [Peter Cohan](#) writes that the 44-year-old Levoff worked at Apple from 2008 until he was terminated in September 2018. At the time of his termination, he reported directly to the general counsel.

Fortune [reports](#) that the SEC alleged Levoff traded on advance knowledge of revenue-and-earnings figures multiple times dating back to 2011, with the illegal investments leading to about \$227,000 in profits while allowing him to avoid \$377,000 in losses.

[Read the Fortune article.](#)

[Read the Forbes article.](#)

Facebook Fine Could Total Billions if FTC Talks Lead to a Deal

The New York Times is [reporting](#) that Facebook and the Federal Trade Commission are discussing a settlement over privacy violations that could amount to a record, multibillion-dollar fine, according to three people with knowledge of the talks.

Sources told the *Times* that the company and the FTC's consumer protection and enforcement staff have been in negotiations over a financial penalty for claims that Facebook violated a 2011 privacy consent decree with the agency, according to reporter [Cecilia Kang](#).

"The F.T.C. began its investigation into Facebook's mishandling of data after *The New York Times* reported in March 2018 that the information of 87 million users had been harvested by a British political consulting firm, Cambridge Analytica, without their permission," writes Kang.

[Read the NY Times article.](#)

Lawyer Lied About Cancer to

Get Case Delays and Justify LSAT Score, Ethics Complaint Alleges

The *ABA Journal* [reports](#) that an Illinois ethics complaint alleges that a Chicago civil rights lawyer falsely claimed he and a nonexistent son had stomach cancer in a series of false statements that began when he applied to the University of Chicago Law School.

The complaint alleges that Vincenzo Field made his fake cancer claims to courts as well as the law school. He is also accused of lying to his former firm, Loevy & Loevy, about securing an expert witness who was supposedly unable to work because his daughter was hit by a car, according to the *Journal's* [Debra Cassens Weiss](#).

The tumor-surgery excuse cropped up in two separate cases, in 2013 and 2015, when he asked for discovery extensions.

[Read the *ABA Journal* article.](#)

Michigan State Fires Former State Supreme Court Justice

as GC

Michigan State University has removed former Michigan Supreme Court Justice Bob Young as its general counsel, [reports](#) the *Lansing State Journal*.

Young's last day was Friday, eight months after he started in the job.

Young's salary at MSU was \$425,000 per year. He had a contract that ran through May 31, 2021, making its total value \$1.275 million.

"A university spokeswoman said Young will receive a full payout of that contract," writes the *State Journal's* [Matt Mencarini](#). "That would mean the university will pay about \$1 million on the remaining balance."

[Read the *Lansing State Journal* article.](#)

Fifth Circuit Suggests Claims for Make-Whole Amounts Should Be Disallowed



Image by [NY](#)
[Photographic](#)

In a recent ruling, the Fifth Circuit strongly suggested that claims for make-whole damages be characterized as “unmatured interest” and that claims for postpetition interest on unsecured debt be limited in bankruptcy proceedings, reports Jones Day in [a post](#) on its website.

The Fifth Circuit reversed the Bankruptcy Court’s order holding that the debtors’ plan impaired the unsecured noteholders’ claims and vacated and remanded for reconsideration determinations by the bankruptcy court that noteholders were entitled to recover such contractual amounts.

The decision makes the Fifth Circuit unattractive to unsecured or undersecured lenders asserting claims for make-whole payments and default rate postpetition interest, the authors conclude.

[Read the article.](#)

Attorney Suspended for 3.5 Years After Offering Legal Advice for Go Fund Me Money

A Charleston, WV attorney's law license has been suspended for three and one-half years after attempting to raise funds via Go Fund Me in exchange for legal advice, [reports](#) the *The West Virginia Record*.

As treasurer of the Kanawha Valley Soccer League, lawyer Mark Allen Glover allegedly transferred money from the league's checking account to his personal checking account, writes the *Record's* [Kyla Asbury](#). The newspaper reported finding documents showing that Glover diverted approximately \$12,000.

He lost his job after the diversion was discovered. Glover then set up a Go Fund Me fundraiser, seeking funds to help in his attempt to transition to being a solo practitioner. He offered free legal advice to those who donated to him. The state Supreme Court suspended his license for 42 months.

[Read the *WV Record* article.](#)

New Advertising Rules Coming

for Texas Lawyers, Law Firms



The rules governing legal advertising for Texas attorneys and law firms are scheduled for some significant changes in the coming months, writes Bruce Vincent of Muse Communications in an [online summary](#) of the revised advertising rules to help legal professionals prepare.

In his post, he discusses the Texas Disciplinary Rules of Professional Conduct rules governing lawyer advertising that are up for revision and the substantive differences compared to the status quo, including rules on trade names, verdict amounts and specialization, prohibited solicitations, submissions to ad review, and exempt communications.

[Read the article.](#)

Biglaw Firm to Pay \$4.6 Million in Case Tied to Manafort and Ukraine

New York-based law firm Skadden, Arps, Slate, Meagher & Flom has agreed to pay \$4.6 million to settle a Justice Department investigation into whether its work for a Russia-aligned Ukrainian government violated lobbying laws, [reports](#) *The New York Times*.

“As part of the settlement, the law firm agreed to register retroactively as a foreign agent for Ukraine in addition to paying the government \$4.6 million, representing the money it earned from its work in Ukraine,” write the *Times*’ [Kenneth P. Vogel](#) and [Matthew Goldstein](#).

The firm should have disclosed its lobbying activity for Ukraine under the Foreign Agents Registration Act, which covers both lobbying and public relations on behalf of foreign political interests, the Justice Department said.

[Read the *Times* article.](#)

DOJ Hiring Attorneys to Handle Property Seizures for Border Wall

Politico [reports](#) that the Justice Department placed an online job posting for a pair of attorneys to tackle border wall litigation in South Texas – a sign of coming property seizures and other legal controversies that President Donald Trump anticipates if he plows ahead with his signature project.

Politico’s [Ted Hesson](#) interviewed Chris Rickerd, the American Civil Liberties Union’s senior policy counsel on border and immigration issues, who said the attorneys likely will deal with eminent domain property seizures and quarrels with landowners over what their land is worth.

The two advertised jobs, based in McAllen and Brownsville, will pay between \$53,062 and \$138,790, according to a posting to a federal jobs website.

[Read the Politico article.](#)

Brexit Vote Prompts New Questions for UK, US Businesses



The historically large rejection of Prime Minister Theresa May's Brexit proposal is creating new uncertainty for companies doing business in the United Kingdom.

“Questions about the terms of Brexit is already affecting currency exchange rates and the confidence of business leaders and long-range investment plans,” says [Tony Magee](#), a former Chancery Barrister practicing in the U.K., and now a trial attorney in Dallas. “The risk for U.S. companies is that if Brexit happens without a clear long-term deal on customs rules and tariffs, that could inhibit trade with the U.K. and encourage U.S. companies to deal more with the European Union.”

Magee notes that while it is too early to predict the overall Brexit process and timing, the situation is very dynamic and volatile with the Prime Minister now required to come back to the House of Commons within three days to outline her “Plan B” proposal.

“It is possible that Brexit could be delayed by mutual consent and that the government could hold a second referendum to ask the electorate to vote on whether they still want to leave the E.U. But it is unlikely that a second referendum could be scheduled before the March 29 Brexit deadline. Publicly, May’s cabinet is not currently willing to hold a second referendum, but there are reports of differences of opinion in the cabinet on that score. Things could develop and change very quickly.”

Supreme Court Hands Rare Win for Workers in Arbitration Case



Justice Neil
Gorsuch

The U.S. Supreme Court on Tuesday sided with a long-haul truck driver who sued his employer for failing to pay him a minimum wage, handing down a decision that could have broad ramifications on the transportation sector and the economy as a whole, [reports CNBC](#).

CNBC reporter [Tucker Higgins](#) explains:

“In an opinion delivered for a unanimous court, Justice Neil Gorsuch held that courts must decide whether an exception in the Federal Arbitration Act, or FAA, for transportation workers applies before requiring arbitration. And, he wrote, that exception applies not just to traditional employees but also to independent contractors.”

The U.S. Chamber of Commerce had urged the court to rule in favor of the employer.

[Read the CNBC article.](#)

Autonomous Vehicle Survey Shows Desire for Consistent Regulation to Dispel Safety Concerns



Image by [Norbert Aepli](#)

The most critical driver for consumers' adoption of autonomous vehicles, above technological advancement and adequate investment, is coherent national regulation amid consumer safety concerns. That's according to a [new survey](#) of automotive and technology leaders and state and federal regulators by global law firm Perkins Coie LLP and the Association for Unmanned Vehicle Systems International (AUVSI), the world's largest nonprofit organization devoted to advancing the unmanned systems and robotics community.

Survey participants indicated they saw a potential to increase convenience and reduce traffic incidents that stem from further development of autonomous vehicle technology. And while survey respondents are focused firmly on consumers' perceptions regarding safety, no clear majority of respondents agree on which regulatory authority should be responsible for overseeing liability issues amid the current patchwork of federal, state and local rules.

"The emergence of any new technology requires adaptation of existing regulatory regimes," said William G. Malley, office managing partner for Perkins Coie in Washington, D.C. "The same is true with automated vehicles. Regulators at every level will need to rethink and update existing requirements. In the long run, smart regulation can help to facilitate the development and deployment of this new technology by providing regulatory certainty and helping to reinforce the public's confidence in the new technology."

In a release, the firm discussed the survey:

Liability and Consumer Perception Top Challenges

Liability concerns ranked first among the challenges that industry leaders and regulators believe could impede the driverless-car market, just slightly ahead of consumers' safety perceptions. Respondents also see an urgent need for infrastructure, such as smart signs, traffic lights and merge lanes, to make roads shared by fully autonomous, semi-autonomous and traditional cars safe for everyone.

"You don't see liability issues go through the courts until you have already had an accident," said Daniel P. Ridlon, Co-Chair of Perkins Coie's Unmanned Vehicle Systems Industry group. "Participants in our survey from across the spectrum of industry and regulatory insiders understand this, telling us in a variety of ways that safety and product liability risk are principally important and closely related. They also recognize how both issues can affect consumer sentiment, impacting the industry well beyond the immediate costs related to lawsuits."

Investment Opportunities Abound

With the market for driverless cars projected to grow to as large as \$7 trillion by 2050, respondents see multiple investment opportunities as equally attractive and urgent. Vehicle-to-vehicle and vehicle-to-infrastructure communication technology, 5G technology and Advanced Driver Assistance Systems were seen as the most enticing investments, followed closely by precision mapping and location technology.

"This survey shows a young industry with tremendous potential and understandable growing pains as technology shapes the future of transportation," said Brian Wynne, President and CEO of AUVSI. "Lawmakers, consumers and regulators alike should embrace the advantages of the future AV era as we work to resolve early-cycle challenges in the years ahead."

Other Key Survey Findings

- A majority – 54 percent – of industry respondents said they would rather see regulation come from the federal level. This reflects the difficulty automakers anticipate in achieving widespread adoption of AVs without a broad and coherent regulatory framework.
- All survey respondents – technology and automotive executives as well as regulators – saw the possibility of reducing vehicle accidents as the most important benefit of AVs. More survey respondents selected reduced traffic accidents as the greatest benefit to consumers than all other options combined.
- Respondents believe the price of investment, behind safety concerns, is one of the top obstacles to the growth of the AV industry with those in technology fields considering investment costs the most worrisome obstacle.

[See the complete survey report.](#)

Border Wall Needs Private Property. But Some Texans Won't Give Up Their Land Without a Fight.



Image by [U.S. Customs and Border Protection](#)

Government lawyers have taken the first step in trying to seize private property using the power of eminent domain to build a border wall – a contentious step that could put a lengthy legal wrinkle into President Trump’s plans to build hundreds of miles of wall, reports [The Washington Post](#).

Previous eminent domain attempts along the Texas border have led to more than a decade of court battles, some of which date to George W. Bush’s administration and have yet to be resolved, according to the *Post*’s [Katie Zezima](#) and [Mark Berman](#). Many landowners are vowing to fight anew.

The reporters quoted Gerald S. Dickinson, an assistant professor of law at the University of Pittsburgh, who said this newest fight will be different because the earlier effort mostly included federal government land.

“If it’s going to be a contiguous wall across the entire southwest border, you’re talking about a massive land seizure of private property,” he said.

[Read the Post article.](#)

Can You Be Forced to Sign This Contract Modification?

A new U.S. Postal Service change to the standard terms and conditions that apply to its newly awarded Highway Contract Route (HCR) and Contract Delivery Service (CDS) contracts could be unenforceable, according to [David P. Hendel](#), writing in the Husch Blackwell [Contractor's Perspective](#) blog.

The changes apply to existing CDS contracts as well as newly awarded ones. In an email, the Postal Service asked contractors to sign, without any "alterations or additions," a contract modification that incorporated the new terms. If the contractor did not so, the Postal Service's email threatened contract termination, Hendel writes.

He cited problems with the way the changes are presented, including lack of consideration, violation of the implied covenant of good faith and fair dealing, and the legal theory of coercion and duress.

[Read the article.](#)

Judge Rebukes DOJ, Says U.S. 'Laughable' for Using Shutdown to Delay Suit

A U.S. judge overseeing a veteran's multimillion-dollar negligence lawsuit in Puerto Rico rebuked the Justice Department for attempting to use the partial government shutdown to put the case on hold, calling the request "laughable," according to a Bloomberg Law [report](#).

Bloomberg's Erik Larson writes: "In a ruling denying the government's bid for more time, U.S. District Judge William G. Young said lapses in federal appropriations, like the current one triggered by President Donald Trump's demand for funding for a border wall with Mexico, aren't a government 'policy' that could theoretically justify staying such a lawsuit."

The judge decried "an abdication by the president and the Congress" of the duty to govern responsibly.

[Read the Bloomberg Law report.](#)

General Counsel Named in

Corruption Probe Subpoenas Resigns

Cleveland.com [reports](#) that Emily McNeeley, general counsel for Cuyahoga County's troubled IT Department and one of several people named in subpoenas related to an ongoing corruption investigation, has resigned from her \$95,000-a-year job,

The county reported the resignation Tuesday, according to Cleveland.com's [Courtney Astolfi](#).

McNeeley was placed on unpaid leave in April after corruption investigators repeatedly named her, and her boss, IT Director Scot Rourke, in subpoenas served on the county. The cases refer to potential conflicts of interest, the report says.

[Read the Cleveland.com article.](#)

Federal Courts Run Out of Cash Next Friday. Here's What Happens Then

Bloomberg Law [reports](#) that companies that turn to the federal courts to resolve fights with rivals and customers may find themselves in limbo if the government shutdown continues beyond next week.

The system can spend money left over from fees and other sources to run through Jan. 11, writes Bloomberg's Erik Larson.

"After that, nonessential workers at the 94 federal district courts, and at higher courts across the country, may have to stay home even as skeleton crews show up—without pay—to handle matters deemed essential under U.S. law, including many criminal cases," Larson explains.

Individual courts and judges then will decide how to fulfill those critical functions.

[Read the Bloomberg Law article.](#)

In 8-Month Tenure, Non-Elected NY AG Was Leading Trump Antagonist

Barbara Underwood was an apolitical force in New York, quietly serving as solicitor general before getting an unexpected promotion to become the state's first female attorney general, writes the [Associated Press](#).

In her eight months in the AG's role, she sued to put President Donald Trump's charitable foundation out of business, accusing him of running it as a wing of his private businesses and political campaign. She also used the courts to challenge his administration on a multitude of policy fronts,

including opposing its push to add a citizenship question to the 2020 census.

Underwood was appointed attorney general by the state legislature in May after the surprise resignation of Eric Schneiderman, explains AP's Michael R. Sisak.

Now she's going back to the solicitor general's office, but Trump still [faces challenges](#) from New York, from the new AG, Letitia James.

[Read the AP article.](#)

Lawyer Accuses Judge of 'Robe Rage,' Tells Opposing Counsel to 'Certify Your Own Stupidity'

The *ABA Journal* [reports](#) on a Chicago lawyer who has been accused of belittling his opposing counsel during a deposition and then describing the judge's reaction to his conduct as "robe rage."

Charles Andrew Cohn was accused in a complaint before the hearing board of the Illinois attorney disciplinary commission.

During a deposition, the complaint says, Cohn instructed his

client not to answer a question, spurring the opposing lawyer to note her disagreement. "Certify the question," said the opposing lawyer.

"OK," Cohn replied. "Then certify your own stupidity."

Cohn doubled-down when he filed a response to the opposing lawyer's motion to compel. He wrote that – in a hearing on the motion – the judge had himself flown into a rage in the court hearing, describing the situation as a "robe rage incident."

[Read the ABA Journal's article.](#)