

# Supreme Court Ruling in Drug Case Could Have Big Implications for Product Liability

A Supreme Court decision could make it harder for large groups of plaintiffs to sue corporations in state courts for damages caused by manufacturers' products, [reports Politico](#).

The court sided with Bristol-Myers Squibb to limit where patients can seek compensation for harm caused by drugs.

“But the ruling will echo beyond the pharmaceutical industry to potentially affect any liability case in which consumers allege harm caused by a deficient product, including automobiles, tobacco, food and other mass litigation like consumer claims of financial fraud by a company,” writes [Sarah Karlin-Smith](#). “It could also affect lawsuits against companies being accused of environmental wrongdoing.”

Karlin-Smith quotes a blog post by James Beck, who works with pharmaceutical and product liability law at Reed Smith: “This is one of the most important mass tort/product liability decisions.”

“It will extremely limit the notion that large companies can be sued by anyone, anywhere,” he explained.

[Read the Politico article.](#)

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# Webinar: Avoiding Construction Claims and Disputes

A Baker Tilly [on-demand webinar](#) provides an overview of strategies to identify potential claims scenarios and potential resolutions available to mitigate claims.

“Conflict and disagreements are normal on construction projects; however, when everyday disagreements escalate into unresolvable issues, claims and disputes may result,” the firm says on its site. “These can lead to costly and time consuming distractions for your organization and your project.”

Learning objectives:

- Understand red flags associated with high-risk projects
- Learn characteristics of a culture of claims avoidance
- Learn contractual methods/provisions that can help to proactively avoid disputes
- Understand remedies not requiring legal action

[Watch the on-demand video.](#)

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# Legal Aspects of Smart Contract Applications

Perkins Coie has published a [white paper](#) that offers an initial analysis of the legal aspects of five prominent smart contract use cases: digital asset sales and capital markets, supply chain management, smart government records and smart cities, real estate land registries, and self-sovereign identity.

In the paper, available on JD Supra, the authors conclude that legal risk is inherent in each of these subject areas, but that with careful risk mitigation planning, companies can overcome those hurdles to offer effective products and services.

The paper consists of four parts: definition of terms, a review of current literature, five uses of smart contracts, and insight into practical steps a business may take when launching a product or service that uses smart contracts to mitigate legal risk.

[Read the white paper.](#)

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## Emoluments Clause Lawsuits

# Could Expose Trump Tax Filings

Lawsuits against President Trump for alleged violations of the foreign emoluments clause of the U.S. Constitution could result in the pretrial production of his personal tax returns, explains [Paul Barrett](#) for [Bloomberg Businessweek](#).

“The plaintiffs say one of their first steps will be to demand, via pretrial discovery, copies of Trump’s elusive personal tax filings,” Barrett writes. “How better to assess the scope of the president’s international business affairs—and perhaps to discover why he has hidden his returns so defiantly?”

Trump’s refusal to divest himself of his business empire led to the suits, partly based on the use of Trump International Hotel in Washington by representatives of the governments of Kuwait, Saudi Arabia, Turkey and Georgia.

[Read the Bloomberg article.](#)

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# Change Management in Commercial Contracts (Part 2)

In the [second part](#) of a series on change management in commercial contracts, Morgan, Lewis & Bockius LLP discusses the procedural mechanisms for managing change.

“In addition to classifying changes and allocating costs, outsourcing agreements and other long-term service agreements should include a defined set of procedures for documenting and implementing changes,” write partner [Peter M. Watt-Morse](#) and associate [Glen W. Rectenwald](#).

The explain that agreements should, at a minimum, contain key procedural issues, such as mandatory changes, emergency changes, permissive changes and disputes. The article also covers the mechanism for making the change.

[Read the article.](#)

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## [Uber CEO Pays a Price for Breaking the Rules](#)



Image by [Adam Tinworth](#)

The hard-charging, take-no-prisoners corporate culture exhibited by Uber and his brash CEO is now seen as the

company's biggest liability, reports [\*The Los Angeles Times\*](#).

Co-founder and Chief Executive Travis Kalanick announced Tuesday that would take an indefinite leave of absence.

Reporter Tracey Lien writes that Kalanick took responsibility "for where we've gotten and how we've gotten here."

He wrote the statement in a memo to employees, "acknowledging a humiliating year in which the company was accused of mishandling the medical records of a passenger who was raped by an Uber driver in India, using trade secrets allegedly stolen from a Google-owned self-driving car firm and covering up claims of sexual harassment," according to Lien.

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

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[\*\*Webinar: Automating Contract Management with SharePoint\*\*](#)



Optimus BT will present a free webinar featuring a comprehensive demonstration of eContracts, an Enterprise Legal Contract Management product for SharePoint, featured in Gartner Market Guide 2017 for legal teams.

[Automating Contract Management with SharePoint](#) will be Wednesday, June 21, 2017, at 2 p.m. EDT.

The presentation also will cover why it is important to go beyond your legal contract repositories and invest in a Legal Contract Lifecycle Management solution.

Key topics covered will include:

- **Building blocks** for automating contract management and legal function within your organization.
- Possibilities presented by **Microsoft Azure and SharePoint** for Contracts management in the Cloud for processing large volume of documents, Advanced Search & Workflow.
- Demonstrate how **Optimus BT's eContracts** can help kick start this journey and address the major pain points due to lack of automation of contract lifecycle.
- Capabilities to look for while automating contract management processes.
- An example of how an IT and legal teams have benefited from automating their contract lifecycle.

[Register for the webinar.](#)

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# Equity Compensation for Partnerships and LLCs

Practical Law will present a [75-minute webinar](#) addressing common issues and structures for partnership and LLC equity compensation.

The event will be Wednesday, June 21, 2017, 1-2:15 p.m. EDT.

Partnership and LLC equity compensation programs raise many of the same issues that arise with corporate equity compensation. However, because of the “flow-through” nature of partnership taxation, there are some unique planning opportunities and pitfalls that can arise in the realm of partnership equity compensation.

Topics will include:

- The difference between a “capital interest” and a “profits interest”;
- Profits interests subject to vesting restrictions;
- Tax Treatment of partnership and LLC equity awards upon various liquidity events; and
- Collateral tax and employee benefit consequences of partnership and LLC equity awards.

Presenters:

- Michael P. Spiro, Partner, Finn Dixon & Herling LLP
- Adam S. Mendelowitz, Associate, Finn Dixon & Herling LLP

A short Q&A session will follow.

[Register for the webinar.](#)



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# Construction Contracts: Allowance or Contingency?

While both relatively simple concepts, allowances and contingencies are often confused with one another. Conflating the two can lead to pitfalls, warn [Randolph E. Ruff](#) and [Jonathan M. Mraunac](#) of [Ogletree Deakins](#).

“An easy way to remind oneself of the difference is: allowances are for *known* unknowns, and contingencies are for *unknown* unknowns,” they write.

In their article, they explain the differences between allowances and contingencies, how they are used, and how they can be drafted.

[Read the article.](#)

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## Tips For Reviewing A Contract



There are a few things every lawyer is expected to be able to do – but every lawyer should be able to review a contract, writes [Gary J. Ross](#) for [Above the Law](#).

The first tip Ross offers is “make sure your client can get out. This is *most* important.”

Other topics include renewal terms, termination, indemnification, collections expenses, amendments, governing law and jurisdiction, and notification.

[Read the article.](#)

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## [Lawsuit in U.S. Accuses 12 Big Banks of Credit Default Swap Collusion](#)



Image by [Mark Moz](#)

A small trading exchange on Thursday filed an antitrust lawsuit accusing Bank of America Corp., Citigroup Inc., JPMorgan Chase & Co. and nine other banks of conspiring to shut it out of the \$9.9 trillion credit default swap market, [reports Reuters](#).

The plaintiff, Tera Group, alleges the banks organized a boycott of its seven-year-old TeraExchange platform by refusing both to send it any CDS transactions, and to clear and settle any CDS trades that customers wanted to handle there, according to reporter [Jonathan Stempel](#). The complaint said the banks used their 95 percent market share to require that trading follow a protocol known as “request for quote,” which Tera described as opaque and inefficient.

“Tera said this enabled banks to boost profit by keeping traders in the dark about prices, defeating a goal of the 2010 Dodd-Frank financial reforms, while instilling a “great fear of retaliation” against traders who defected to rival platforms,” Stempel writes.

[Read the Reuters article.](#)

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[Change Management in](#)

# Commercial Contracts

While a primary goal of any well-crafted commercial agreement is durability – terms that work for the life of the agreement—the only certainty in the course of a long-term commercial relationship is the inevitability of change, write [Peter M. Watt-Morse](#) and [Glen W. Rectenwald](#) for [Morgan Lewis](#).

“Once a customer has become dependent on a third party for essential goods or services to operate its business, an unforeseen shift in its business requirements or a change to applicable laws can create holdup problems for customers, leading to costly renegotiations of the original agreement,” they explain. “The right change management mechanisms can manage these risks by allocating the responsibility and costs for changes and creating clear and effective procedures for managing and implementing changes to the agreement.”

They discuss the issues of mandatory changes and allocating the costs of changes.

[Read the article.](#)

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## Why ABC News Is Facing a Jury Over ‘Pink Slime’

Bloomberg Law offers a [backgrounder](#) on Walt Disney Co.’s ABC News upcoming trial in South Dakota, where the network faces as much as \$5.7 billion in potential damages over allegations

that it made false and misleading statements about the food additive “pink slime” in a 2012 series of reports.

South Dakota’s Beef Products Inc. claimed the coverage caused sales to plummet, costing the company \$1.9 billion and forcing layoffs.

The question-and-answer article covers such issues as What’s pink slime? What is the lawsuit about? What does this do to the industry? and What does this mean for Disney and ABC?

[Read the Bloomberg article.](#)

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## [The Whistleblower Behind Caterpillar’s Massive Tax Headache Could Make \\$600 Million](#)

[BloombergBusinessweek](#) reports on the story behind the accountant who might end up the best-paid whistleblower of all time, with a potential paycheck of \$600 million, while Caterpillar, the 92-year-old pride of American industry, will experience something unfamiliar: public humiliation.

“In a 2011 deposition, a Caterpillar attorney asked [accountant Daniel] Schlicksup if his actions threatened to hurt shareholders. write [Bryan Gruley](#), [David Voreacos](#) and [Joe Deaux](#).”

“It is absolutely in the shareholders’ best interests to have the most accurate financial statements they can have,” Schlicksup replied. “I don’t think that the shareholders of Enron would think it would have been such a bad deal if somebody would have caught that before it bankrupted the company and they lost everything they had.”

[Read the BloombergBusinessweek article.](#)

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## [Healthcare Developer Fined \\$155 Million for Lying About Compliance](#)

Health records software developer eClinicalWorks has agreed to pay a \$155 million to the federal government for civil fraud and kickback charges, according to [HIT Consultant](#).

“Both the government and the whistleblower alleged that eClinicalWorks falsely represented to customers that its EHR [electronic health record] system complied with Meaningful Use requirements,” the publication says. “The settlement marks the first time an EHR vendor is being charged for the truthfulness and accuracy of representations made when seeking government certification of its EHR system and the government applying the federal Anti-Kickback Statute (AKS) law to the promotion

and sale of EHR systems.”

The whistleblower alleged the company modified its software to pass testing, without being fully functional. The lawsuit listed several allegations against the company, such as kickbacks for recommendations, and failure to test its software adequately before releasing it.

[Read the HIT Consultant article.](#)

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## [How a Supreme Court Ruling on Printer Cartridges Changes What It Means to Buy Almost Anything](#)

The U.S. Supreme Court has handed a victory to consumer groups in a case about printer cartridges – or more specifically, *toner* cartridges, the kind used by laserjet printers. The case has huge implications for the way we think about technology ownership in America, and your rights as a user, according to [The Washington Post](#).

As [IPWatchdog](#) explains it: The court ruled “that when a patent owner sells a product the sale exhausted patent rights in the item being sold regardless of any restrictions the patentee attempts to impose on the location of the sale. In

other words, a sale of a patented product exhausts all rights – both domestic and international.”

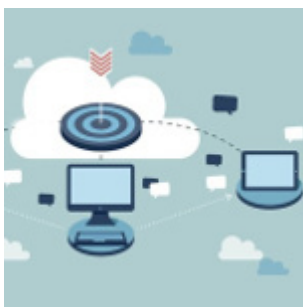
The *Post*’s Brian Fung explores how the ruling can affect commerce:

The practical question is how much Lexmark or any other company can control what you do with the things you buy. This debate isn’t limited to printer cartridges. If you buy a car, how do you know you really own it? What does ownership actually entitle you to do with your property, anyway?

[Read the \*Washington Post\* article.](#)

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## [Using Technology and Contract Terms to Avoid Vendor Lock-In](#)



Migrating applications and workloads to a cloud provider has obvious benefits – scalability, flexibility, efficiency, and cost considerations are all driving the dramatic increase in the use of cloud services, write [Peter M. Watt-Morse](#) and [Glen W. Rectenwald](#) of Morgan Lewis.

In their article on the firm’s Tech & Sourcing blog, they discuss how enterprises that start utilizing proprietary



application programming interfaces (APIs) and other vendor-specific development and integration tools can easily become locked into their cloud providers.

“The efficiency and low cost of using cloud services, including form vendor agreements that are provided with such services, can lead to vendor lock-in, making it difficult and expensive to migrate applications in-house or to a new provider,” they write.

[Read the article.](#)

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## [It's All Fun and Games Until Someone Sues for Breach of Contract](#)



Loans secured by stock are an important and popular product offered by many lenders to individuals and other borrowers, according to a post on the website of [Loeb & Loeb LLP](#).

“The ability of a lender to sell the stock held as collateral is very much dependent on the documentation governing the loan. When and to what extent a lender may realize upon (or liquidate) the stock to repay the indebtedness under the loan

should be carefully and clearly set forth in the loan documents,” write [Bryan G. Petkanics](#) and [Anthony Pirraglia](#). “A recent federal court case analyzed the ability of a lender to act upon stock pledged to secure a loan, and provides insight into valuable language to be included in the loan documentation.”

They discuss *Kinzel v. Merrill Lynch*, in which the Sixth Circuit affirmed the judgment of the district court in favor of Merrill Lynch, finding that the financial services company breached neither the contract nor its duty of good faith under the terms of the loan management account agreement.

[Read the article.](#)

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## [National Survey on Restrictive Covenants](#)

Fox Rothschild’s Labor and Employment and Securities Industry practice groups have updated the firm’s [quick reference](#) on restrictive covenants for in-house counsel and human resource professionals.

“The law in this area not only varies considerably from state to state and changes frequently, but its application is fact-specific,” the firm says in its introduction to the updated guide.

The guide breaks down the use of restrictive covenants for each state. It gives details about each state’s factors on the

topics of non-competes, non-solicitation, non-hire/"raiding," and confidential information.

[Read the guide.](#)

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## [CVS's Omnicare to Pay \\$23 Million to Resolve U.S. Kickback Case](#)

Reuters [is reporting](#) CVS Health Corp's Omnicare unit has agreed to pay \$23 million to resolve a whistleblower lawsuit alleging that it took kickbacks from a drugmaker to promote two antidepressants, according to settlement papers.

The agreement comes out of a 2007 lawsuit against the pharmacy operator by two former employees of drugmaker Organon USA Inc on behalf of the federal government and various states.

"The lawsuit claimed that from 1999 to 2005, Omnicare and certain pharmacies it acquired sought and received kickbacks from Organon in the form of discounts in exchange for promoting the antidepressants Remeron and Remeron SolTabs," writes [Nate Raymond](#).

Former Organon employees Richard Templin and James Banigan filed the suit, which reached a related \$31 million

settlement in 2014.

[Read the Reuters article.](#)

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