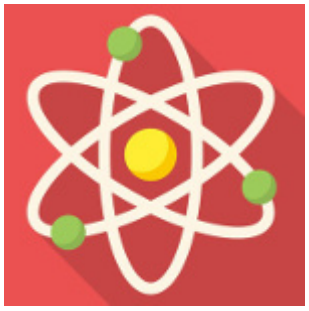
Quick Legal Appeal in the Works for Illinois Zero-Emissions Credit Ruling



An immediate legal appeal was in the works after a federal judge upheld Illinois' controversial zero-emissions credit program aimed at providing millions of dollars of taxpayer-funded subsidies to keep two money-losing Exelon nuclear plants from closing, **reports Platts**.

Nuclear generators in other states also are seeking legislative and administrative support to help plants compete against cheaper gas and renewables in a low wholesale power price environment, explains Bob Matyi.

"Chicago-based Exelon, the nation's largest nuclear generator, won the first round of the legal battle Friday when Judge Manish Shah of the US District Court for the Northern District of Illinois in Chicago dismissed a lawsuit filed late last year by a competitive power group that includes Calpine, Dynegy, NRG Energy and the Electric Power Supply Association," according to Matyi.

Read the article.

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Republicans Introduce Bills to Scrap New Bank Arbitration Rule

Republican lawmakers in the House and Senate have introduced bills calling for the repeal of a just-announced regulation that would make it easier for consumers to bring class-action lawsuits against banks, reports ***The Los Angeles Times***.

The new Consumer Financial Protection Bureau rule would ban banks and other financial institutions from forcing arbitration clauses on customers to prevent them from bringing or joining class-action suits.

Some Republicans have introduced resolutions calling for use of the Congressional Review Act, which allows Congress to new regulations created by federal agencies, writes **James Rufus Koren**.

Read the *LA Times* article.

Workplace Plaintiffs Face Long Odds at Trial, Analytics

Data Indicates

The ABA Journal **reports** that only 1 percent of plaintiffs who file federal job discrimination, harassment and retaliation claims win on the merits at trial, according to an analysis by the Lex Machina legal analytics firm.

The article by **Stephen Rynkiewicz** discusses Lex Machina's new employment litigation search and analysis module that covers findings of hostile work environment, retaliation and Title VII issues such as race bias, as well as discrimination based on age, equal rights, military, pregnancy and rehabilitation.

"Lex Machina reviewed nearly 72,000 cases and found that nearly three-fourths them settle, while employers prevail on summary judgment 13 percent of the time," writes Rynkiewicz. "In more bad news for plaintiffs, only 192 damage awards since 2009 included punitive damages."

Read the ABA Journal article.

After N.F.L. Concussion Settlement, Feeding Frenzy of Lawyers and Lender

Some former NFL players are receiving pitches for legal help in receiving checks from the league's legal sports history

aimed at retirees who sued for lying about the dangers of concussions suffered by the players.

Ken Belson of ***The New York Times*** writes, "Some players may get very little, but others with severe neurological diseases may receive as much as $5 million. Now lawyers, lenders and would-be advisers are circling, pitching their services and trying to get a cut of the money."

Some of the ex-players with severe neurological disorders are cognitively impaired and may not understand the terms used by the lawyers who make the pitches.

Read the *NYT* article.

Dot Your I's, Cross Your T's, and Place Your Commas

When drafting contracts, briefs, and other documents, the significance of placing a comma is often overlooked, points out Hyatt & Weber P.A. The decision to include or omit a comma, however, could be dispositive in a dispute over the meaning of legislation or a contract.

"Indeed, in *O'Connor v. Oakhurst Dairy*, 851 F.3d 69 (1st Cir. 2017), the United States Court of Appeals for the First Circuit found the absence of a comma created an ambiguity when interpreting certain legislation, and that ambiguity drove the outcome of the litigation," according to **a post** of the firm's website.

“Guiding principles regarding the use of commas and other writing conventions should be strongly considered when drafting contracts, for example, as including or excluding a comma in a particular contract provision may ultimately determine whether a company owes or is owed millions of dollars in a subsequent dispute,” the post continues.

Read the article.

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Trump Faces Obstacles in Bid to Re-Shape Key U.S. Courts

President Donald Trump’s effort to reshape influential U.S. courts by stocking them with conservative judges faces at least one significant impediment, **reports Reuters**: some of the courts best placed to thwart his agenda have liberal majorities that are likely to stay in place in the short-term.

“Those courts, including an influential Washington appeals court and two appellate courts that ruled against Trump in cases involving his travel ban, all had an influx of fresh liberal blood under President Barack Obama,” writes **Lawrence Hurley**.

Hurley explains that in Obama’s eight years in office, he was able to make enough appointments to leave a strong liberal imprint on the federal courts. At the end of his second term, nine of the 13 federal appeals courts had a majority of

Democratic-appointed judges.

Read the Reuters article.

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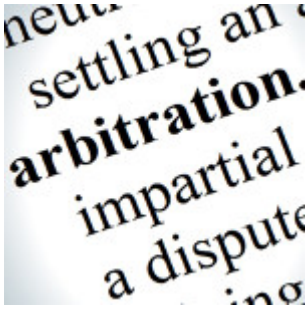
Consumer Watchdog Makes It Easier to Sue Banks and Other Companies



The government's consumer watchdog has finalized a rule that will make it easier for people to challenge financial companies in court, reports ***The Washington Post***.

The new Consumer Financial Protection Bureau rule targets arbitration clauses, which can show up on user agreements for credit cards, bank accounts and other consumer products.

"As a condition for receiving services or products, consumers often give up their right to join a class-action lawsuit with these clauses, and instead agree to settle any disputes in a private process known as arbitration," writes the *Post*'s **Jonnelle Marte**.

Now the rule will ban companies from using these agreements to block consumers from joining group lawsuits. But supporters of arbitration say the clauses can help companies and consumers save money by minimizing legal costs.

Read the *Post*'s article.

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Webcast: Emerging Trends And Legal Analytics For Employment Litigation

Above the law and Lex Machina will present **a webinar** on trends and legal analytics for employment litigation on Thursday, July 13, at 12 p.m. EDT.

David Lat, founder of Above the Law, says the event will address such questions as: The What do recent political and economic changes mean for the employment litigation landscape? How can knowledge management and technological tools help litigators navigate the transformations in this sector?

Lex Machina is expanding its Legal Analytics to a new practice area, Employment Litigation, shedding light on this rapidly evolving area of law, Lat writes. The webcast will feature panelists discussing new employment litigation data, with never-before seen trends and insights about judges, parties, lawyers and law firms.

Register for the webinar.

Managing Legal Risks and Cultural Issues in Cross-Border and Whistleblower Investigations

AltaClaro will present a complimentary webinar focusing on managing legal and cultural risks in cross-border investigations. The event will be Wednesday, July 26, 2017, beginning at noon Eastern time.

Expert panelists Jon Abernethy (Partner, Cohen & Gresser LLP) and Andrew Curtin (Global Head of Investigations, AIG) will join AltaClaro Founder & CEO and former Deputy General Counsel of Mitsubishi UFJ Financial Group, Abdi Shayesteh, will be presenters.

In this interactive, live webcast, Abdi will moderate Abernethy's and Curtin's discussion of the following topics:

(1) Handling multi-jurisdictional approaches to privileged communications in the aftermath of the recent U.K. decisions in Eurasian Natural Resources Corporation Ltd. and The RBS Rights Issue Litigation

(2) Identifying potential cultural challenges and local laws that may impede an effective investigation and prevent a one-size-fits-all approach to designing internal processes and procedures within multinational organizations

(3) Implementing best practices when preparing for and

coordinating effective internal investigations across international lines

Register for the webinar.

Litigator Jaikaran Singh Joins Foley & Lardner

Foley & Lardner LLP announced that Jaikaran (Jai) Singh has joined the firm's Consumer Law, Finance & Class Action Practice as a partner in the San Diego office.

In a release, the firm said Singh's national practice focuses on high-stakes business and commercial litigation and consumer class action defense, including multi-district litigation, primarily in the retail, food and beverage, multifamily housing, healthcare, manufacturing and financial industry sectors. He has significant experience defending class action claims brought under California's unfair competition and false advertising laws, including claims for product mislabeling and false pricing; and class claims for violation of the Consumer Legal Remedies Act, the Telephone Consumer Protection Act, the Fair Debt Collection Practices Act, the Song-Beverly Credit Card Act and the Song-Beverly Consumer Warranty Act, among other state and federal statutes.

"Jai is one of the leading class action litigators in California and his broad base of deep experience and substantive knowledge of class actions significantly

strengthens our national litigation team," said Jay Varon, chair of Foley's Consumer Law, Finance & Class Action Practice. "He has a strong record of delivering positive results and bringing a practical, common sense approach to resolving complex problems that considers the client's business needs."

Singh is a frequent speaker on issues relating to case management, e-discovery, class action litigation and California's consumer protection laws. He is active in several professional and civic organizations and serves on the board of the San Diego County Bar Foundation and on the board of governors of the Association of Business Trial Lawyers.

"I am thrilled to join Foley's talented, national litigation practice," said Singh. "I was attracted to Foley because of its excellent reputation, its emphasis on providing exceptional client service and because of the firm's long, rich history and tradition that goes back 175 years."

San Diego Managing Partner Paul Hunter added: "We're excited to bring Jai aboard, as he's renowned for helping clients across the country with their business practices and compliance with California's stringent consumer protection laws."

Prior to joining Foley, Singh was a partner at Dentons US LLP.

Judge Shoots Down eDiscovery Trade Secrets Case

A federal judge in Manhattan has rejected DTI Global's arguments that a sales team lured away by a competitor had misappropriated key trade secrets, such as its e-discovery clients' purchasing needs, and denied its motion for a preliminary injunction, according to a **Bloomberg Law report**.

The four sales agents had gone to work for LDiscovery.

U.S. District Judge Jed Rakoff wrote in his opinion that he was "unpersuaded that LDiscovery has done anything improper by entering into these agreements with the Individual Defendants, let alone that the Individual Defendants have breached the applicable terms of their agreements with DTI."

Read the Bloomberg article.

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Justice Neil Gorsuch Has Already Changed the Supreme Court Forever

This past term shows that the Supreme Court is really the Gorsuch Court – a trend that will likely continue well into the future, writes **Jessica Mason Pieklo** in **Rewire**.

"Gorsuch's concurring opinion in *Trinity Lutheran Church v. Comer*, the case that has further opened a pipeline for direct government spending to some religious institutions, was so conservative not even Justice Samuel Alito – who happily endorsed corporate religious rights in the *Hobby Lobby v. Burwell* decision – agreed with it,"
Pieklo writes.

If justice Anthony Kennedy retires from the court, a second Trump appointee could move the court the most conservative in its history, she adds.

Read the Rewire article.

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Download: Insights From the Latest E-Discovery Cases

Zapproved's **2017 Summer volume** offers insights from the latest e-discovery cases – and how courts are applying the FRCP to reach big decisions. The new volume is available for downloading at no charge.

The company says the publication includes summaries detailing e-discovery no-nos – from data compliance missteps to misconduct to total e-discovery breakdown. It also discusses trends in how courts are applying the new Federal Rules of Civil Procedure (FRCP) to validate best practices.

The collection covers cases with many high-profile brands, such as *Wal-Mart Stores*, *UPS*, *Goodyear Tire*, *Angie's List* and the return of *Targate*. Other cases put lesser known names in the spotlight, like *Fischer v. Forrest*, *Vir2us, Inc. v. Invincea, Inc.* and *OOO Brunswick Rail Mgmt. v. Sultanov*.

This free volume includes abstracts of e-discovery case law from the last 10 years, plus 11 full summaries of recent 2017 cases. It reveals how the courts are bringing issues of proportionality, cooperation and preservation to the forefront:

– *Gordon v. T.G.R. Logistics, Inc.*
– *United States v. HV1 Cat Canyon, Inc.*
– *Goodyear Tire & Rubber Co. v. Haeger*
– *Williams v. Angie's List, Inc.*
– *Bird v. Wells Fargo Bank*
– *Fischer v. Forrest*
– *HCC Ins. Holdings, Inc. v. Flowers*
– *Vir2us, Inc. v. Invincea, Inc.*
– *Wal-Mart Stores, Inc. v. Cuker Interactive, LLC*

– *Solo v. United Parcel Serv. Co.*
– *OOO Brunswick Rail Mgmt. v. Sultanov*

Download the 2017 volume.

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Firms Offer Litigation Insurance So Clients Can Hedge Bets in Court

Image by Pictures of Money

Some American law firms trying to collect on big contingency claims are starting to use form of litigation insurance to hedge against the possibility that the judgment could be wiped away on appeal, according to **Bloomberg Law**.

Reporter **Gabe Friedman** describes one case in which a firm used the process when it was trying to resolve one of its biggest

cases: a $300 million trial judgment for a client, which would yield a 10 percent fee for the firm.

The lawyer "negotiated for a type of 'insurance' with Credit Suisse that was acceptable to the court," Friedman explains. "Under the deal, his firm paid Credit Suisse what was akin to an insurance premium. And if his firm was unable to collect its 10 percent fee award, Credit Suisse would pay it an undisclosed sum; and if the firm did collect, which it eventually did, the firm had only paid the bank the premium, an amount equal to a portion of its fee award … ."

Read the Bloomberg article.

Class Action Accuses Steptoe & Johnson of Gender Bias

A former associate filed a national class action against Steptoe & Johnson, claiming the giant law firm pays only lip service to gender equality, but has a male-dominated leadership that discriminates against women in pay and promotions, according to a **Courthouse News Service** report.

Ji-In Houck, of Los Angeles, says her starting pay at the firm as a contract attorney was barely half the $165,000 that inexperienced male lawyers made – though she had come to Steptoe with two years of experience in civil litigation.

"During her three years in Steptoe's Century City office, her salary typically was 30 percent to 40 percent less than male

lawyers with comparable experience, she says in her June 22 complaint," writes **Don Debenedictis**. "When she left in March 2016, she was earning $200,000 a year, compared to the $230,000 paid to men at her level."

Read the Courthouse News article.

The Litigation Storm Around President Trump

Image by Gage Skidmore

Liberal activists are thrilled to be suing President Donald Trump, reports **Bloomberg Law**.

The article by Paul Barrett and Dune Lawrence quotes Norman Eisen, the chief White House ethics lawyer for President Barack Obama: "The reason you're seeing a proliferation of lawsuits against President Trump is that he brought his lifelong contempt for the rule of law with him to the Oval Office."

A varied collection of plaintiffs accuse Trump of improperly profiting from private businesses such as his Washington hotel, which has been patronized by officials from Saudi Arabia, Kuwait, and other countries.

“Yet another legal challenge has blocked a separate executive order cutting off certain federal funds from ‘sanctuary cities,’ which refuse to have their police departments help federal authorities target immigrants for deportation,” the authors report.

Even some stare and local governments are taking Trump to the courthouse.

Read the Bloomberg article.

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Bailey Brauer Helps Secure Appellate Win in Texas Partnership Liability Battle

In a decision relying on the Fifth U.S. Circuit Court of Appeals’ application of a 19th century court ruling to Texas general partnership liability law, an agricultural wholesaler will be allowed to enforce a judgment against individual partners of a defunct agribusiness partnership.

The partners of G&K Farms, a North Dakota-based general partnership formed in 2008 to farm land in Texas, amassed debts of nearly $650,000 to Crop Production Services. G&K partners John and Dawn Keeley and Thomas Grabanski made payments on the debt until Grabanski and his wife filed for bankruptcy in 2013.

A default judgment was issued in 2014 against G&K Farms totaling more than $1.3 million, with a subsequent judgment also issued against the Keeleys based on their derivative liability as partners.

In their efforts to vacate the judgment, the Keeleys relied on the 1872 U.S. Supreme Court ruling in *Frow v. De Le Vega*, which they felt protected them from individual liability after Keeley avoided a finding of liability based on a guaranty he signed. *Frow v. De Le Vega* determined that when there are multiple defendants, if some parties present a defense and win, then the ruling can be applied to defaulting parties under certain circumstances.

“The courts had already found that there was no logical application of *Frow* in this case. It was simply a very thinly veiled attempt by the Keeleys to avoid their responsibilities as partners in repaying the general partnership’s debts,” said CPS’s lead appellate attorney Clayton Bailey of Dallas’ **Bailey Brauer PLLC**. “Crop Production Services’ trial attorneys, John Mark Stephens and Abel Leal, did a terrific job in the trial court demonstrating that the *Frow* doctrine did not apply.”

“This has been a protracted battle that should have been settled years ago. Nevertheless, this is a big win for CPS,” said Stephens of the Dallas law firm Johnson Stephens & Leal, PLLC, who represents CPS at trial along with partner Leal. “We are gratified that the Fifth Circuit saw through this smoke screen and affirmed the ruling of the district court.”

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International Association of Defense Counsel Publishes Defense Counsel Journal Spring 2017 Edition

The International Association of Defense Counsel (IADC) has announced publication of the spring 2017 edition of its Defense Counsel Journal (DCJ), which is available for free and without a subscription to IADC members and non-members via the IADC's website, **www.iadclaw.org**.

The spring 2017 edition is available at **www.iadclaw.org/publications-news/defense-counsel-training-manual/**.

Published in its first edition in 1934 as the Insurance Counsel Journal, the DCJ is a forum for topical and scholarly writings on the law, including its development and reform, as well as on the practice of law in general. The DCJ is published quarterly and is frequently and favorably cited by courts and other legal scholarship.

"This year, for the first time, we are making the IADC's acclaimed Defense Counsel Journal free and accessible to anyone via our website to meet demand for the publication and to more easily share our members' insights on timely legal practice issues with the broader legal community," said John

T. Lay, Jr., IADC President and a shareholder at Gallivan, White & Boyd, P.A.

A 2,500-member, invitation-only organization, the IADC serves its members and their clients, as well as the civil justice system and the legal profession. The organization maintains a leadership role in many areas of legal reform and professional development, the association said in a news release.

“We are very excited about the new distribution model for our Defense Counsel Journal,” said Michael Franklin Smith, IADC member and current editor of the DCJ, as well as a shareholder at McAfee & Taft. “The new spring issue offers scholarly, in-depth review and analysis for engaging attorneys and enhancing their understanding of current legal trends and timely issues that they may face in diverse practice areas.”

The spring issue of the DCJ includes analysis of the following topics:

– Why the majority of jurisdictions in the United States have rejected the product line theory of liability, along with a 50-state review of the case law addressing the theory;

– The rapidly evolving defense of lack of personal jurisdiction since the U.S. Supreme Court’s 2014 opinion in Daimler AG v. Bauman;

– Case law discussing insurance coverage for malicious prosecution under comprehensive general liability policies and the policy exclusions that can affect that coverage; and
The development and evolution of judicial notice, a tool that can greatly increase the efficiency of certain kinds of proof if used properly.

Judge Rips Lawyers in IP Rift; Will Award Fees to Defendants

A New York federal judge has ruled that no "reasonable attorney" would have sued news organizations for broadcasting or publishing seconds-long clips from the 45-minute live Facebook video of a childbirth, **reports Ars Technica**.

And the media outlets defendants are entitled to recover what may amount to hundreds of thousands of dollars in legal costs, writes **David Kravets**.

"No reasonable lawyer with any familiarity with the law of copyright could have thought that the fleeting and minimal uses, in the context of news reporting and social commentary, that these defendants made of tiny portions of the 45-minute video was anything but fair," U.S. District Judge Lewis Kaplan of New York wrote.

Read the Ars Technica article.

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The Dumbest Class Action Claim Ever

The Milwaukee Journal Sentinel reports on a pair of class-action lawsuits against Home Depot and Menards that **Above the Law** calls "the dumbest class action claim ever."

As *Journal Sentinel* reporter **Rick Romell** explains:

> Menards and Home Depot stand accused of deceiving the lumber-buying public, specifically, buyers of 4×4 boards, the big brother to the ubiquitous 2×4.
>
> The alleged deception: The retailers market and sell the hefty lumber as 4x4s without specifying that the boards actually measure 3½ inches by 3½ inches.

Above the Law's **Joe Patrice** explains that everybody who ever built anything already knew that 3½ by 3½ is the industry standard:

> In fact, if retailers started selling boards that *were* 4 inches by 4 inches, they'd actually be useless because they wouldn't match up with all the other standardized materials that assume the board will be 3 1/2″ by 3 1/2″.

Read the **Journal Sentinel** and **Above the Law** articles.

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