

What to Do When You're in the Sexual Harassment Hot Seat



Meritas will present a [webinar](#) titled “When #MeToo Means #YouToo: What to do when you're in the sexual harassment hot seat.”

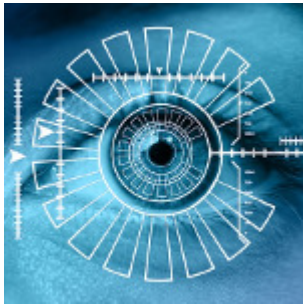
The event will be Wednesday, May 2, 2018, at 1 p.m. CDT.

“The #MeToo movement has many employers uncertain about the best ways to protect themselves from sexual harassment complaints and the right way to respond after a complaint has been made,” the firm says on its website. “This seminar will explore how our definitions of sexual harassment have evolved in the age of #MeToo and the misconceptions that have formed around this issue.”

“Participants will come away with actionable advice they can put to use to avoid the damage that such claims can create, not just in terms of liability but also in workplace culture, employee attraction and retention.”

[Register for the webinar.](#)

Could Be Forced to Pay Billions Over Alleged Violations of Illinois Biometrics Law



A federal judge's ruling means Facebook could face billions of dollars in damages if the court finds the company violated Illinois residents' privacy rights with its facial tagging feature, reports the [Chicago Tribune](#).

Reporter [Ally Marotti](#) explains that the potential penalty stems from a federal lawsuit filed in Illinois in 2015 that alleges the social media giant violated a state law protecting residents' biometric information, such as data from facial, fingerprint and iris scans. Illinois has one of the strictest biometric privacy laws in the nation.

Facebook has argued that if its collection of biometric information did not harm individuals, they do not have grounds to sue under Illinois' biometrics law. But the judge in the case determined that an alleged invasion of privacy was injury enough to allow users to sue.

[Read the Tribune article.](#)

Judge Says No to Law Firm on NFL Concussion Settlement

The Associated Press [reports](#) that a federal judge has denied a law firm's request to be added as an administrator of the NFL's estimated \$1 billion concussion settlement.

"U.S. District Judge Anita Brody rejected an attempt from the Locks Law Firm to join the process that compensates former players for head injuries they sustained during their careers. The firm had claimed that the process was going too slowly," according to the AP report.

Nearly 400 claims that could pay out more than \$416 million have already been approved.

[Read the AP report.](#)

Sandy Hook Parents Accuse Alex Jones, InfoWars of Defamation, Seek Damages



Image by [Sean P. Anderson](#)

The parents of children who died in the 2012 massacre at Sandy Hook Elementary School in Newtown, Conn., have accused conspiracy theorist Alex Jones and InfoWars of defamation and seek damages in excess of \$1 million, reports the [Austin Statesman](#).

Plaintiffs in two lawsuits filed in Austin, Texas, allege that Jones and his media organization spread false information related to the tragedy, according to reporter [Mark D. Wilson](#).

The *Los Angeles Times* [reports](#): “The lawsuits allege that Jones defamed the parents by constantly calling them ‘crisis actors’ and insisting the shooting was a ‘false flag’ operation; they also claim Jones’ accusations have led to death threats against the Sandy Hook families by Jones’ followers.”

[Read the Statesman article.](#)

Ward, Smith & Hill Helps

Secure \$502.6M Patent Infringement Win Against Apple

A jury has awarded internet security software company VirnetX \$502.6 million, finding Apple Inc. willfully infringed on four patents used for VPN on Demand and Facetime in Apple products.

The finding that Apple willfully infringed on four VirnetX communications patents could lead to higher damages. The liability and damages verdict was returned on April 10 at the end of a seven-day trial, and the willful infringement finding was returned the following day. It is the third jury verdict in the past two years that lawyers with East Texas-based firm Ward, Smith & Hill, PLLC, have secured for VirnetX in its long-running legal battle with Apple.

Judge Robert W. Schroeder III heard the case in the U.S. District Court for the Eastern District of Texas, Tyler Division. The dispute involved U.S. Patent Nos. 6,502,135; 7,490,151; 7,418,504; and 7,921,211.

VirnetX was represented at trial by [Ward, Smith & Hill](#) name partner Johnny Ward and Caldwell Cassady & Curry attorneys Brad Caldwell, Jason Cassady, Austin Curry and Chris Stewart.

In September 2016, Ward played a key role in securing a \$302 million patent infringement verdict for VirnetX. Seven months prior to that verdict, Ward and attorney Claire Abernathy Henry assisted with a \$625.6 million patent verdict win against Apple, the firm said in a release.

The case is *VirnetX Inc. et al v. Apple Inc.*, case 6:12-cv-00855, in the U.S. District Court for the Eastern District of Texas.

‘Tax Case of the Millennium’ Hits High Court: A Primer



Oral arguments in the biggest U.S. Supreme Court tax case in years are just days away, reports [Bloomberg Law](#).

Oral arguments in *South Dakota v. Wayfair* are scheduled for Tuesday, April 17.

Reporter [Ryan Prete](#) writes that the case directly challenges the 1992 decision in *Quill Corp. v. North Dakota*, prohibiting states from imposing sales tax collection obligations on vendors lacking an in-state physical presence.

“The case has set off perhaps the largest amount of state and local tax-related activity in the past decade as states have tried to ‘kill Quill’ as online commerce has replaced traditional brick-and-mortar markets,” according to Prete.

He quotes Max Behlke, director of budget and tax at the National Conference of State Legislatures, as saying the South Dakota case is the “tax case of the millennium.”

[Read the Bloomberg article.](#)

Sexual Misconduct and D&O Claims

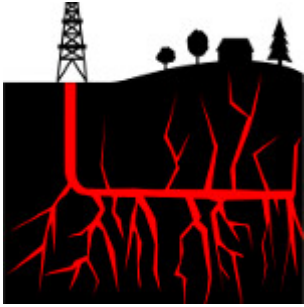
Kevin LaCroix, writing in [The D&O Diary](#), discusses a recent scholarly article that takes a detailed look at director and officer claims arising out of allegations of sexual misconduct.

The University of Chicago Law School article examines the potential bases of liability, and considers the relative social utility of this kind of litigation, as well as the practical implications for corporate boards and their organizations.

LaCroix writes: “The authors conclude that ‘in some instances, corporate fiduciaries will indeed be liable to shareholders when workplace-sexual misconduct occurs at companies.’ In light of this conclusion, it would be prudent for companies and their executives to take steps to reduce their potential exposure to these kinds of suits.”

[Read the article.](#)

Pennsylvania, Texas Courts Disagree on Whether Rule of Capture Applies to Fracturing



A recent Superior Court of Pennsylvania ruling in a case concerning hydraulic fracturing runs counter to a ruling in a similar case by the Texas Supreme Court, reports John B. McFarland in Graves, Dougherty, Hearon & Moody's [Oil and Gas Lawyer Blog](#).

The Pennsylvania court held that “hydraulic fracturing may constitute an actionable trespass where subsurface fractures, fracturing fluid and proppant cross boundary lines and extend into the subsurface estate of an adjoining property for which the operator does not have a mineral lease, resulting in the extraction of natural gas from beneath the adjoining landowner’s property.”

In doing so, McFarland explains, the court rejected the reasoning of the Texas Supreme Court when that court held that the rule of capture prevented any such cause of action.

[Read the article.](#)

Making the Business Case for Upgrading Your Legal Hold System



An article published by Zapproved breaks down the results and explains the benefits of replacing an existing system – or lack thereof – with automated, cloud-based legal hold software.

The article [can be downloaded](#) at no charge.

Research results demonstrate a real rate of return on investment generated by automated cloud-based legal hold software, the company says on its website.

“E-discovery is expensive, but the risks of not handling it are even more costly,” Zapproved says on its website. “Many legal teams tend to focus their cost-reduction efforts on later phases of discovery, such as processing and review, overlooking the benefits of optimizing the preservation process. Yet putting in the effort to preserve and collect the right data has a trickle-down effect, saving money and time in every step that follows while minimizing potential spoliation. The question is, just how much can you save with effective preservation?”

[Download the article.](#)

PwC Faces Largest-Ever Auditor Malpractice Damages Verdict



Image by [Bjørn Erik Pedersen](#)

MarketWatch [is reporting](#) that the Federal Deposit Insurance Corp. could collect the largest damage award ever against a global public accounting firm when a federal judge decides what to award the agency after a verdict against PricewaterhouseCoopers.

The judge in the case has already ruled that PwC had been professionally negligent in not detecting the criminal fraud that led to the failure of Colonial Bank Group in 2009, according to reporter [Francine McKenna](#).

The FDIC has asked Judge Barbara Rothstein to award it \$625 million in compensation for the bank's alleged net losses from a fraud with mortgage originator Taylor Bean and Whitaker,

which also failed in 2009.

Even PwC's estimate of damages based on the judge's decision, per court filings, of \$306 million would result in the largest-ever final judgment or jury verdict for accounting malpractice, MarketWatch reports.

[Read the MarketWatch article.](#)

JPMorgan Juror Says Doomed \$8 Billion Award Was Message to Bank



Image by Ben Sutherland

Irelsie Alvarez said she and fellow jurors wanted to send JPMorgan Chase & Co. a message with their startling \$8 billion verdict in a Dallas probate case – an award that's destined to be reduced to no more than \$90 million, [reports Bloomberg](#).

The trial was in late 2017, but lawyers for the bank company

were back in court on Thursday, saying the defendant is entitled to a take-nothing verdict.

The widow of deceased American Airlines executive Max Hopper sued the bank for allegedly mismanaging the estate of her late husband.

Alvarez, a 26-year-old insurance agent, said she took the suggestion of lawyers for Hopper's family that a big damage award was needed "in order to prevent this from happening again."

Reporter [Tom Korosec](#) writes that the jury award was the largest of 2017 and the ninth-largest in U.S. history.

[Read the Bloomberg article.](#)

Target Pays \$3.7M to Settle Lawsuit Over Racial Disparity in Use of Criminal Background Checks



Image by [Mike Mozart](#)

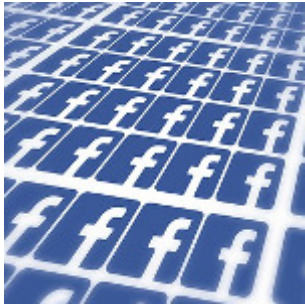
The *Minneapolis Star Tribune* [is reporting](#) that Target Corp. has agreed to pay \$3.7 million to settle a lawsuit over concerns that the way it uses criminal background checks as part of the hiring process has disproportionately hurt black and Latino applicants.

Reporter [Kavita Kumar](#) quotes Sherrilyn Ifill, president of the NAACP Legal Defense and Educational Fund: “Target’s background check policy was out of step with best practices and harmful to many qualified applicants who deserved a fair shot at a good job. Criminal background information can be a legitimate tool for screening job applicants, but only when appropriately linked to relevant questions such as how long ago the offense occurred and whether it was a nonviolent or misdemeanor offense.”

As part of the settlement of the class-action complaint, independent consultants will recommend changes to Target’s current screening guidelines.

[Read the Star Tribune article.](#)

Facebook Privacy Scandal Unleashes Nationwide 'Litigation Swarm'



Facebook Inc. finds itself in the eye of a rapidly building legal storm over the disclosure of user data to political research firm Cambridge Analytica as lawsuits stack up from users and investors, and regulatory agencies pile on, Bloomberg Technology [reports](#).

Reporter [Christie Smythe](#) quotes Marc Melzer, a New York-based attorney: “Facebook’s having to fight on multiple fronts, with potentially conflicting strategies and obligations, is what will make this ‘litigation swarm’ problematic.” The company will likely “want to move slowly and withhold as much as they can without antagonizing regulators or the courts that are presiding over the suits.”

“Damages could be substantial for shareholders, with one group of investors estimating that at least \$50 billion in the company’s market capitalization has been wiped out as a result of the disclosure, which affected 50 million users,” Smythe reports.

[Read the Bloomberg Technology article.](#)

Holland & Knight Wins Reversal of \$34.5M Malpractice Verdict

[Bloomberg Law reports](#) that a wealthy investor who accused Holland & Knight of facilitating a Ponzi scheme was not entitled to the \$34.5 million verdict that a jury awarded him in 2012, a California appeals court ruled April 2.

Plaintiff Rahim Sabadia claimed that he lost \$16 million in cash, and incurred an additional \$18 million in loan obligations, in a series of real estate investments that H&K structured on behalf of Atlanta developer M. Shi Shailendra. Shailendra came under SEC scrutiny for defrauding investors and was permanently barred from selling securities in 2014.

“Sabadia filed this suit against H&K in 2010, accusing the firm of malpractice and fraud and alleging that it helped Shailendra with a series of transactions that bore the ‘classic elements of a Ponzi scheme,’ in the words of a fraud examiner.” writes [Samson Habte](#).

The appeals court said that verdict couldn’t stand because “Shailendra’s dishonest acts broke the causal connection” between H&K’s alleged misconduct and the plaintiffs’ claimed investment losses.

[Read the Bloomberg article.](#)

Arbitrability Basics: An Illustration of the 'Autonomy' Principle

When considering an arbitration clause in a contract, one must always bear in mind the “separability” or “independence” of the arbitration agreement – the autonomy principle, writes [Narges Kakalia](#) in the [ADR: Advice From the Trenches](#) blog of Mintz Levin.

She asks: “For example, should a plaintiff be compelled to arbitrate a dispute if the contract containing the ADR clause has expired? What if the contract containing the arbitration clause is unconscionable as a matter of public policy? A plaintiff may nonetheless be compelled to arbitrate in order to resolve his dispute, as illustrated recently in a decision by the U.S. District Court for the Northern District of Texas.”

She discusses *Athas Health, LLC v. Giuffre* and explains how the court reached its decision.

[Read the article.](#)

Judge Dismisses Exxon's

Lawsuit, Letting Multi-State Fraud Investigation Continue

Exxon Mobil Corp.'s attempt to derail a multistate fraud investigation into the company's public comments about climate change flamed out in a New York court, according to wire services, via [The Dallas Morning News](#).

The report says a U.S. district judge in New York on Thursday dismissed Exxon's lawsuit claiming officials in New York and Massachusetts conspired with environmental groups in planning the securities-fraud probe and made up their minds about its outcome before it started.

Judge Valerie Caproni said in her ruling that Exxon's tactic of suing in federal courts in New York and Texas to stop the state probes "running roughshod over the adage that the best defense is a good offense."

[Read the Dallas News article.](#)

Barclays Wins Its DOJ Gamble With \$2 Billion Mortgage Settlement

Bloomberg [is reporting](#) that Barclays Plc agreed to pay \$2 billion to settle a probe into how it sold the sort of

mortgage bonds that fueled the financial crisis, securing a penalty less than half of what U.S. authorities originally demanded.

Reporters [Stephen Morris](#) and [Gavin Finch](#) explained: “The British lender was the only bank to push back against the size of the settlement demanded by the Justice Department, prompting the prosecutor to file a lawsuit in the waning days of the Obama administration in 2016. The DOJ wanted a fine of about \$5 billion, but the bank refused to pay any more than \$2 billion, Bloomberg news reported in 2016.”

Two former executives at the bank, Paul Menefee and John Carroll, also settled Thursday and agreed to pay \$2 million to resolve claims without admitting wrongdoing.

[Read the Bloomberg article.](#)

An Indemnity Agreement Means What it Says

[Charles Sartain](#) offers a reminder that a court will (if it's doing its job) enforce an agreement according to what it actually says, not by that which one party or the other would have liked it to say or imagines that it said.

Writing in Gray Reed's [Energy & the Law](#) blog, Sartain discusses *Claybar v. Samson Exploration*. That case involved an agreement over an indemnity clause in a contract for the drilling of petroleum wells and related operation on property

owned by Claybar.

Sartain presents the facts of the case, including a break-down of both side's positions.

“Generally, indemnity agreements do not apply to claims between the parties but apply to claims made by others who are not parties to the agreement,” Sartain writes. “However, the parties can write an agreement to indemnify one another against claims they later assert against each other. To do so, the parties must expressly and specifically state that intention.”

[Read the article.](#)

Remington Bankruptcy Leaves \$500M Question Over Pending Legal Claims



Image by [Mitch](#)
[Barrie](#)

Remington Outdoor Co.'s decision to seek court protection brings up the question of whether people with pre-existing legal claims against the company will be made whole.

[Bloomberg reports](#) that lawsuits over firearms defects and the use of its weapons in the Sandy Hook attack were pending when the company filed for bankruptcy, and the company has moved to suspend those cases.

As reporters [Eliza Ronalds-Hannon](#) and [Polly Mosendz](#) write: "As much as \$500 million could hang in the balance. Remington, which is owned by Cerberus Capital Management, is embroiled in litigation over trigger defects on guns such as its iconic Model 700 rifle, as well as another lawsuit by survivors of the children and teachers killed in the 2012 elementary school shooting in Newtown, Connecticut. Bushmaster, owned by Remington, manufactured the firearm used in that massacre, which left 26 dead. "

[Read the Bloomberg article.](#)

Supreme Court Prepares for Right Turn

As the White House and Congress descend deeper into turmoil, the U.S. Supreme Court is showing signs of becoming as politically fractured as the rest of Washington, with a shift to the right a real possibility, [reports CNN](#).

CNN legal analyst Joan Biskupic explains: “Indications from the few decisions issued so far and from oral arguments in yet-to-be decided cases suggest the five conservatives on the nine-member bench may be ready to wield their majority power. Led by Chief Justice John Roberts and joined by President Donald Trump appointee Justice Neil Gorsuch, the five have already prevailed in recent ideologically charged cases regarding prisoners’ civil rights and immigrants in custody.”

Biskupic writes that a looming question since Trump took office has been whether the justices would become a check on Trump, who has flouted legal norms, criticized federal judges, and revealed disdain for the rule of law.

[Read the CNN article.](#)