

Dallas Trial Lawyer David Elrod Joins Shackelford, Bowen, McKinley & Norton



Veteran trial lawyer David Elrod has joined the business and entertainment law firm Shackelford, Bowen, McKinley & Norton, LLP, as a partner in the Dallas office, marking a significant expansion of the firm's existing litigation practice, [the firm announces](#).

Also joining Shackelford are partner Worthy Walker, of counsel Barbara Wohlrabe and associate Hayley Ellison. The attorneys all have substantial experience in complex commercial and energy disputes in Texas and around the country.

"It's not every day that you have the opportunity to bring upper-tier litigators such as David and his team into your firm. Their addition strengthens our litigation and trial capabilities regionally and throughout the country, while also adding a robust energy litigation section."

[Read the firm's announcement.](#)

Lurid Lawsuit's Quiet End

Leaves Silicon Valley Start-Up Barely Dented

The executives of some Silicon Valley companies have been forced out of their corporate positions because of sexual improprieties between themselves and employees, but one company has weathered a similar ordeal with little apparent repercussion.

[The New York Times](#) discusses the case of Upload, an entertainment and news hub for the VR industry. When the former digital media manager sued the company after she was fired, allegedly because she complained about the hostile atmosphere, the company at first denied the allegations. Then, as the *Times*' story about the suit neared publication, Upload's CEO and president issued a statement saying, "We let you down and we are sorry."

The Silicon Valley story took a turn. As reporter [David Streitfeld](#) writes:

In contrast to the venture capitalists who were knocked off their perches this summer by harassment complaints, Upload was scarcely dented by the publicity surrounding [the] suit. [The CEO and president] were not forced to resign. Investors did not pull their money. The company's events continued, if in terms that were a bit more muted.

[Read the NYT article.](#)

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[ADA Website Wars Coming to a Retailer Near You](#)

The Winn-Dixie grocery chain is the latest and perhaps highest-profile business to face penalties for websites that are not compliant with the Americans with Disabilities Act (ADA), but it's not likely to be the last, according to a post on the website of [Androvett Legal Media & Marketing](#).

A federal judge in Florida found that the grocery chain's website was inaccessible to visually impaired individuals and thus violated the ADA because features such as the website's online coupons and pharmacy could not be accessed using a screen reader. The court ruled in favor of the plaintiff on all issues and awarded injunctive relief and attorneys' fees.

The Americans with Disabilities Act prohibits discrimination on the basis of disability in public places, like stores and movie theaters. Increasingly, a battle has been brewing over whether or not websites for such "places of accommodation" must also be accessible.

"In Winn-Dixie's case, the court agreed that because its website was closely integrated with its stores, the web content must be accessible to the hearing and visually impaired," said employment attorney [Audrey Mross](#) of Dallas-based [Munck Wilson Mandala](#). "If consumer-facing businesses were not aware of ADA website compliance, this case should be an eye-opener."

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2017 Litigation Finance Survey Shows Continued Growth



Burford's [2017 Litigation Finance Survey](#) shows that litigation finance continues to achieve dramatic growth, finding that the use of litigation finance in the United States grew by 28% from last year, to 36%. And it has grown 414% since 2013.

Among respondents in the US, UK and Australia, a majority of users (59%) say their use of litigation finance has increased in the last two years.

A strong majority (72%) of all respondents agree that litigation finance is a growing and increasingly important area of the business of law—and, notably, 40% of US companies report having foregone claims due to the cost of litigation.

Pointing to continued growth on the horizon, among all respondents whose organizations have not yet used litigation finance, a majority of law firm respondents (57%) and nearly half of in-house respondents (49%) are likely to consider its use in the next two years.

Some early concerns about litigation finance have evaporated. For example, in the US, the number of in-house respondents with concerns about litigation finance leading to unnecessary litigation fell to 10% from 81% five years ago. Among all respondents, ethical concerns rank dead last among obstacles to use, at 9%.

Only 7% of all respondents are unfamiliar with litigation finance, and only 4% of law firm respondents.

Christopher Bogart, Burford's CEO, commented: "Burford's latest research affirms our own experience: More and more often, clients and law firms are turning to litigation finance as a solution to some of the intractable challenges and pressures of managing legal cost and risk, and that strong demand is driving dramatic growth."

Burford's 2017 Litigation Finance Survey was conducted by ALM Intelligence, the research arm of ALM Media, publisher of The American Lawyer, from May 17 to June 16, 2017. The full report is [available online](#).

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[Survey Ranks Dallas Law Firm Bailey Brauer Among Most Feared by Opponents](#)

The Dallas-based trial and appellate law firm [Bailey Brauer PLLC](#) has again earned a spot among an elite group of firms that corporate lawyers most fear facing in court.

According to a release from the firm, Bailey Brauer, founded in 2913, is among the youngest and smallest firms included on BTI Litigation Outlook 2018's Honor Roll of the nation's Most Feared Law Firms. This is the second time the firm has been

recognized for its complex commercial litigation, class action and other litigation work. Selection is based upon interviews with general counsel and in-house litigation leaders nationwide who were asked which lawyers they would least like to face in litigation.

The release continues:

“To earn a place on the BTI list is an honor because it’s based on corporate counsel feedback,” said firm co-founder attorney [Alex Brauer](#). “And what it tells me is that the businesses we represent appreciate how we handle their most important cases, and that is being noticed by those across the table as well.”

BTI Consulting Group, based in Massachusetts, is a national business research company that conducts independent research on how Fortune 1000 companies buy, manage and evaluate their professional service providers. A full list of its 2018 honorees is available at <https://www.bticonsulting.com/litigation-outlook-fearsome-fo>
[ursome](https://www.bticonsulting.com/litigation-outlook-fearsome-fo).

“What BTI focuses on is client service,” said co-founder [Clayton Bailey](#). “And from day one, serving clients has been at the very heart of what we do. To have that dedication recognized by BTI twice in the four years since we opened is validation that we are on target with providing Big Law quality representation in a much more nimble, responsive way.”

This represents the second year in a row that BTI has recognized Bailey Brauer, adding to honors the firm has collected from Benchmark Litigation. Most recently, Mr. Brauer and Mr. Bailey were named individually to the 2017 Texas Super Lawyers listing. Mr. Brauer also was named among the Best Lawyers in Dallas by D Magazine. Mr. Bailey was named among The Best Lawyers in America, The National Law

Journal's Elite Boutique Trailblazers list and to The National Trial Lawyers' Top 100 civil plaintiff lawyers in Texas.

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[**DLA Piper Litigation Practice Recognized By BTI Consulting**](#)

[DLA Piper](#) has been recognized as a "powerhouse" law firm for class actions and complex commercial litigation by BTI Consulting Group in its recently published BTI Litigation Outlook 2018 report.

The firm was also named a "standout" in IP litigation, securities and finance litigation, complex employment litigation, everyday employment litigation, product liability litigation and everyday commercial litigation. DLA Piper was one of eight firms to be recognized as a "BTI Awesome Opponent," a category that includes firms clients said they least hope to see on the other side of the table.

The annual report draws on more than 4,800 interviews with corporate counsel and other leading legal decision makers conducted over the past 18 years to recognize law firms that are leading the litigation market by providing clients with faster turnaround times and more innovative approaches. Special analysis for this year's report was based on feedback received between February and July 2017.

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[Google Sued by Women Workers Claiming Gender Discrimination](#)

Bloomberg Law [reports](#) that Google Inc. was accused in a class action of systematically paying male employees more than females, adding the internet giant to a growing list of technology companies sued for gender discrimination.

“Three women who worked at Google in recent years sued in San Francisco Superior Court alleging that the company pays women less than men for equal or similar work,” according to reporter [Erik Larson](#). “They also say it puts them on career paths with lower pay ceilings, according to a copy of a complaint provided by their lawyer. The filing couldn’t be immediately verified in court records.”

Some other tech companies, including Microsoft Corp. and Twitter Inc., have been targets of similar litigation claiming men are favored for advancement.

[Read the Bloomberg article.](#)

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[The Questionable Non-Compete: How to Hire Someone but Avoid a Tortious Interference Claim](#)



A post on the website of Nilan Johnson Lewis addresses a question about hiring: What specific steps should you take to set up your best defense to a claim that your company interfered with a new hire's non-compete agreement with her current employer?

[The article](#) defines tortious interference and then discusses five considerations: selecting counsel, proving reasonable reliance, selecting the witnesses, proving the advice happened, and proving the substance of advice.

“By taking these actions with future litigation squarely in mind, your company can create the best evidence to support a justification defense when hiring a new employee with a questionable non-compete,” the article concludes.

[Read the article.](#)

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[Equifax Faces Multibillion-Dollar Lawsuit Over Hack](#)



Bloomberg [reports](#) that a proposed class-action lawsuit was filed against Equifax Inc. late Thursday evening, shortly after the company reported that an unprecedented hack had compromised the private information of about 143 million people.

The law firms filing the suit are Olsen Daines PC and Geragos & Geragos, a celebrity law firm known for blockbuster class actions. Reporter [Polly Mosendz](#) writes that Ben Meiselas, an attorney for Geragos, said the class will seek as much as \$70 billion in damages nationally.

In the security breach, hackers are believed to have accessed Social Security numbers, addresses, driver's license data, and birth dates. Some credit card information was also put at risk.

[Read the Bloomberg article.](#)

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[Trump Lawyers Urge Supreme Court to Rule for Colorado Cake Maker Who Turned Away Gay Couple](#)

Trump administration lawyers joined sides with a Colorado baker Thursday and urged the Supreme Court to rule that he has the right to refuse to provide a wedding cake to celebrate the marriage of two men, reports [The Los Angeles Times](#).

In a friend-of-the-court brief, Acting Solicitor Gen. Jeffrey B. Wall argued that the cake maker's rights to free speech and the free exercise of religion should prevail over a Colorado civil rights law that forbids discrimination based on sexual orientation, according to the report by [David G. Savage](#).

Savage writes: "The brief filed Thursday is likely to bolster the cake maker's case, and is in line President Trump's repeated promises to protect 'religious liberty.'"

[Read the LA Times article.](#)

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[Former Assistant to the US](#)

Solicitor General Ilana Eisenstein joins DLA Piper Litigation Practice in Philadelphia

DLA Piper announced the addition of Ilana Eisenstein to the firm's Litigation practice as a partner in Philadelphia.

Eisenstein joins DLA Piper after three years as Assistant to the Solicitor General in the US Department of Justice, where she briefed and argued extensively before the US Supreme Court. She also advised the Solicitor General regarding federal appellate litigation on civil, criminal and administrative law matters.

"Ilana's experience before the Supreme Court and other outstanding efforts with the Solicitor General provides a tremendous addition to the firm's strategic commitment to provide appellate capabilities to our clients at the highest level; and, her superb trial, case management and leadership experience adds a wonderful breadth to our complex litigation, white collar and investigations practices," said James Brogan, co-chair of DLA Piper's US Litigation group.

Before joining the Office of the Solicitor General, Eisenstein served as an Assistant U.S. Attorney in the District of Delaware for eight years. While there, she was the lead attorney on more than 100 cases and tried 11 jury trials to verdict. She was involved in a wide array of cases, including a three-year pharmaceutical pricing investigation, securities and financial fraud investigations, and cases involving bank and tax fraud.

"We are excited to add this talented trial and appellate lawyer to our office, which celebrated its 25th anniversary

earlier this year and continues to grow,” said Joseph Kernen, managing partner of DLA Piper’s Philadelphia office. “Ilana has roots in the Philadelphia area, as she grew up here and has developed a strong reputation working in and around the region.”

Earlier in her career, Eisenstein clerked for Judge Edward R. Becker of the US Court of Appeals for the Third Circuit. She received her J.D., summa cum laude, from the University of Pennsylvania Law School, and her B.A., magna cum laude, from Harvard University.

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[Is Your Social Media and Digital Data Secure Enough?](#)



Zapprived has published a white paper discussing methods of keeping social media data ready for e-discovery. The document [can be downloaded](#) at no charge from the company’s website.

“If you’re not keeping up with digital trends and best

practices, achieving positive litigation outcomes may elude you,” Zapproved says in an announcement.

This strategic insights paper outlines ways to sustainably manage the social media and digital app security challenges of e-discovery. It includes tips on adopting the right policies and procedures to help with compliance with e-discovery rules.

It also covers the emerging technology and FRCP Rules. It gives advice on:

- Creating an effective way to preserve and collect data from new sources, such as social media, mobile and audio devices, cloud services and messaging apps.
- Adopting a ‘bring your own device’ policy that governs the preservation of social and digital device data to minimize legal risks if the employee device becomes discoverable.
- Applying best practices to keep up with emerging data sources, meet e-discovery obligations and avoid hefty sanctions for noncompliance.

[Download the white paper.](#)

Law Firm Sex-Bias Cases Will Turn on Key Question: Can

Partners Be Employees?



[Alison Frankel](#) reports for [Reuters](#) that briefing wrapped up this week on Proskauer's motion to end a sex bias suit by an anonymous partner in its Washington, D.C., office.

She writes that Proskauer's motion for summary judgment, the woman simply can't sue the firm under federal and state anti-discrimination laws because those laws protect employees and she's an equity partner – not an employee.

“The woman, who is represented by Sanford Heisler Sharp, tells a different story in her brief opposing summary judgment,” Frankel writes. “According to her, Proskauer's rank-and-file partners have effectively no control over the firm. All important decisions about hiring, firing, governance and compensation are delegated to Proskauer's seven-member executive committee, which she depicts as the power center of the firm.”

[Read the Reuters article.](#)

[Phones for VW Lawyer, Emissions Tester Were Lost or](#)

Wiped Clean

Volkswagen AG's top U.S. lawyer and the leader of its emissions-testing lab in California are among the employees whose mobile devices were either lost or erased as the company's diesel cheating scandal emerged, according to court records made public on Thursday, [reports Bloomberg](#).

David Geanacopoulos, VW Group of America's senior vice president for public affairs and public policy, was general counsel when, he reported, he lost his phone while en route to Los Angeles International Airport on Dec. 1, 2015, according to the records.

And the company cell phones of Anna Schneider, VW's senior vice president of industry and government relations, and Matthias Barke, senior director of VW's emissions test center in Oxnard, California, were "wiped" or erased of data in the months after the U.S. Environmental Protection Agency announced VW had rigged its vehicles to pass pollution tests, according to the report by [Ryan Beene](#) and [Margaret Cronin Fisk](#).

[Read the Bloomberg article.](#)

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[VW Engineer Sentenced to 40-Month Prison Term in Diesel Case](#)

A federal judge in Detroit sentenced former engineer James Liang to 40 months in prison for his role in Volkswagen AG's multiyear scheme to sell diesel cars that generated more pollution than U.S. clean air rules allowed, [Reuters is reporting](#).

The sentence calls for Liang to pay a \$200,000 fine, 10 times the amount sought by federal prosecutors. The sentencing judge said he hoped the prison sentence and fine would deter other auto industry engineers and executives from similar schemes to deceive regulators and consumers, write [David Shepardson](#) and [Joseph White](#).

Prosecutors said Liang was a "pivotal figure" in designing the systems used to make Volkswagen diesels appear to comply with U.S. pollution standards, when instead they could emit up to 40 times the allowed levels of smog-forming compounds in normal driving, according to the report.

[Read the Reuters article.](#)

[Liability in the Oil and Gas](#)

Fields: The Gap Between Your Company and Its Employees



Texas courts have continued to evaluate the nature and extent of liability that property owners have for the acts of independent petroleum contractors, points out [Marcy Rothman](#) in Kane Russell Coleman Logan's [Energy Law Today blog](#).

She explains that a new opinion from the Eastland Court of Appeals is highly relevant for owners, operators, and drillers.

The Texas Supreme Court specifically held that the plain language of the Liability for Acts of Independent Contractors statute in the Texas Civil Practice & Remedies Code protects only the property owner, not its employees.

Boiling the Eastland court's decision to its most practical terms, when it comes to claims for negligent hiring, companies are subject to claims that they knew or should have known that the contractors were not competent, Rothman writes.

[Read the article.](#)

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Supreme Court Has Another Chance To Help Take Down Patent Trolls

When the U.S. Supreme Court hears *Oil States Energy Service v. Greene's Energy Group*, the justices will have the opportunity to banish patent trolls back under the bridge where they belong, according to [Above the Law](#).

[Gary Shapiro](#) explains that *Oil States* hinges on inter-partes review – “the process used by the U.S. Patent and Trade Office to determine whether a patent under question was issued based on merit. If not, the patent can be rescinded. The process is similar to a trial: Lawyers make their case to the Patent Trials and Appeals Board (PTAB), and three highly qualified administrative patent judges hear their case and come to a decision.”

He says the process is expensive, but it's much less costly than going to court.

[Read the Above the Law article.](#)

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Valeant's Latest Legal Threat Could Be Especially Costly

Valeant Pharmaceuticals International Inc. has been selling assets, paying down debt and riding a recovery of its shares from their lowest point last spring. But one big uncertainty – its potential legal costs – just got bigger, [reports Bloomberg](#).

Mutual fund company Lord Abbett & Co. filed a securities fraud lawsuit against Valeant, alleging that it bought shares in the drug giant at an artificially high price because of misinformation provided by Valeant, write [Greg Farrell](#) and [Neil Weinberg](#). The suit, alleging violations of New Jersey's racketeer influenced and corrupt organizations (RICO) law, represents a new and potentially costly legal attack on Valeant, which is already facing lawsuits over alleged manipulation of drug prices.

“If other investors were to follow Lord Abbett's lead, Valeant's legal exposure could balloon,” according to Bloomberg. “In its filings with the Securities and Exchange Commission, Valeant says that the class action suits are without merit and that it intends to fight them.”

[Read the Bloomberg article.](#)

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Mueller Uses Classic Prosecution Playbook Despite Trump Warnings



Bloomberg Law [describes](#) how special counsel Robert Mueller is following a time-tried strategy for looking into the Trump campaign's possible ties to Russia:

“Follow the money. Start small and work up. See who will ‘flip’ and testify against higher-ups by pursuing charges such as tax evasion, money laundering, conspiracy and obstruction of justice.”

Reporter Chris Strohm quotes Jeffrey Cramer, a former prosecutor who's now managing director of consulting firm Berkeley Research Group LLC: ““You go for the weakest link, and you start building up.”

Mueller's approach has been used for decades in criminal investigations, from white-collar fraud to mob racketeering.

[Read the Bloomberg article.](#)

Massive California Verdict Expands J&J's Talc Battlefield



Image by [Open Grid Scheduler](#)
[/ Grid Engine](#)

Reuters [is reporting](#) that a massive California verdict in a lawsuit alleging Johnson & Johnson's talc-based products cause cancer has opened a new front in the litigation.

"The \$417 million award by California jury to a California resident suggested so-called forum-shopping, in which parties seek to file cases in whichever jurisdictions seem most favorable, may not be the main problem facing J&J as it wrestles with some 4,800 outstanding talc lawsuits," according to reporter [Tina Bellon](#).

Previous talc cases, all tried in the same state court in St. Louis and involving out-of-state plaintiffs, totaled \$307 million.

[Read the Reuters article.](#)

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