

# June 28 Event: Experts Explore Ways to Control Litigation Costs

**Bloomberg  
BNA**

Big Law Business and Catalyst will present a complimentary event in San Francisco, [Successful Legal Department Management: Innovation to Control Litigation Costs and Ensure Compliance](#) to discover how today's top law firms are pairing innovation with technology to move litigation control in-house and on-budget.

The event will be Wednesday, June 28, 2017, 3:30-5:30 p.m. at the Bloomberg LP office at 3 Pier #101 in San Francisco 94111.

Leading in-house and outside counsel will discuss where they believe legal departments face the most pressure and how to successfully transform the management of litigation.

In addition, this event will explore:

- The necessity of developing new and innovative approaches for managing departments to keep litigation costs low
- How to prepare teams, departments and businesses to identify the benefits of technology
- How to effectively prepare for litigation, from initial investigations to trial

[Register for the event.](#)

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# Suit for Bad Frac Job Requires a Certificate of Merit

Gray Reed & McGraw's [Energy & the Law Blog](#) discusses *Perdenal Energy LLC v. Bruington Engineering, Ltd.*, which asked whether a court must dismiss an engineering defect lawsuit filed without a certificate of merit with prejudice or may dismiss without prejudice.

“Texas law requires a plaintiff to file a ‘certificate of merit’ with its original petition for claims arising out of work by licensed or registered engineers,” explain authors [Charles Sartain](#) and [Chance Decker](#). “The certificate must be from a qualified engineer and must detail the manner in which the professional services were faulty.”

They outline approaches for handling this situation, both from the standpoint of the defendant and the plaintiff.

[Read the article.](#)

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# 11th Circuit: ‘Completed Work’ Exclusion Does Not Bar Claims for Work Under Maintenance Contract



Image by [Pictures of Money](#)

The 11th Circuit ruled in *Liberty Surplus Ins. Corp. v. Norfolk Southern Railway Co.* that the unambiguous language of Liberty’s “Completed Work” exclusion did not bar coverage for injuries sustained by a motorist injured at a railroad crossing who later sued Norfolk Southern, reports Hunton Williams.

“Before the Court is, once again, the classic case of the insurer requesting relief from the consequences of the inartfully drafted, yet plain, terms of its insurance policy,” the opinion reads.

[Andrew A. Stulce](#) writes in the firm’s [Insurance Recovery Blog](#) that the decision makes some important points:

First, courts continue to construe exclusionary provisions narrowly and against the insurer, even where the provision utilizes plain and unambiguous wording. Second, in the context of contracts and agreements to supply services, work

or operations over time, exclusions designed to bar coverage for completed work or operations must be explicit as to when the services, work or operations are deemed to be “complete.”

[Read the article.](#)

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## [Invitation: Summer Legal Conference, Berlin](#)



Knowledge Nomads' [Summer Legal Conference](#) in Berlin July 23-29, 2017, will feature sessions on law in the age of hyperconnectivity, legal issues in the sharing economy, and the legal fallout from Volkswagen's emissions scandal.

The event will be at Berlin's Radisson Blu Hotel.

The CLE-qualified sessions will feature a diverse group of speakers, including a broad range of nationalities, backgrounds and ages.

Interspersed with the the presentations will be an arts and culture day with a choice of seven tailor-made tours, a trip to the home of Volkswagen, and a closing dinner on top of the German Federal Parliament Bundestag building.

Other side events will include guided tours, dinners, receptions, concerts, a gallery tour and more.

[Register or get more information.](#)

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## [Bookkeeper Embezzled More Than \\$850,000 From Law Firm, Suit Alleges](#)

The family of the late Daniel Lilley, Maine's highest-profile lawyer, is accusing a former bookkeeper of embezzling more than \$850,000 from his law firm over a little more than four years, reports the [Portland Press Herald](#).

Plaintiffs allege that Jaime Butler, the bookkeeper for Lilley's Portland law firm, repeatedly wrote checks to herself totaling \$844,000 and also improperly diverted \$12,000 in cash.

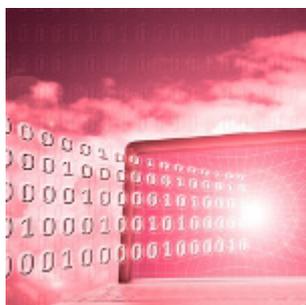
The family's lawyer said that "Butler issued herself 'dozens of checks' in some months and that the alleged embezzlement began almost immediately after she was hired as the law firm's bookkeeper in early 2013," writes [Edward D. Murphy](#).

[Read the Press Herald article.](#)

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# Success Factors for Compliance During Office 365 Migration



Zapproved has published a solution brief about how to keep legal preservation during Microsoft Office 365 migration. The free brief [can be downloaded](#) from Zapproved's website.

The duty to preserve does not cease when an organization migrates data systems, Zapproved says on its website. In fact, not only does the duty persist, but it becomes more complex.

Corporate legal teams must collaborate with IT to define a migration plan with processes that defensibly preserve data despite the complexity of a hybrid data world with half in the cloud and half on premise. Since data is not in one place, dual processes are required to ensure compliance is maintained throughout migration.

"In-House Elevated: Close the Gap on Office 365 E-Discovery Success," by Zapproved Senior Product Manager Sarah Thompson addresses what legal and IT teams will need to consider to safely protect discovery data and manage preservation during and after migrating to Office 365.

[Download the publication.](#)

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# [Fear of Career Damage Led Woman to Sue Proskauer Anonymously](#)

Bloomberg Law [is reporting](#) that Proskauer Rose has become the latest Big Law firm to be hit with a gender discrimination lawsuit by a female partner.

The plaintiff brought the case against her employer under a pseudonym.

“According to the redacted complaint filed Friday, the plaintiff, an unnamed partner in Proskauer’s Washington, D.C. office, was objectified by male partners who made inappropriate comments about her physical appearance, paid less than male partners who were similarly or less productive than she was, and excluded from projects and client development activities once she began complaining,” writes reporter [Stephanie Russell-Kraft](#).

The defendant responded by saying the suit is “groundless” and “meritless.”

[Read the Bloomberg article.](#)

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# [Law Firm Sues Insurer Over \\$700K in Lost Billings Due to Ransomware Attack](#)



A small Rhode Island law firm has filed a lawsuit against its insurance company after the insurer refused to pay \$700,000 in lost billings following a ransomware attack on the firm that locked down the firm's computer files for three months, reports CloudNine's [eDiscovery Daily Blog](#).

[Doug Austin](#)'s report, based on a story in the [Providence Journal](#), explains that Moses Afonso Ryan Ltd. is suing its insurer, Sentinel Insurance Co., for breach of contract and bad faith. The insurer denied the plaintiff's claim for lost billings over a three-month period when the documents were frozen by a hacker's ransomware attack. The hacker encrypted the law firm's computer files, offering to unlock them if a ransom were paid.

The suit says the infection disabled the firm's computer network, meaning lawyers and staffers "were rendered essentially unproductive."

[Read the eDiscovery Daily Blog article.](#)

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# Speaking Out About Employer's Personal Views Results in Termination

Unhappy with his boss and former friend's close association with the Trump administration, David Magerman aired his concerns about Renaissance Technologies President Robert Mercer in a February interview with the *Wall Street Journal*, according to a post on the website of [Androvett Legal Media](#).

Although the hedge fund's legal department had assured the research scientist that his interview would not violate company policy, Magerman was fired shortly after publication of the article, which labeled Mercer a racist.

The former partner is now fighting back with a wrongful termination lawsuit, which should serve as a cautionary tale for all companies, says Dallas labor and employment attorney [Leiza Dolghih](#) of [Godwin Bowman & Martinez](#).

*"It is important for a company to establish and enforce clear rules on media interaction, particularly in situations such as this where you have high profile leadership or there is a potential for controversy. Here you had an employee who claimed that the Chief Compliance Officer orally told him that his interview was authorized," she says. "No matter how respected he may have been at the firm, Magerman was known to have divergent views that were likely to be explored during the course of the interview. Even in instances where an employee is allowed to talk with the media, you cannot give them blanket assurances about repercussions."*

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# Arbitration Clauses Extending to Non-Signatory Affiliates: Are They Enforceable?

**Arbitration**

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

A recent decision of the New Jersey Appellate Division considered the enforceability of arbitration agreements by non-signatories, writes [Marissa Tillem](#) in Proskauer Rose's [Minding Your Business](#) blog.

She discusses a case in which the plaintiff filed a putative class action complaint against defendant alleging violations of New Jersey's Truth-In-Consumer Contract, Warranty and Notice Act, as well as the state's Lemon Law.

The panel determined, among other things, that by signing a lease agreement, plaintiff agreed to arbitrate her dispute not only with the underlying signatories of the lease, but with any of its affiliates. Now the plaintiff will need to decide whether to pursue her claims in arbitration, Tillem explains.

[Read the article.](#)



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# Weil Gotshal Benchslapped Over Fee Request



U.S. Bankruptcy Judge Anita Shodeen slapped down a fee request from Weil Gotshal, writing, “By any measure the fees requested in Weil’s motion are staggering.”

[Joe Patrice](#), writing for [Above the Law](#) reports on the case, quoting from [Law360](#) (sub. req.).

Weil Gotshal submitted a request for \$976,000 for fees for its representation of TCTM Financial FS, Wellman’s senior secured lender, during the months of September and October of last year, the report says. The judge criticized Weil’s billing rates, the number of attorneys assigned and its lack of specificity in billing entries, trimming its fees to \$488,452 and denying about \$32,200 in additional costs.

“Based simply upon the number of attorneys and hours billed leads to the inherent conclusion that there was a distinct lack of billing judgment exercised by Weil in its representation of TCTM,” Shodeen wrote.

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

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# [Arent Fox Adds Two Veteran Litigators in Washington, DC](#)

[Arent Fox LLP](#) has expanded its Complex Litigation practice with the addition of partner Linda M. Jackson and counsel Abram J. Pafford in the firm's Washington, DC office.

Jackson is a first-chair trial attorney with experience representing clients before federal, state, and appellate courts, as well as before administrative agencies and in arbitration settings. Pafford has experience in government contracts, insurance coverage, and appeals, and routinely appears before appellate courts, trial courts, and administrative tribunals.

"We are excited to welcome Linda and Abe to the firm," said Complex Litigation leader D. Jacques Smith. "Linda is exactly what we wanted to add to our group – an aggressive, talented, client-focused litigator with a proven track record. She is equally adept at pursuing pre-litigation and litigation strategies that help clients efficiently meet their goals. Abe is a key addition to our growing group and has extensive experience in appellate litigation and government contracts, particularly with cases involving the False Claims Act and the Contract Disputes Act."

A news release from the firm continues:

Previously a partner at Littler Mendelson P.C., Ms. Jackson has a particular litigation focus in the Eastern District of Virginia, also known as the "Rocket Docket," and the state trial courts in Northern Virginia, including Fairfax, Arlington, and Loudon counties. A determined litigator who focuses on her clients' business objectives, Ms. Jackson'

practice includes non-compete, non-solicitation, and non-disclosure negotiation and litigation; civil business conspiracy and tortious interference; executive contracts and compensation; shareholder litigation; whistleblower and retaliation investigations and litigation; trade-secret disputes and wrongful discharge and discrimination matters.

A highly-regarded and well published attorney, Ms. Jackson has been recognized by Chambers USA and Washingtonian magazine as one of the top lawyers in her field. She earned her bachelor's degree from Amherst College and her law degree from the College of William & Mary.

Mr. Pafford is an accomplished appellate advocate who has argued over two dozen cases in various state and federal courts of appeal. His clients range from Fortune 500 defense contractors and large commercial entities to technology startups and individuals facing white-collar investigations initiated by state and federal law enforcement and regulatory authorities. Mr. Pafford comes to Arent Fox after having operated a successful litigation boutique based in Virginia and Washington DC. Prior to forming his own law firm, he practiced commercial litigation for nearly 10 years with Fried Frank LLP and Covington & Burling LLP. Mr. Pafford also completed judicial clerkships on the United States Court of Federal Claims and the United States Court of Appeals for the Third Circuit. He earned his bachelor's degree from Liberty University, and his law degree from The George Washington University Law School.

Ms. Jackson and Mr. Pafford are the most recent additions to Arent Fox's Complex Litigation practice, which has added highly-regarded commercial litigators Peter J. Most and John S. Purcell in Los Angeles and Brian P. Maschler in San Francisco.

## [Court Issues Warning To The Bar Regarding Use Of 'Boilerplate' Discovery Objections](#)

In *Liguria Foods, Inc. v. Griffith Laboratories, Inc.*, Judge Mark Bennett of the United States District Court for the Northern District of Iowa required both plaintiff and defense counsel to show cause why they should not be sanctioned for discovery abuses based on the excessive use of “boilerplate” objections to discovery requests, according to [E-Discovery Law Today](#).

Writing in the Jackson Lewis blog, Joshua Scott and [Brett M. Anders](#) explain that the issue arose when the court was reviewing a discovery dispute between the parties and noticed numerous objections that the court deemed to be improper “boilerplate objections.”

“The court subsequently required both parties to submit all of their written discovery responses for the court’s review,” the authors write. “The court also notified counsel of its intention to impose sanctions on every attorney who signed discovery responses if they were found to be improper or abusive. Based on its review of the discovery responses the court determined that numerous discovery responses, from both sides, were improper.”

[Read the article.](#)

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## [Webinar: Effectively Using Offers of Judgment](#)

Dinsmore & Shohl LLP will present a complimentary webinar titled "[Effectively Using Offers of Judgment](#)" on Thursday, May 18, at 11 a.m. Central time.

In the third webinar series of the year, Brittany Kirk will provide an introduction to Offers of Judgment, discussing how to leverage this risk-shifting tool to avoid litigation and its associated costs.

This presentation will discuss:

- When is the Offer of Judgment an effective litigation tool
- How to draft a precise Offer of Judgment
- Using Offers of Judgment to moot class actions after Campbell-Ewald
- State Offer of Judgment statutes

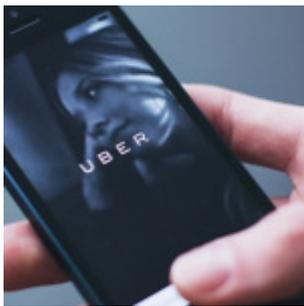
Anyone with questions may contact Missy Davis:  
melissa.davis@dinsmore.com

[Register for the webinar.](#)

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# [Uber Faces Criminal Probe Over the Secret 'Greyball' Tool It Used to Stymie Regulators](#)



[Reuters is reporting](#) that the U.S. Department of Justice has begun a criminal investigation into Uber Technologies Inc.'s use of a software tool that helped its drivers evade local transportation regulators, two sources familiar with the situation said.

Reporters [Dan Levine](#) and [Joseph Menn](#) write that Uber has acknowledged the software, known as "Greyball," helped it identify and circumvent government officials who were trying to clamp down on Uber in areas where its service had not yet been approved, such as Portland, Oregon.

"The criminal probe could become a significant problem facing the company that is already struggling with an array of recent business and legal issues," they explain.

Some Uber employees told Reuters that the Greyball technique was used against suspected local officials who could have been looking to fine drivers, impound cars or otherwise prevent Uber from operating.

[Read the Reuters article.](#)

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## [Jury Awards Record-Setting \\$110.5M in Baby Powder Lawsuit](#)

A St. Louis jury has awarded a Virginia woman a record-setting \$110.5 million in the latest lawsuit alleging that using Johnson & Johnson's baby powder caused cancer, according to an [Associated Press report](#).

The verdict for Lois Slemm comes after three previous St. Louis juries awarded a total of \$197 million to plaintiffs who made similar claims. About 2,000 state and federal lawsuits are in courts across the country over concerns about health problems caused by prolonged talcum powder use.

"Slemm, who was diagnosed with ovarian cancer in 2012, blames her illness on her use of the company's talcum-containing products for more than 40 years," the AP report says. "Her cancer has spread to her liver. Although she was too ill to attend the trial, an audiotape of her deposition testimony was played. In it she said: 'I trusted Johnson & Johnson. Big mistake.'"

[Read the AP article.](#)

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## [Three Join Greensfelder Litigation Team as Officers](#)

[Greensfelder, Hemker & Gale, P.C.](#) expanded its litigation team with the recent addition of three attorneys in the firm's St. Louis office.

Katherine M. Fowler, Jonathan H. Garside and Erika N. Reynolds joined the firm May 1 as officers in the Litigation Practice Group. The three previously were partners at Fox Galvin in St. Louis, practicing in the areas of pharmaceutical, medical malpractice, environmental, class action and product liability litigation.

Fowler acts as lead trial counsel defending businesses in complex civil litigation, including pharmaceutical, high exposure birth injury and medical malpractice litigation, product liability, environmental and class action litigation. She has successfully defended hospitals, nurses and physicians in personal injury and wrongful death claims and has represented a major pharmaceutical company as regional counsel. She also is the founder of the Let's Start Legal Clinic, which provides pro bono legal representation to women and families impacted by incarceration. Ms. Fowler earned her law degree from Saint Louis University Law School and her Bachelor of Arts from the University of Dayton.

Garside is a trial lawyer with experience handling product liability, medical malpractice, pharmaceutical and commercial

litigation. In the area of product liability, he has successfully defended manufacturers of pharmaceuticals, medical devices, construction and farm equipment and consumer products. In class actions, he has obtained dismissals and other favorable results for clients including an association of major health insurers, a nationally known hospital, an international automaker and drug manufacturers. In addition, he represents a major hospital system in complex medical malpractice cases. Mr. Garside earned his law degree from Washington University School of Law and his Bachelor of Arts from the University of California-Berkeley.

Reynolds represents businesses including large international companies in all phases of commercial litigation. She is experienced in mass tort, medical negligence defense, environmental, pharmaceutical and medical device litigation, as well as employment law matters. Her experience includes representing energy, health care and pharmaceutical companies. Her professional involvement has included the Defense Research Institute, Mound City Bar Association, Missouri Organization of Defense Lawyers and the Society for Human Resource Management. Ms. Reynolds earned her law degree from the University of Virginia Law School and her Bachelor of Arts from the University of Dayton.

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# Litigator William P. Barry Joins Miller & Chevalier

Miller & Chevalier has announced that William P. Barry joined the firm as a member in the Litigation department.

In a news release, the firm said Barry advises clients on securities enforcement and white collar defense matters, with a particular emphasis on representing boards, senior executives, and companies in matters related to Foreign Corrupt Practices Act (FCPA), anti-money laundering, accounting, and related issues.

The release continues:

Prior to joining Miller & Chevalier, Barry served as a partner at Richards Kibbe & Orbe LLP, counselling public companies, investors, investment and retail banks, and non-U.S. companies seeking investments from U.S. entities.

"I'm pleased to join a firm with experts in a variety of disciplines necessary to cross-border business in today's marketplace, who advise and protect companies, boards, and individuals in critical junctures," Barry said. "The goal is to serve your clients best when they need you the most, and I can't think of a better place to do that than at a firm with nearly a century of tradition, history, and stability whose lawyers operate on the cutting edge of emerging market trends."

"I've known Will personally and professionally for over 25 years," said Mark Rochon, Chair of Miller & Chevalier's Litigation practice. "I've always been impressed with his judgment, calm assessment of complicated issues, and ability to work well with everyone. He is a dynamic addition to Miller & Chevalier."

Barry's move comes on the heels of another key litigation addition, as civil and criminal attorney Preston L. Pugh joined the firm in April.

Barry's influence expands far beyond his work in the Washington, DC area; he has advised clients with interests around the world, including Brazil, Canada, China, India, Russia, and Switzerland. He was selected by Benchmark Litigation as a National Star for White Collar Crime and Securities Litigation in 2017 and has been recommended by The Legal 500 United States in White Collar Criminal Defense four years running.

"We are very pleased to welcome Will to Miller & Chevalier," said Anthony F. Shelley, Chair of the firm's Executive Committee. "His securities enforcement and white collar experience will be a valuable asset to our growing Litigation department."

A frequent author and speaker on corruption topics, Barry is a member of the American Bar Association's International Anti-Money Laundering Committee and International Anti-Corruption Committee. He is also the chairman of Olney Boys & Girls Club (OBGC), a non-profit organization that currently serves close to 6,000 children and their families in Maryland. Over the course of its nearly 50-year history, OBGC has provided more than 45,000 children with safe after-school sports programs emphasizing both physical and emotional development.

Barry earned a B.A. from Wesleyan University in 1991 and a J.D. from George Washington University Law School in 1995.

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# [Two Ward, Smith Cases Make 2016 Top 100 Verdicts List](#)

Two verdicts won by East Texas law firm [Ward, Smith & Hill](#) are among the list of [top 100 verdicts](#) from 2016 as compiled by *The National Law Journal*.

In one of the cases, firm founder Johnny Ward helped VirnetX win a \$302 million patent verdict against Apple Inc. After one week of trial, the jury awarded the amount based on Apple's infringement of four of VirnetX's internet security patents. The \$302 million verdict was the ninth largest verdict overall in the U.S., and fourth largest IP verdict in 2016.

And in the other case, name partner Wes Hill successfully convinced a jury that Apple Inc. willfully infringed on a patent owned by Cellular Communications Equipment resulting in an award of \$22 million for past damages. The seven-day trial revealed how Apple knowingly infringed the patent in its iPhones and iPads.

[Read about the verdicts.](#)