

Florida Supreme Court Foils Governor's Plan to Pick New Justices

The Associated Press [reports](#) that Florida's next governor and not incumbent Gov. Rick Scott will get to pick three new justices to the state Supreme Court, the court ruled in a decision with major implications in this year's gubernatorial campaign.

"In a major rebuke to Scott, the Supreme Court concluded that the Republican governor exceeded his authority when he started the process to find replacements for the three justices," the AP reports.

Because of age limits of 70, three justices must retire at midnight Jan. 8, the same day Scott is scheduled to leave the governor's office. Scott, claiming he had authority to name the replacements, last month asked a nominating commission to start accepting applications with a Nov. 10 deadline.

[Read the AP article.](#)

Firms Cite 1851 Law in Fatal

Missouri Duck Boat Accident, Seek Mediation

Two companies facing multiple lawsuits over a summer tourist boat accident in Missouri that killed 17 people have invoked an 1851 law that allows vessel owners to try to avoid or limit legal damages as they also seek settlement negotiations with victims' family members, [reports](#) the *Chicago Tribune*.

"If a judge concluded that the federal law cited by Ripley [Entertainment Inc.] and Branson Duck Vehicles applies, claims for damages over the July 19 accident on Table Rock Lake near Branson, Missouri, could be consolidated into a single federal court case," explains the article, from the Associated Press. "The companies' petition states that under the federal law, they would not owe any damages because the boat carried no freight and was a total loss."

[Read the *Chicago Tribune* article.](#)

Champagne Remark May Cost Lawyer \$289 Million Bayer Award



The lawyer most responsible for winning a \$289 million verdict against Bayer AG may end up wiping it out, according to a [Bloomberg Law](#) report.

Brent Wisner, the lead trial attorney who in August convinced a jury that Monsanto Co.'s Roundup weed killer caused his client's cancer, irked the judge handling the case so profoundly that she's considering tossing the verdict and ordering a new trial.

From the Bloomberg report: "The lawyer told jurors that Monsanto executives in a company board room were 'waiting for the phone to ring' and that 'behind them is a bunch of champagne on ice,' according to a court filing. He said that 'if the damages number isn't significant enough, champagne corks will pop.'"

[Read the Bloomberg Law article.](#)

Recent Oil and Gas Verdict Highlights Importance of FLSA Compliance

A recent case from the United States District Court for the Western District of Pennsylvania highlights how expensive a

Fair Labor Standards Act case can be when an employee prevails for unpaid overtime compensation, writes [Jay Carr](#) in Vorys, Sater, Seymour and Pease's [Energy & Environmental Law Blog](#).

The article describes *Sammy Mozingo v. Oil States Energy Services L.L.C.*, in which oil field workers in Texas filed a class action alleging that their employer Oil States had misclassified them as exempt from overtime laws. Most of the employees settled, but eight went to trial, resulting in Oil States paying damages, fees, and costs totaling \$3,385,884 for just these eight employees.

[Read the article.](#)

Discrimination Defense Lawyer Confirmed for Trump Civil Rights Post

Bloomberg Law [reports](#) that the U.S. Senate has confirmed Eric Dreiband, a Jones Day attorney who defends companies accused of discrimination, to lead the Justice Department office that enforces anti-bias laws and investigates police civil rights cases.

“Dreiband represented the University of North Carolina when it implemented policies under the state’s since-repealed ‘bathroom bill,’ requiring people to use gender-designated

restroom facilities based on the biological sex listed on their birth certificates,” writes Bloomberg’s [Chris Opfer](#). “He also won a case for R.J. Reynolds Tobacco that made it harder for workers to sue for age discrimination under federal law.”

[Read the Bloomberg Law article.](#)

Texas Lawyer Who Claimed Political Donations Influenced Appeal Faces Possible Discipline

Plaintiffs’ lawyer John McCraw of Dallas is facing possible disciplinary action because he filed a motion asking two appellate court justices to remove themselves from a case, implying that the pair voted to overturn his clients’ \$1 million jury verdict because of donations they’d received from two political action committees.

Dallas Observer [reports](#) that the justices not only declined to recuse themselves, they and their fellow justices sent McCraw’s name to the general counsel of the State Bar of Texas for possible disciplinary action for insulting the court.

A three-judge panel of the 5th Court of Appeals had overturned a \$1 million award to McCraw’s clients, two women who had sued their apartment owner after an intruder entered through a window and violently assaulted both women.

Reporter [Nashwa Bawab](#) writes: “McCraw asked the entire 13-member appeals court to reconsider – minus Justices Craig Stoddart and Molly Francis, two of the three judges who unanimously voted to overturn the verdict. Stoddart and Francis each received \$2,000 from the Texans for Lawsuit Reform PAC and the Apartment Association of Greater Dallas PAC a few days apart from each other and less than a month before they were assigned the case.”

[Read the Dallas Observer article.](#)

Contracting Around Class Actions, a Win for Employers

A recent Ninth Circuit ruling that Uber’s arbitration agreements did not violate the National Labor Relations Act provides a major victory to Uber by requiring each plaintiff to separately arbitrate his or her claims.

[Christine M. Fitzgerald](#), writing in the Jackson Lewis [California Workplace Law Blog](#), explains that plaintiffs filed a putative class action against Uber for failure to remit gratuity paid by customers, and for misclassification of the drivers as independent contractors and failing to pay their business expenses. The O’Connor plaintiffs sought an order declaring Uber’s 2013 arbitration agreements unconscionable.

The panel rejected plaintiffs’ argument that the lead

plaintiffs constructively opted out of arbitration on behalf of the entire class.

[Read the article.](#)

Morrison & Foerster Will Eat \$16M in Fees, Costs Pursuing Vets' Claims

The law firm that spent nine years fighting and winning health care for veterans subjected to government-administered human testing of chemicals including sarin, mustard gas, and LSD was awarded \$3.4 million in fees, a small fraction of the value of the hours the firm said it put into the case.

Bloomberg Law [reports](#) that Morrison & Foerster LLP accepted a fee award from the U.S. Army that's \$16 million less than the fee the firm could have sought.

"The fee award is the latest and nearly last chapter in the litigation by soldiers subjected to the government's decades-long human testing program who were seeking recognition and health care above what they could get at the Veterans Administration for injuries they suffered," writes Bloomberg's [Joyce Cutler](#).

[Read the Bloomberg Law article.](#)

Vizio Reaches Potential Settlement for Its Spying TVs – And Victims Could Receive Less Than a Dollar



Vizio has announced a potential \$17 million settlement in a recent class action lawsuit, which could result in a pay-out that is as little as a few cents for each of the millions of people claiming the company's smart TVs collected and shared their private viewing data without their consent, reports the [New](#)

[York Daily News](#).

A ProPublica 2015 expose alleged Vizio used its smart TVs to spy on an estimated 16 million Vizio TV owners who purchased and connected their televisions to the internet between Feb. 1, 2014 and Feb. 6, 2017, writes reporter [Jessica Schladebeck](#).

“After payment of notice and administration costs and any approved award of attorneys’ fees, costs and service awards, all funds remaining in the settlement fund will be distributed to the class,” according to court documents.

[Read the NY Daily News article.](#)

Founder of Tea Party Nation Has Been Disbarred for Trying to Scam Timeshare Owners

The *Orlando Sentinel* [is reporting](#) that the founder of Tea Party Nation has been disbarred for trying to swindle timeshare owners into thinking they canceled their timeshares.

Tennessee attorney Judson Wheeler Phillips, a senior partner with Nashville-based Castle Law Group and founding member of the conservative Tea Party group, was accused of taking off with the money he earned from the fraudulent transactions, the Tennessee Supreme Court has ruled.

Federal lawsuits were filed against Phillips by Westgate Resorts and Orange Lake Resorts, both based in Orlando, as well as Las Vegas-based Diamond Resorts and Fort Lauderdale-based Berkley Resorts. More than 90 consumer fraud complaints also were filed.

[Read the *Orlando Sentinel* article.](#)

Class Action Royalty Litigation in the Shale Plays

A [recent article](#) posted on the website of Haynes and Boone analyzes nationwide trends in the filing and certification of royalty class action cases, which result in much greater exposure to producers than individual royalty owner cases. For example, in the past five years, producers have settled class actions for amounts in excess of \$80 million.

“Ninety-six putative class actions filed during the period from 2001 to the present are analyzed in this article. Since Congress enacted the Class Action Fairness Act of 2005 (CAFA), most of these cases were litigated in federal court,” write [David Ammons](#) and [Mike Stewart](#).

“These cases deal almost exclusively with alleged underpayment of natural gas royalties (oil royalty litigation rarely arose during the period analyzed).”

[Read the article.](#)

Overqualified? Or Too Old? Ex-GC's Age Discrimination

Case Takes Aim at Biased Recruiting Practices

The *Chicago Tribune* [tells the story](#) of a former general counsel who had been unemployed and job hunting for three years when he came across a position that seemed promising, but for this part of the ad: “3 to 7 years (no more than 7 years) of relevant legal experience,” it said.

The story of Dale Kleber, who was 58 at the time, illustrates a bigger story of the critical question about whether job applicants can pursue lawsuits at all in such cases, explains reporter [Alexia Elejalde-Ruiz](#).

“The federal Age Discrimination in Employment Act prohibits discrimination against people over 40, but there is dispute about whether Congress intended for the law to protect external job applicants, not just current or former employees, against policies that appear to be neutral but have a disproportionate adverse effect on older people,” she writes.

Kleber’s experience includes a stint as general counsel at Dean Foods and, most recently, as CEO of a dairy products trade group.

[Read the *Chicago Tribune* article.](#)

North Carolina Bar Accuses Florida Lawyer of Stealing From 2 Death Row Exonerees

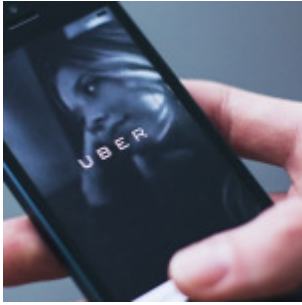
The ABA Journal [reports](#) that A Florida lawyer defrauded, deceived and embezzled funds from two mentally disabled clients who were declared innocent after spending 31 years in prison, according to a complaint filed Wednesday by the North Carolina State Bar.

“Henry McCollum and his half-brother, Leon Brown, were exonerated in 2014 after serving decades in prison for the notorious rape and murder of an 11-year-old girl. They received \$750,000 each from the state in compensation,” writes Joseph Neff for the [Marshall Project](#).

Orlando lawyer Patrick Megaro took excessive fees when he pocketed a third of the awards despite having done virtually no work on their exonerations or compensation cases, the state bar alleges.

[Read the ABA Journal article.](#)

Federal Appeals Court Rules Uber Can Force Drivers Into Individual Arbitration, Voids Class-Action



A federal appeals court Tuesday ruled that Uber can force its drivers into individual arbitration over pay and benefit disputes, voiding an effort by thousands of drivers to join in a class-action suit against the ride-hailing company, according to the [Los Angeles Times](#).

The U.S. 9th Circuit Court of Appeals in San Francisco overturned a lower-court order that had certified the drivers' class-action effort.

The court's opinion cited a 5-4 U.S. Supreme Court decision in May that employers could enforce arbitration agreements that require workers to give up the ability to collectively pursue claims that they were shortchanged or treated unfairly.

[Read the LA Times article.](#)

Former Skadden Partner May Face Charges Related to Manafort-Linked Ukraine Report

The *ABA Journal* [reports](#) that attorneys for former Skadden, Arps, Slate, Meagher & Flom partner Greg Craig say he did not circulate a report put together by the law firm and involving former Trump campaign chair Paul Manafort.

Reporter [Stephanie Francis Ward](#) explains: “The report was written by Skadden attorneys about the 2011 trial of Yulia Tymoshenko, a former prime minister of Ukraine who was found guilty of abusing her office. Working as a lobbyist, Manafort solicited the report on behalf of Viktor Yanukovich, Ukraine’s pro-Russian president and a rival to Tymoshenko. The plan was to use the report to defend her trial.”

The Washington Post reports that Skadden was paid \$4.6 million, a fact Manafort did not reveal, while Ukrainian officials said they paid \$12,000 for the report.

And CNN reports that the U.S. Attorney’s Office for the Southern District of New York is also looking into whether Craig failed to register as a foreign agent as required by the Foreign Agents Registration Act.

[Read the ABA Journal article.](#)

Cloak-and-Dagger Saga Over Cybercrime, Trump Dossier Plays Out in Miami Courtroom With Celebrity Lawyer

A federal courtroom in Miami is now the intersection for a celebrity attorney, two major cybercrimes and a foreign tech firm with an ephemeral South Florida address and entanglement in the Trump-Russia probe, reports the [Miami Herald](#).

The case involves a defamation lawsuit brought by Cyprus-based entrepreneur Aleksej Gubarev against online news outlet BuzzFeed, which published the collection of research memos known as the Trump dossier.

Gubarev also sued former British spy Christopher Steele, a Russia expert who wrote the dossier, in London.

Colorful lawyer Roy Black is representing BuzzFeed in the Miami suit.

[Read the Miami Herald article.](#)

IBM Sued for Age Discrimination After Thousands of Older Workers Laid Off



Image by [Patrick](#)

USA Today [reports](#) that a class-action lawsuit was filed Monday against IBM on behalf of three former employees alleging age discrimination.

Reporter [Swapna Venugopal Ramaswamy](#) explains: “The lawsuit alleges that the plaintiffs are among thousands of IBM employees to be laid off recently as the result of a shift in IBM’s focus to recruit millennials ‘in order to make the face of IBM younger, while at the same time pushing out older employees.’”

“IBM has discriminated, and continues to discriminate, against its older workers, both by laying them off disproportionately to younger workers and by not hiring them for open positions,” the lawsuit alleges.

The three name plaintiffs are 55, 59 and 67, and have worked for IBM for periods ranging from 15 to 34 years.

[Read the USA Today article.](#)

West Mermis Co-Founders Earn National Recognition

[Lawrence J. West](#) and [Joshua W. Mermis](#), co-founders of the Houston-based litigation boutique West Mermis PLLC, have both [been named](#) to the 2019 listing of The Best Lawyers in America as well as the 2018 listing of Super Lawyers by Thomson Reuters.

West and Mermis have been recognized for two consecutive years by Best Lawyers for their work in construction litigation.

In addition to this year's Super Lawyers recognition, West has been named to the Texas Super Lawyers list each year since 2014.

Mermis was first recognized in 2017, after earning appearances on the companion Texas Rising Stars list from 2010-2011 and again from 2014-2016.

[Read about the awards.](#)

'Outrageously Excessive' Requests for Attorney Fees Can Be Altogether Denied, 3rd Circuit Says

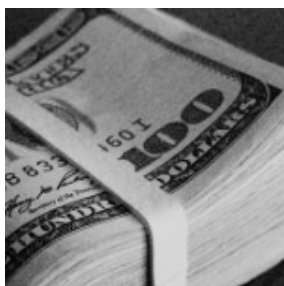


Image by [Chris Potter](#)

A federal appeals court has upheld a federal judge's decision to deny as "grossly excessive" a request for more than \$900,000 in attorney fees based on a \$100,000 punitive award, reports the [ABA Journal](#).

The Philadelphia-based 3rd U.S. Circuit Court of Appeals, found that, when a request under a fee-shifting statute is "outrageously excessive," a judge may deny the award altogether if the statute gives the judge discretion in awarding fees.

Journal reporter [Debra Cassens Weiss](#) explains:

Lawyers seeking the fees had admittedly tasked one lawyer with recreating time records that included vague descriptions and excessive hours, the appeals court said. Sixty-four hours were billed for "transcripts/clips" and 562 hours were billed to prepare for a week-long trial. There were only five witnesses for both sides.

[Read the ABA Journal article.](#)

State Supreme Courts Increasingly Face Partisan Impeachment Threats



Attacks on judicial independence are becoming more frequent and more partisan, according to a *Governing* [report](#).

Reporter [Alan Greenblatt](#) explains, that “while ‘threats of this nature have been going on for years,’ says William Raftery of the National Center for State Courts, articles of impeachment are now being filed more often and for more reasons. Over the past decade or so, judges have become targets of criticism not only from politicians but cable talk-show hosts. In the past, grounds for impeachment have typically been treason, high crimes or malfeasance. That’s changing. These days, lawmakers’ partisan disapproval of rulings appears to be a strong motivator for ousting judges.”

[Read the Governing report.](#)

