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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Simon Greenstone Earns 2016 Top Verdict Recognition in California, Arizona

TopVerdict.com has recognized Dallas trial law firm **Simon Greenstone Panatier Bartlett, P.C.** for securing the largest jury verdict in Arizona, and the largest asbestos case verdict in California, in 2016.

In Arizona, a federal jury awarded $17 million to the family of a retired civilian employee of the U.S. Navy who died from mesothelioma after working for years in the Norfolk Naval Shipyard in Virginia. The case was *Coulbourn v. Crane* in the U.S. District Court for the District of Arizona.

In a news release, the firm said attorneys David C. Greenstone, Jordan Blumenfield-James and Samuel Iola represented George Coulbourn's family. Coulbourn, a shipyard machinist, repaired and maintained equipment including the removal of asbestos-containing gaskets and packing from valves. He died at age 73, less than a year after being diagnosed. After a three-week trial, jurors found Crane Co. and William Powell Co. liable for Coulbourn's death and assessed punitive damages against both defendants.

In California, a Los Angeles jury awarded $18 million, a record verdict in a mesothelioma case tied to cosmetic talc. The case involved Philip Depoian, a prominent political figure and longtime aide to Mayor Tom Bradley, who was diagnosed with mesothelioma in May 2015.

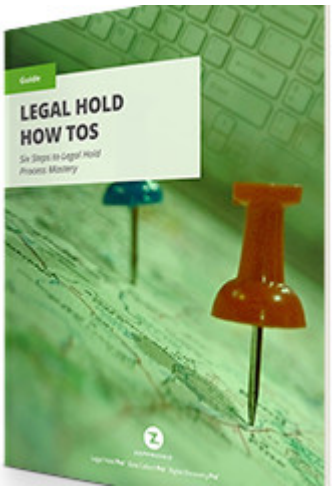
Evidence showed Depoian was exposed to asbestos in talc products at a barber shop and through personal use of products

such as Old Spice, Clubman, Kings Men and Mennen Shave Talc. Jurors found talc supplier Whittaker Clark & Daniels liable for supplying asbestos-containing talc to the manufacturers. Attorneys Jay Stuemke and Stuart Purdy represented Depoian in the case, *Depoian v. American International Industries, Inc.,* in Los Angeles Superior Court.

“We are pleased that our verdicts have been recognized as landmarks in jurisdictions across the country. But more than that, we are very proud of the work we are doing to help all of our clients, wherever their cases may be,” said Greenstone, co-founder and shareholder of Simon Greenstone Panatier Bartlett, P.C.

Co-founder and shareholder Jeffrey Simon said, “We work hard to make sure that those who have been injured by dangerous products or workplaces get the justice they deserve.”

TopVerdict.com recognizes law firms and attorneys who have obtained the highest jury verdicts in individual states and nationwide in specific practice areas.



Managing a defensible legal hold process is a demanding job, reports Zapproved. A lawyer must know his or her duty to preserve evidence – and issue legal holds quickly, clearly and securely as soon as litigation is reasonably anticipated.

Success requires clear strategy and the right technology to make it possible. For helpful insights,Zapproved has published an **updated legal hold how-to guide**. It walks through the six steps to a smooth and defensible process.

Implementing these best practices can ensure the legal hold process meets its duty:
– Use legal hold templates to reduce risk
– Uncover critical insights through custodian interviews
– Improve custodian response rates to litigation holds
– Handle terminated employees on legal hold
– Release a litigation hold
– Create a defensible preservation audit trail

Download the free guide.

Using Arbitration Agreements to Reduce the Costs of Litigation and the Risk of Class Action Claims

A properly drafted arbitration clause with a class action waiver should be enforceable and can be a good and useful line of defense against expensive and costly litigation, especially class action lawsuits, write **Jay N. Varon** and **Jennifer M. Keas** in Foley & Lardner's **Consumer Class Defense Counsel** blog.

Their article explains how arbitration works, what type of arbitration agreements are generally enforceable, what features that have or can cause problems, and how such provisions can reduce the risk of class actions.

They also discuss the possible effect or non-effect that could come from the Consumer Financial Protection Bureau's proposed arbitration rule.

Read the article.

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June 28 Event: Experts

Explore Ways to Control Litigation Costs

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.

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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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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DOJ Threatens Immigration Rights Lawyers, Demands They Drop Their Clients

A federal judge in Seattle has temporarily blocked a Justice Department order that called on a local immigrant-rights organization to stop some of its legal work. His ruling also applies to similar groups around the country. according to ***The Seattle Times***.

The nonprofit Northwest Immigrant Rights Project brought the lawsuit that resulted in the ruling by U.S. District Judge Richard Jones.

"In a letter last month, the Justice Department told the group it must 'cease and desist' providing certain legal assistance to immigrants unless it undertakes full representation of them in court," writes reporter **Nina Shapiro**.

The ruling also barred the Justice Department from sending similar orders to any other organizations around the nation.

Read the *Seattle Times* article.

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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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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."

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

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.

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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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 Slemp 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.

"Slemp, 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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Fox News Scandal Puts General Counsel in the Crosshairs

The top lawyer at Fox News finds herself the subject of speculation about whether she may be following the company's former president out the door in the wake of complaints of sexual harassment or racial discrimination at the network.

Financial Times reports that Dianne Brandi, executive vice president of legal and business affairs, is named in three lawsuits that the network is contesting.

In one of the suits, Andrea Tantaros, a Fox News host, filed a suit against the company and Brandi, alleging that Brandi failed to investigate allegations of misconduct. Fox News and Brandi have denied the allegations in all the suits.

The Washington Post reports that Brandi was one of the senior executives "who engaged in a concerted effort to silence Tantaros by threats, humiliation, and retaliation."

Hollywood Reporter has **a story** saying that Brandi is particularly vulnerable if more heads roll at Fox News.

Read *The Washington Post* article.

Read the *Financial Times* article.

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Using a TRO to Stop Legal Opponents in Their Tracks

Sometimes a temporary restraining order, or TRO, can provide immediate relief from the court system when a party can show irreparable harm will be caused if someone is allowed to remain in control of assets that belong to the company, according to an article posted on the website of **Mehendru P.C.**

“It may be that a competitor has interfered with a business contract, an employee has stolen your trade secrets or breached a non-compete agreement, or a business partner has stolen from your company. You have to go to court to protect the company though you’d rather not,” the post reads.

A judge can grant a TRO to stop an individual’s actions even without that person or his lawyer being in court. And a TRO provides immediate relief from the court system when a party can show irreparable harm will be caused if someone is allowed to remain in control of assets that belong to the company.

Read the article.

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3 Cases of Cross-Border Compliance Mishaps

Zapproved has published a free whitepaper revealing e-discovery insights on cases involving Volkswagen, Apple, Samsung and Takata. **The paper can be downloaded**.

The paper discusses three recent cases involving international brands, failure to meet U.S. compliance regulations yielded high penalties. Missteps like these not only cost billions in fines, they can also erode customer trust and public opinion.

Zapproved says this paper examines what went wrong and glean tips to prevent the same cultural misfires in your organization. The cases involve:

- Apple
- Samsung
- Volkswagen AG
- Takata

While these cases paint a portrait of what not to do, they also illustrate why building a culture of compliance is so vital, Zapproved says on its website. The paper reveals three key takeaways:

- **First**, create and maintain a culture of compliance that

champions ethical practices.

- **Second**, know the rules that apply to cross-border litigation, particularly discovery, and ensure that all participants understand those multinational rules.
- **Finally**, adopt smart, automated and secure e-discovery processes.

[Download the white paper](#).

Bad Judgment on Social Media May Lead to Job Offer Withdrawals

Plano, Texas attorney Jason Van Dyke was all set to begin a new chapter of his legal career as an assistant district attorney in Victoria County. So he was startled to receive notice that the District Attorney's office had rescinded its job offer with no explanation. Van Dyke speculates the reversal could be related to media coverage of a Twitter exchange he had involving a case he was working on in 2014. He has since filed suit seeking answers from Victoria County.

In a post on the website of [Androvett Legal Media & Marketing](#), Rhonda Reddick quotes Dallas labor and employment attorney [Leiza Dolghih](#) of [Godwin Bowman & Martinez](#), who says this is a cautionary tale for both employers and job-seekers.

The post continues:

> “Many employers these days Google prospective hires and look them up on social media for any evidence of red flags that indicate that the applicant may be violent, unethical, unstable or simply have bad judgment. These behind-the-scenes, informal background checks often result in rejection, or even withdrawal, of a job offer,” she says.
>
> While a Texas employer may reject a prospective candidate for a myriad of reasons, including social media activity, a prospective employee cannot be rejected on the basis of race, gender, religion, age or other protective categories – information that can often be gleaned from social media. If a candidate can show that a job rejection was based on information protected under employment law, there could be basis for a claim of discrimination.
>
> “However, in this case, if the employer discovered what they considered unsavory comments, or possible evidence of poor judgment or lack of self-control, after offering Mr. Van Dyke a job, the withdrawal of that offer based on the newly discovered information, would be acceptable,” says Ms. Dolghih. “While everyone has the right to speak their mind freely, that speech may result in rather harsh consequences in terms of employment.”

Reallocation Actions and Settlement Agreements: What Did We Settle?

The purpose of a settlement and release agreement is to fully and finally dispose of a disputed matter, explains Stacy L. La Scala, a neutral writing for JAMS.

“However, more and more often, a dispute cannot be fully resolved where nonparties to the dispute have contributed defense and indemnity amounts on behalf of one or more of the parties and have reserved the right to seek recovery of those amounts in subsequent litigation,” he cautions.

In **the article**, published on JDSupra.com, he writes:

> In particular, where insurance carriers have actually provided a defense and/or indemnity in an action, those carriers in a number of jurisdictions have potential rights against their insureds, pursuant to reservation of rights for uncovered claims; potential rights against those entities who are principally responsible for the loss; and potential rights against contractually obligated indemnitors of their insureds. The carriers are typically not part of the action and are not signatories to the settlement agreement.

Read the article.

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Fox News Hit With Suit Alleging Racial Discrimination and ‘Plantation-Style Management’

An expanded lawsuit filed Tuesday accuses Fox News Channel of racial discrimination “that appears more akin to Plantation-style management than a modern-day work environment,” reports the **Associated Press**.

Eight former and current Fox employees joined an existing case involving three former Fox workers who have accused a since-fired Fox financial executive of bias. It also expands the case to include Dianne Brandi, Fox’s chief counsel.

Fox News has denied the allegations.

“One plaintiff, on-air personality Kelly Wright, who’s black, said he’d been effectively sidelined and asked to perform the role of a Jim Crow, an insulting slang term to refer to a black man, according to the lawsuit. Wright said [Bill] O’Reilly, who’s white, refused to show a piece Wright had prepared after racial protests in Ferguson, Missouri, because they showed blacks in too positive a light,” writes AP reporter David Bauder.

Read the AP article.

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