

# [Big Pharma's Tobacco Moment as Star Lawyers Push Opioid Suits](#)

Big Pharma is having a Big Tobacco moment as litigation over opioids attract star lawyers and a growing list of states and local governments seeking their own multibillion-dollar payout to deal with costs of a burgeoning drug epidemic, reports [Bloomberg Law](#).

Six states have sued opioid makers, alleging they have created a public health crisis.

“Plaintiffs’ lawyer Joe Rice, a plaintiff lawyer who helped negotiate a \$246 billion settlement with the tobacco industry in 1998, suggests states are laying the groundwork to force a resolution that provides billions of dollars to cover the costs of an epidemic blamed for 62 deaths per day,” explain Jef Feeley and Jared S. Hopkins.

[Read the Bloomberg article.](#)

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# [GM Accuses Bankruptcy Trust of Secret \\$1 Billion Stock](#)

# Plot



General Motors Co. accused the trust set up to handle its bankruptcy claims of secretly plotting with plaintiffs' attorneys to make it pay \$1 billion in stock as part of a \$15 million class-action settlement. [Bloomberg Law](#) is reporting.

As Bloomberg's [Erik Larson](#) explains, the accord will pit GM against the "Old GM" General Unsecured Creditors Trust for the first time since the 2009 bankruptcy sale created the split to save the company.

Larson writes that attorney Steve Berman said that the settlement "between the plaintiffs and the trust for old GM will resolve hundreds of personal-injury cases stemming from GM's faulty ignition switches, as well as a class-action suit over millions of vehicles that allegedly lost value due to a series of recalls in 2014."

[Read the Bloomberg article.](#)

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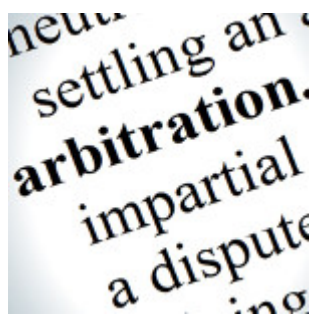
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**11th                      Circuit                      Holds**

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# Arbitrators Have Venue-Setting Authority in International Arbitrations

[Alston & Bird](#) asks and answers the question: In an international arbitration, when an arbitration provision is ambiguous about the seat of the arbitration, who resolves the question?



Authors [Andy Tuck](#) and [Lee Deneen](#) discuss *Bamberger Rosenheim Ltd. v. OA Development Inc.*, in which the Eleventh Circuit held that interpretation of a venue provision is the arbitrator's prerogative.

They write:

The federal circuits are split on whether the FAA serves as a proper basis for vacatur of an international arbitration award. In this case, the panel saw “no reason to analyze [Bamberger’s] arguments under the New York Convention or [the FAA] separately,” since Bamberger’s argument was the same for both bases for vacatur. The court stated in a footnote that it “assume[d], without deciding, that [the FAA] applies to the award in the present case.”

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# [Confusion Between 'FMLA' and 'Maternity Leave' Sends Employer to Trial](#)

[HR Dive reports](#) on a federal case in which an employee's Family and Medical Leave Act suit will go to trial over how she was fired after confusion about how much leave she had available.

Reporter [Kate Tornone](#) explains: "The employer's handbook had two separate sections: one discussed employees' entitlements to 12 weeks of unpaid FMLA leave, while the other offered workers eight weeks of paid maternity leave, with the option to take four more weeks unpaid."

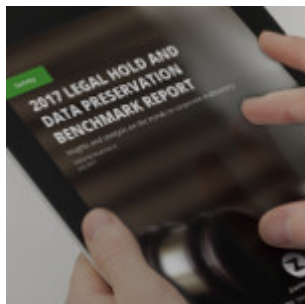
The company fired the employee when she didn't return to work after 12 weeks absence.

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# [Download: In-Depth Analysis and Tips for Improving E-Discovery Strategy](#)



Zapproved has published an exclusive report that reveals insights about current and year-over-year changes in legal hold and data preservation processes.

The “[2017 Legal Hold & Data Preservation Benchmark Report](#)” discusses automation maturity levels, allowing users to see how their company measures up.

This complimentary report offers in-depth analysis of:

- Legal hold automation trends over time
- Meeting best practices with automation
- Process satisfaction based on process type
- Power Preservers’ secrets to success
- Surprising dip in employee training

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# Firm Wants Former Employee's Millions From Recent Settlement; 'Absurd,' He Replies

*Forbes* tells [the story](#) of a plaintiffs lawyer who worked on a long-running class action for the past 13 years, and now his former firm wants nearly all of his \$2.45 million in fees from a settlement, even though he resigned from the firm in 2004.

"On June 5, the Pittsburgh law firm Specter Specter Evans & Manogue filed a lawsuit against [R. Bruce] Carlson, who left the firm long ago to create Carlson Lynch in 2004," explains John O'Brien, *Forbes* contributor and editor of Legal Newsline. "The Specter firm alleges Carlson owes it nearly all of his \$2.45 million in fees gained in a recent \$24 million settlement regarding fees imposed on those who took out second mortgages from Community Bank of Northern Virginia."

The firm cites a separation agreement, but Carlson says the firm was only entitled to a percentage of his fees if the original 2003 settlement was approved. An appellate court rejected that settlement, and the case went on for another 11 years.

[Read the \*Forbes\* article.](#)

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# Download: The Definitive Guide to E-Discovery



Exterro has published “[The Definitive Guide to E-Discovery](#)” and made the 90-page document available for free downloading.

“E-Discovery is a crazy-quilt of Law, Technology, Project Management, and Business. There is a lot to learn from many different angles, and it can be difficult to find a resource that is truly comprehensive,” Exterro says on its website.

About the guide:

- 90 pages of in-depth information, spanning every stage of the e-discovery process
- Each chapter features best practices, technology tips, up to date analysis of case law, and FRCP Rule changes
- Expert commentary from some of the top thought leaders in the industry

[Download the guide.](#)

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# Trump's Real Personnel Victory: More Conservative Judges

While the public watches President Trump churn through White House staff members, his Administration is humming along nicely in filling federal judgeships, with the enthusiastic assistance of the Republican majority in the Senate, points out [Jeffrey Toobin](#) in [The New Yorker](#).

Neil Gorsuch to the Supreme Court was Trump's most important victory. Senate Republican leader Mitch McConnell kept that seat vacant for nearly the full final year of Barack Obama's presidency.

"But McConnell didn't just protect a Supreme Court seat for the next President; he basically shut down the entire confirmation process for all of Obama's federal-judgeship nominees for more than a year," Toobin writes. "It's the vacancies that accumulated during this time—more than a hundred of them—that Trump's team is now working efficiently to fill."

[Read the New Yorker article.](#)

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# Newlyweds Ordered to Pay Photographer More Than \$1M In Damages

Do words matter? A Dallas County jury recently ruled – to the tune of \$1 million – that they do, according to a post by [Androvett Legal Media & Marketing](#).

In March 2015, Dallas wedding photographer Andrea Polito filed a defamation lawsuit against former clients Neely and Andrew Moldovan.

Polito, who photographed the couple's wedding in 2014, alleged they launched a large-scale social media campaign against her over what they claimed were unreasonable fees associated with the delivery of their wedding photos.

In a TV interview, the couple charged that Polito was "holding their pictures hostage."

According to the suit, the newlyweds posted to social media and blogs that Polito "cheated" and "scammed" people, and that they were "pretty sure [Polito's] business was done."

As their online onslaught went viral, Polito said the allegations ruined the business she spent 13 years building.

"People knew me and my reputation," she told the [Dallas Morning News](#). "All the name-calling, all the bullying ... I was humiliated."

In court, Polito's attorney, [Dave Wishnew](#) of [Gruber Elrod Johansen Hail Shank LLP](#), argued the Moldovans should be held liable for defamation, disparagement and civil conspiracy.

The jury agreed, awarding Polito \$1.08 million in actual and punitive damages.

“We hope that this sends a message that freedom of speech does not mean freedom from consequences,” Wishnew said. “The right to air legitimate grievances and opinions doesn’t extend to a concerted campaign designed to defame and destroy someone’s hard-earned business.”

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## [Family of Brothers Electrocuted in Fort Worth Park File Suit Against Oncor](#)

The family of two young brothers electrocuted by a downed Oncor power line in a Fort Worth park have filed a wrongful death lawsuit against the electric utility company.

[Androvett Legal Media and Marketing](#) reports on its website on the case:

On March 29, 2017, while exploring a heavily wooded section of Fort Worth’s Oakland Lake Park the day after a storm, Alex Lopez, 12, was electrocuted when he came into contact with an energized power line. Moments later, his brother, 11-year-old Isaiah, also was electrocuted when he raced to pull his brother to safety.

“Oakland Lake Park was a place Alex and Isaiah loved and felt safe to explore. It was never a place to fear,” said Dallas lawyer [Jeffrey Rasansky](#), founder of Rasansky Law Firm, who represents Alex and Isaiah’s mother, Tammy Brooks. “But due to Oncor’s negligence and delay in cutting power to this live line, the park became the scene of horror, ending these young boys’ lives.”

According to the lawsuit, Oncor uses interactive smart technology that provides real-time notification of disruptions. Yet the company failed to address line problems in the park until after the tragedy. Even then, it took Oncor workers an hour to arrive on the scene to cut power so that emergency personnel could reach the Lopez brothers. Both boys died from extensive injuries resulting from high-voltage electric shock.

“As the owner and operator of Texas’ largest electric grid, Oncor has a responsibility to operate in a manner that protects all citizens,” said Houston lawyer Arturo Gonzalez of Arthur J. Gonzalez PC, who represents the boys’ father, grandmother and estate. “Not only did Oncor fail to secure the area and de-energize the downed line within a public park, the company also failed to warn the public.”

The lawsuit is *Alejandro Luis Lopez, Tammy Brooks, and Ana Lopez as Personal Representative of the Estates of Jose Alexandro Luis Lopez and Isaiah Alexander Luis Lopez v. Oncor Electric Delivery Company, LLC*, in Dallas County.

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# McKool Smith Secures \$9.4 Million Verdict for Quincy Jones Against Michael Jackson Estate

[McKool Smith](#) has secured a \$9.4 million jury verdict on behalf of legendary music producer Quincy Jones against the late music icon Michael Jackson's production company, MJJ Productions Inc., in a breach of contract and royalty dispute. Jones produced a number of the King of Pop's most acclaimed albums, including "Off the Wall," "Thriller," and "Bad."

According to a [release](#) from the firm, the lawsuit centered on allegations that MJJ Productions Inc., which is controlled by Michael Jackson's estate, failed to pay Jones royalties for the soundtrack to "This Is It," a documentary that was released just months after Michael Jackson's death, and Jackson's Cirque du Soleil productions, which both feature several musical hits produced by Jones.

[Read the article.](#)

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# In Texas, Guns and Alcohol Can Be OK – If People Aren't Drunk



Is it OK to mix guns and alcohol? A Texas Court of Appeals seems to be saying, “It depends.”

A post on the website of [Androvett Legal Media & Marketing](#) reports that the court ruled that when people are drinking, but not obviously intoxicated, it can't be assumed that a serious injury will happen just because there's a gun around. The ruling came in a case in which a woman sued a Houston area homeowner after she was accidentally shot in the ankle at a barbecue where people were drinking. Hours before she was wounded, the plaintiff and other guests shot soda cans with a pistol. The plaintiff testified that she did not feel safe.

The 14th Court of Appeals in Houston concluded that the homeowner couldn't be sued for premises liability and gross negligence just because there was a gun where beer and wine were served. The ruling isn't surprising, said [Ross Asher](#) of [Roberts Markel Weinberg Butler Hailey PC](#), which has offices across Texas. The Houston-based trial lawyer is experienced in insurance and premises liability matters.

*“The most basic aspect of negligence law is foreseeability, and whether a reasonable person in similar circumstances should have foreseen that such an injury would occur. Texas law recognizes the important distinction between merely drinking alcohol and drinking to the point of impaired judgment.”*

*“For example, the law criminalizes driving while intoxicated, but not simply driving after drinking. Thus, the amount of alcohol consumed and the effect of the alcohol on a person are the deciding factors – not the mere fact that some alcohol was imbibed. In this case, there was apparently no evidence that anyone near the firearm showed any signs of excessive drinking and impaired judgment. Therefore, such an incident could not be reasonably foreseen by the homeowner.”*

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## [Law Firm Releases Documents in Litigation, Angering Monsanto](#)



Image by [Mike Mozart](#)

Documents released Tuesday in a lawsuit against Monsanto raised new questions about the company's efforts to influence the news media and scientific research and revealed internal

debate over the safety of its highest-profile product, the weed killer Roundup, reports [The New York Times](#).

Monsanto said it was outraged by the documents' release by Baum, Hedlund, Aristei & Goldman, writes [Danny Hakim](#).

"There is a standing confidentiality order that they violated," said Scott Partridge, vice president of global strategy for Monsanto. He said that while "you can't unring a bell," Monsanto would seek penalties on the firm.

A partner in the firm said Monsanto had failed to file a motion seeking continued protection of the documents, but the company said no such filing was necessary.

[Read the NYT article.](#)

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[\*\*Once Again, Trump DOJ Busts Convention, Splits Government in High-Profile Employment Case\*\*](#)



The case of Donald Zarda, a skydiver who claimed his employer, Altitude, violated Title VII when it fired him after finding out he was gay, illustrates how the U.S. Department of Justice and the Equal Opportunity Commission can sometimes operate at cross purposes in litigation.

According to a [Reuters report](#), the EEOC, an independent federal agency, is representing Zarda's estate against the former employer. At the same time, the DOJ has filed its own amicus brief, explicitly disavowing the EEOC's stance.

[Alison Frankel](#) writes that the brief "argued primarily that the EEOC and the 7th Circuit, which adopted the agency's reasoning in its en banc opinion last April in *Hively v. Ivy Tech Community College*, disregarded the actual language of the statute and misread Supreme Court precedent on interpreting that language. According to the Justice Department, it's up to Congress, not the courts, to legislate protection for gay and lesbian employees, and Congress has steadfastly refused to do so."

[Read the Reuters article.](#)

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# Wells Fargo Lawyer Accidentally Releases Trove of Data on Wealthy Clients



A Bressler, Amery & Ross lawyer representing Wells Fargo, responding to a third party subpoena in a case between two financial advisors, produced documents without redaction or confidentiality designations that revealed “billions of dollars of client account information, from residents of numerous states and possibly Europe.”

[Above the Law](#) describes how the mistake got worse: “To compound the issue, [the lawyer] alleges that plaintiffs showed the documents – which, remember, weren’t protected by a confidentiality agreement – to the New York Times, which then wrote about the consumer information that was produced. All in all, an incredibly messy affair.”

Kathryn Rubino writes that a broadly worded confidentiality agreement could have mitigated the damage.

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

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# Wells Fargo Oops: Confidential Data Went to Opposing Side

It was a mistake and a bad one. In responding to a subpoena for information, a lawyer for Wells Fargo inadvertently sent the opposing attorney in a lawsuit a disc filled with confidential information, including Social Security numbers, for 50,000 of the bank's wealthiest clients, according to a post on the website of [Androvett Legal Media & Marketing](#). This embarrassing and damaging error came to light in a *New York Times* article.

Telling the media is not the appropriate way to handle such a transgression, says Houston trial lawyer [John Zavitsanos](#) of [Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing P.C. or AZA](#), who has tried more than 75 cases to verdict. Normally, the recipient of the material would return it to the sender, understanding that mistakes like this happen sometimes, he said.

*"Instead, this may boomerang on the people who publicized the breach, and they may get in trouble for it. Most judges are human beings and understand mistakes – and they don't like gotchas.*

*"Also, many states have snapback procedures whereby if you inadvertently turn over privileged information, you can retrieve it and say it was inadvertently produced. Until that privilege is determined, the receiving party can't hold onto it. There are a slew of states that have provisions like that. And even if this involved a state without a snapback rule, the other side can file a motion to protect their confidential information.*

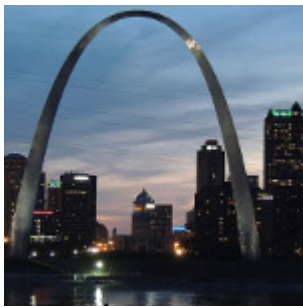
*"Of course, if Wells Fargo is unsuccessful in retrieving the*

*information, its law firm may be subject to claims and penalties. Usually you come up with a set of protocols to prevent this from happening. However, every lawyer with an active litigation practice has produced something in error at some point. You call the other side and ask them to return it. We've all been there."*

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## [The Supreme Court Delivers a Blow to Plaintiff Paradise](#)



St. Louis has been a destination of choice for attorneys going after companies that do business nationwide. But those days may be over, and drugmakers such as Bristol-Myers Squibb Co. and Johnson & Johnson couldn't be more relieved, according to [Bloomberg Law](#).

After the U.S. Supreme Court in June struck a blow against so-called litigation tourism, the fallout in St. Louis was quick. "Within days, J&J, citing the Supreme Court ruling, won a mistrial in a case in which the families of three women blamed their deaths from ovarian cancer on use of the company's talc products. Two of the families were from out of state," report Bloomberg's Margaret Cronin Fisk and Jef Feeley.

The reporters predict more challenges to come in St. Louis, where many non-resident plaintiffs have been flocking for

years.

[Read the Bloomberg article.](#)

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## Want to Peek at Your Employee's Email? Be Careful



[Clarence Webster III](#), writing in Bradley Arant Boult Cummings' [Labor & Employment Insights](#), asks and answers the question: Can you look at an employee's personal email account if you access it on company equipment?

"A recent opinion from the federal District Court of Maryland should at least make you think twice before doing that," he warns. "In *Levin, et al. v. ImpactOffice*, the court denied a company's motion to dismiss a former employee's Stored Communication Act (SCA) claim, which arose out of just such a scenario. The court found that former employee Melissa Edwards could proceed with her claim because the accessed emails were retained on Gmail's servers 'for purposes of backup protection.'"

Webster discusses the facts of the case and concludes that employers should be wary of accessing an employee's web-based email account without permission.

[Read the article.](#)

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## [Can the President Be Indicted? A Long-Hidden Legal Memo Says Yes](#)

A newfound memo from Kenneth W. Starr's independent counsel investigation into President Bill Clinton sheds fresh light on a constitutional puzzle that is taking on mounting significance amid the Trump-Russia inquiry: Can a sitting president be indicted?

[The New York Times](#) reports that the 56-page memo, locked in the National Archives for nearly two decades and obtained by the newspaper under the Freedom of Information Act, amounts to the most thorough government-commissioned analysis rejecting a generally held view that presidents are immune from prosecution while in office.

Reporter [Charlie Savage](#) writes: "It is proper, constitutional, and legal for a federal grand jury to indict a sitting president for serious criminal acts that are not part of, and are contrary to, the president's official duties," the Starr office memo concludes. "In this country, no one, even President Clinton, is above the law."

[Read the NYT article.](#)

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## [Republicans Introduce Bills to Scrap New Bank Arbitration Rule](#)

Republican lawmakers in the House and Senate have introduced bills calling for the repeal of a just-announced regulation that would make it easier for consumers to bring class-action lawsuits against banks, reports [The Los Angeles Times](#).

The new Consumer Financial Protection Bureau rule would ban banks and other financial institutions from forcing arbitration clauses on customers to prevent them from bringing or joining class-action suits.

Some Republicans have introduced resolutions calling for use of the Congressional Review Act, which allows Congress to new regulations created by federal agencies, writes [James Rufus Koren](#).

[Read the LA Times article.](#)