



The Supreme Court of South Carolina

COMMISSION ON CONTINUING LEGAL EDUCATION AND SPECIALIZATION

January 16, 2026

ACCASC

American Corporate Counsel Assoc. South Carolina Chapter

<u>COURSE #</u>	<u>DATE</u>	<u>COURSE NAME</u>	<u>CREDITS</u>	<u>ETHICS</u>	<u>SA/MH</u>	<u>TRIAL AD</u>	<u>SPECIALTY CREDIT</u>
262389	2/19/26	2026 ACC SC Winter Meeting Greenville, SC	8.00	1.00	0.00	0.00	

Your application(s) for accreditation has been approved.

In extending accreditation for CLE activities, the Commission reserves the right to have a representative attend all programs without charge to the Commission and/or its representatives and requires adherence to its accreditation standards found on page two of the Application for Accreditation.

Click this link to review the [Application for Accreditation](#).

Within 30 days of the CLE, attendance is required to be furnished to the Commission with a list of the South Carolina attendees, with South Carolina Bar numbers and attendance totals indicated for each attendee. When submitting a list of attendees, or other correspondence, please refer to the course number(s) indicated above.

All programming is approved on a calendar year basis and expires annually on December 31 of the year in which the program was presented. Programming must be resubmitted (via a comprehensive application packet) in subsequent years to retain accreditation approval. Please note that an application for online, on-demand, teleconference, and in-house programming must be received and approved by the Commission prior to the presentation of the program.

Sincerely,

Commission on CLE
Accreditation Coordinator

2026 Winter Meeting Agenda

Thursday, Feb 19

- 11:30am** **Registration Opens**
- 12:30pm-1:30pm** **Update on Key 2025 Legislative Initiatives and Judicial Opinions: Including the Tort and Liquor Liability Reform Bill**
60 minutes
- Sam Boyd, Bowman and Brooke
 - Patrick Cleary, Bowman and Brooke
- 1:30pm-2:30pm** **4th Circuit and Supreme Court Update**
60 minutes
- Christopher Lauderdale, Jackson Lewis
- 2:30pm-3:30pm** **AI and Legal Ethics: Navigating the New Frontier**
60 minutes ethics
- Rachael Anna, Wyche
 - Brittany Arsiniega, Wyche
 - Josh Lonon, Wyche
- 3:30pm-4:30pm** **Immigration Programs and Compliance**
60 minutes
- Olivia Johnson, Shumaker

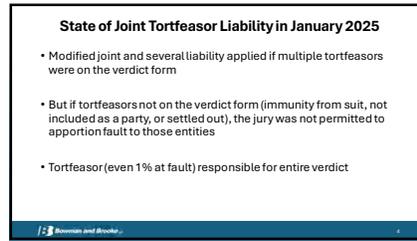
Friday, Feb 20

- 8:30am-9:30am** **Name, Image, Likeness**
60 minutes
- Kevin Hall, Womble Bond Dickinson
 - Mike Ingersoll, Womble Bond Dickinson
- 9:30am-10:30am** **AI in Legal Operations and Business Usage**
60 minutes
- Cailin Heilig, Baker Donelson
 - Jenni McCarty, Baker Donelson
- 10:30am-11:30am** **Navigating the PFAS Maze: Environmental, Legal, and Commercial Impacts**
60 minutes
- Mallory Sparks, Parker Poe
 - Steven Weber, Parker Poe
- 11:30am-12:30pm** **Strategic Infrastructure Procurement: Legal Frameworks That Advance Business Objectives and Manage Risk**
60 minutes
- Will Gibbs, Haynsworth Sinkler Boyd

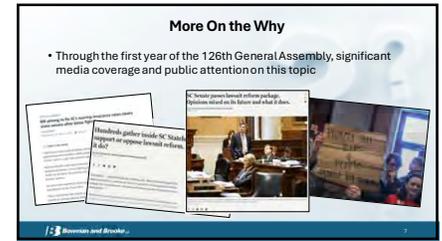
CLE Details: **South Carolina CLE Course Number: N/A yet**
Credits Available: 480



1



4



7



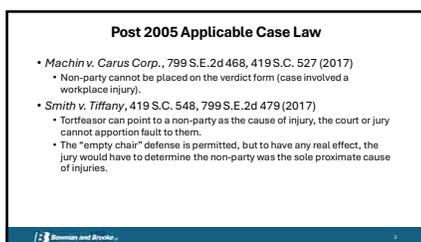
2



5



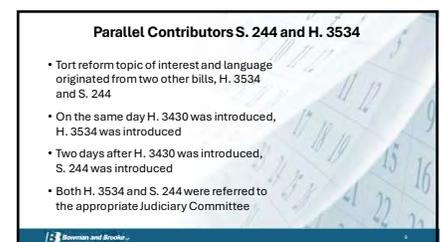
8



3



6



9

H. 3534 a Parallel Bill

- H. 3534 was introduced by Speaker Murrell Smith – District 67 (Sumter)
- Focused solely on tort reform
- Proposed comparing fault of all persons or entities in suit, regardless of whether the person or entity could be names as a party to the suit



10

H. 3430 Final Product



13

Liquor Liability Reform

- Changes to Joint and Several Liability for specific claims:
 - Allows a defendant business to seek joint and several liability if found grossly negligent involving the use, sale, or possession of alcohol – § 15-38-15
 - Allows a defendant business to seek joint and several liability from a driver charged with driving under the influence – § 61-2-147
 - Defendant business can only recover up to 50% from the driver charged with driving under the influence



16

S. 244 - A Parallel Bill

- S. 244 introduced by Senator A. Shane Massey – District 25 (Edgefield/McCormick/Saluda)
- Had both tort reform and liquor liability reform
- As initially introduced, would have significantly changed tort system in South Carolina
- This bill introduced the verdict form changes seen in H. 3430's final form along with much of the liquor liability reform language



11

How? Final Product

- General Tort reform regarding distribution of recoverable fault and identifiable parties
- Liquor Liability:

Liquor Liability Reform	Narrowing potentially liable parties
Liquor Liability Mitigation	Reducing insurance requirements

14

Liquor Liability Reform

Efforts to reduce Liquor Liability Insurance for businesses selling alcohol

- Adds a "knowing" requirement to the tort of selling alcohol to an intoxicated person – S.C. Code Ann. § 61-8-2220.
- Adds a statute creating alcohol server training requirements – §§ 61-3-100-1-40
- Adds additional penalties for businesses who fail to comply with liquor license permit requirements – § 61-4-580



17

Amalgam in Committee

- Despite H. 3430's original topic – state auditor appointment – it morphed completely as it moved from committee to committee
- Through amendments, it became an amalgam of S. 244, H. 3543, and other bills, then dropped its original content
- By its final version on May 8, 2025, the bill only addressed general tort liability and numerous liquor law changes

12

General Tort Reform

- Under the previous statute, restaurants, bars, and other places serving alcohol to an intoxicated driver could be responsible for an entire judgment even if they were found only 1% at fault, despite an otherwise modified joint and several system generally
- New legislation protects restauraneters by limiting exposure when a third party causes most of the fault to the alleged victim
- Now, a defendant can add an additional tortfeasor to the verdict form for the purposes of allocation fault except in the following cases: (1) immune parties, (2) cases of strict liability, (3) asbestos cases, (4) cases of vicarious liability, (5) cases of gross negligence

15

Liquor Liability Mitigation

- Defendant can mitigate how much insurance coverage the law requires it to carry - § 61-2-145
- Specific actions reduce the coverage amount by the following amounts:

Stop serving alcohol by midnight	\$250,000
Have all employees complete alcohol server training	\$100,000
Derive less than forty percent of total sales from alcohol	\$100,000
Use a digital ID system between midnight and 4:00 a.m.	\$100,000
Be a nonprofit engaged in a single charity event	\$500,000

18

Slide 15

SB1 Patrick, can you confirm this is accurate?

Samuel Boyd, 2026-02-12T17:19:49.761

H. 3430 Case Studies

19

Questions About H. 3430?

22

S.C. Common Law Developments in 2025
James: Economic Loss Rule

- James E. Carroll, Jr., v. Isle of Palms Pest Control, Inc., SPM Management Company, Inc. and Terminix Service, Inc., No. 28291 (S.C. July 23, 2025)
 - Homeowner James Carroll contracted with Isle of Palms Pest Control and SPM for termite protection. Without informing Carroll, the pest control companies abandoned the bait system and instead applied a liquid termiticide—allegedly negligently. Carroll renewed the bait station contact annually, unaware of the change. More than a decade later, extensive termite damage was discovered.
 - Carroll sued for negligence and breach of contract. The trial court granted summary judgment on negligence, applying the economic loss rule, and the Court of Appeals affirmed. The Supreme Court of South Carolina granted certiorari and reviewed the economic loss rule’s application.

25

Case Studies

- Under § 15-38-15, a factfinder can apportion fault to a nondefendant tortfeasor if the following are met:
 - Defendant discloses the tortfeasor within 180 days
 - Defendant proves tortfeasor’s negligence
- If the nondefendant tortfeasor settles beforehand, the tortfeasor is automatically included on the verdict form
- Fault cannot be allocated to a nondefendant tortfeasor in the following actions: **civil immunity, gross negligence, imputed liability, strict liability, and asbestos**

20

S.C. Common Law Developments in 2025
Charles: Malpractice Expert Qualifications

- Charles Blanchard Construction Corp., Inc. v. 480 King Street, LLC, --- S.E.2d ---, 2026 WL 158105 (S.C. Supreme Court, January 21, 2026)
 - 480 King Street, LLC (“Owner”) sued Glick/Boehm & Associates, Inc. (“Architect”) for negligence, breach of contract, and breach of warranty related to design and construction administration of a stair tower project
 - Owner submitted an expert affidavit from a professional engineer to meet the affidavit requirement of the *South Carolina Frivolous Civil Proceedings Sanctions Act* after filing but before final disposition

23

S.C. Common Law Developments in 2025
James: Economic Loss Rule

- The Supreme Court reversed the lower courts, holding that the **economic loss rule applies only in the product liability context** where damage is to the product itself
- Because this case involved services and a residential home, not a defective product, the economic loss rule did not bar Carroll’s negligence claim
- The court held that the pest control companies’ conduct—secretly switching treatment methods—was not contemplated by the contract and thereby created a duty of due care outside the contract
- That duty supported a tort negligence claim for alleged negligent application of liquid termiticide

26

Examples of Ambiguity

- Multiple causes of action:
 - Defendant sued in both strict liability and negligence
 - Potential tortfeasor only liable in negligence
 - Can the defendant bring in the potential tortfeasor?
- Settling tortfeasors – when and how are they excluded from being added to the case?
- Imputed liability – what counts for imputed liability?

21

S.C. Common Law Developments in 2025
Charles: Malpractice Expert Qualifications

- Expert Qualification Standard
 - An expert need not hold the same professional license as the defendant; qualification may be shown through specialized knowledge, training, or experience explained in the affidavit
- Application to Claims
 - The engineer’s affidavit was sufficient for negligent construction administration claims because he had relevant experience and would opine on that standard of care
 - The affidavit was insufficient for negligent architectural design or warranty claims because the expert explicitly declined to opine on architectural standards
 - Breach of contract and breach of warranty claims grounded in professional negligence are subject to the same affidavit requirements; contract claims survived only as to construction administration

24

S.C. Common Law Developments in 2025
Welch: Receiverships and Lingering Obligations

- Welch v. Advance Auto Parts, Inc. 445 S.C. 640 916 S.E.2d 320 2025 WL 1450573, (Supreme Court of South Carolina May 21, 2025)
 - Donna B. Welch, as Personal Representative of the Estate of Melvin G. Welch (decedent), sued numerous defendants, including Advance Auto Parts, Inc. and Atlas Turner, Inc., for wrongful death and related asbestos-exposure claims
 - Decedent died of mesothelioma, allegedly from exposure to asbestos products shipped into South Carolina
 - Atlas Turner, a Canadian asbestos supplier, sought dismissal for lack of personal jurisdiction; the trial court denied the motion. The trial court ordered Atlas Turner to engage in discovery, including a Rule 30(b)(6) corporate deposition—an order Atlas Turner refused to obey

27

Slide 21

SB1 Not sure what case studies we want to use

Samuel Boyd, 2026-02-10T17:49:22.177

S.C. Common Law Developments in 2025
Welch: Receiverships and Lingering Obligations

- 1) Producer was obligated to comply with rule governing deposition upon oral examination and designate representative as its deponent, despite claim that it had no witness available because none of its employees had knowledge of its activities;
- 2) Quebec Business Concerns Records Act (QBCRA) did not relieve producer of its obligations to comply with discovery under South Carolina law;
- 3) Striking of producer's pleading as sanction for its refusal to comply with discovery was measured act of trial court's discretion;
- 4) Appointment of receiver over producer's insurance assets prior to judgment was warranted by its willful litigation misconduct;
- 5) Trial court had jurisdiction to appoint receiver over producer's insurance assets, regardless of whether those assets were located outside South Carolina, and
- 6) Equity required limitation of definition of "insurance assets" subject to receivership to those insurance policies that had potential to cover husband's injuries.

Boonin and Brooker

28

S.C. Common Law Developments in 2025
Ormand: Personal Jurisdiction

- *Ormand-Ward by & through CDM Corporation v. Litt*, Appellate Case No. 2023-000239, 2025 WL 3466553 (S.C. Ct. App. Dec. 3, 2025)
 - Former homeowner filed suit against nonresident title insurer, title services company, purported fraudster, and related individuals and entities, alleging that she had been the victim of a scam in which purported fraudster deceived her into selling her home, and asserting claims for negligence, quiet title, intentional infliction of emotional distress, violation of the South Carolina Unfair Trade Practices Act, slander of title, and civil conspiracy
 - The Circuit Court, Horry County, J., 2025 WL 3466553, granted insurer's motion to dismiss for lack of personal jurisdiction. Homeowner appealed.

Boonin and Brooker

31

S.C. Common Law Developments in 2025
Oakwoods: SCUTPA Guidance

- **Holdings:** The District Court, David C. Norton, J., held that:
 - 1) Summary judgment was precluded on SCUTPA claim against company;
 - 2) Liability was contractually limited on any damages awarded against company;
 - 3) Company impermissibly filed successive summary judgment motion on fraudulent nondisclosure claim;
 - 4) SCUTPA direct liability claim was not actionable against licensor;
 - 5) Summary judgment was precluded on SCUTPA vicarious liability claim against licensor;
 - 6) Negligence claim was not actionable against licensor;
 - 7) Rescission claim was not actionable against licensor;
 - 8) Unjust enrichment claim was not actionable against licensor; and
 - 9) Liability was contractually limited on any damages awarded against licensor.

Boonin and Brooker

34

S.C. Common Law Developments in 2025
Spring Valley: Rule Against Perpetuities

- *Spring Valley Interests, LLC v. Best for Last, LLC* --- S.E.2d --- 2026 WL 45017 (Supreme Court of South Carolina, January 07, 2026)
 - In a 2017 commercial real estate financing, Best for Last, LLC granted a freely assignable, perpetual option to purchase a 74.425% co-tenancy interest in property as part of a loan deal. White Interests (original lender) later assigned the option to Spring Valley Interests, LLC. Spring Valley exercised the option during Best's refinance process, sparking a dispute when Best objected and negotiations collapsed.
 - Circuit Court granted partial summary judgment holding the option was void under the common-law Rule Against Perpetuities (CLRAP) because it was a perpetual option arising from a nondonative transfer. South Carolina Court of Appeals affirmed that ruling, agreeing the SC Uniform Statutory Rule Against Perpetuities (SCUSRAP) did not apply to such interests and CLRAP controlled.

Boonin and Brooker

29

S.C. Common Law Developments in 2025
Ormand: Personal Jurisdiction

- Relied on the reasoning from recent Supreme Court case *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 143 S. Ct. 2028, 216 L. Ed. 2d 815 (2023). Reached an opposite conclusion solely due to lack of explicit statutory language.
 - **Holdings:** The Court of Appeals held that:
 - 1) Statutory provision requiring insurers to appoint Director of Insurance to be their attorney for service of process did not confer general jurisdiction over insurer, and
 - 2) Homeowner failed to meet her pretrial burden of establishing that long-arm statute conferred specific personal jurisdiction over insurer.
 - Affirmed

Boonin and Brooker

32

S.C. Common Law Developments in 2025
Parker: Interpreting Covenants Not to Sue

- *Parkerv. Transp. Leasing/Cont., Inc.*, 804 F. Supp. 3d 643 (D.S.C. 2025)
 - Personal representative of motorist's estate brought action against employer of alleged tortfeasor driver for vicarious liability related to fatal automobile crash caused by driver's negligence. Both sides moved for judgment as a matter of law (JMOL).
 - **Holdings:** The District Court, Joseph Dawson, III, J., held that:
 - 1) Covenant was intended by parties to be a "covenant not to execute," and
 - 2) Covenant did not operate as a release.

Boonin and Brooker

35

S.C. Common Law Developments in 2025
Spring Valley: Rule Against Perpetuities

- SCUSRAP's express supersession of CLRAP means even interests excluded from statutory vesting aren't automatically void under common law; absent statute or common law rule, the perpetuities constraint does not apply to nonvested interests arising from commercial (nondonative) transfers
- The Supreme Court reversed the Court of Appeals and held the SC Uniform Statutory Rule Against Perpetuities (SCUSRAP) completely abolishes the common-law Rule Against Perpetuities (CLRAP) in South Carolina
- Because the Option is a nonvested property interest from a nondonative transfer, it is not void under SCUSRAP or CLRAP and therefore, the option may be enforceable

Boonin and Brooker

30

S.C. Common Law Developments in 2025
Oakwoods: SCUTPA Guidance

- *Oakwood Prods., Inc. v. SWK Techs., Inc.*, 774 F. Supp. 3d 734 (D.S.C. 2025)
 - Fine organics manufacturer, as software licensee, filed suits against software implementation consulting company and software licensor for alleged violation of South Carolina Unfair Trade Practices Act (SCUTPA), rescission of contract, fraud, negligent misrepresentation, fraud in inducement, fraudulent nondisclosure, breach of warranty, negligence/gross negligence, and unjust enrichment, by allegedly failing to properly configure and implement enterprise resource planning software to meet manufacturer's business needs
 - Consulting company moved for partial summary judgment, licensor moved for summary judgment, and actions were consolidated

Boonin and Brooker

33

S.C. Common Law Developments in 2025
Constan: Work Product in Discovery

- *Constan Gervais Sr. Car Wash, Inc. v. Auto-Owners Ins. Co.*, 350 F.R.D. 264 (D.S.C. 2025)
 - Insured car wash company brought state court action against its insurer for breach of contract and bad faith refusal to pay insurance benefits
 - Insurer asserted counterclaim, seeking declaratory judgment that it properly denied company's claim for coverage. Action was removed on basis of diversity jurisdiction.
 - Insured filed motion to compel insurer to produce certain documents and discovery responses, including pre-litigation claims notes and internal communications, and requested an award of fees and costs

Boonin and Brooker

36

S.C. Common Law Developments in 2025
Constan: Work Product in Discovery

- **Holdings:** The District Court, Mary Geiger Lewis, J., held that:
 - 1) Pre-litigation claims notes identified on insurer's current privilege log as work product, and documents referenced therein which were generated after insurer received letter, were not entitled to work-product privilege;
 - 2) Insurer would not be compelled to produce all documents in its possession, custody or control responsive to insured's discovery requests "in their entirety without regard to privilege";
 - 3) Insurer would be compelled to produce one year, rather than five years, of prior similar claims to insured; and
 - 4) Insured was entitled to recover partial award of fees and costs associated with its motion to compel discovery.

Bowman and Brooker

37

S.C. Common Law Developments in 2025
Shannon: Punitives and Setoff

- *Shannon P. Green and Darrell Russell, v. Edward C. McGee and David Hudgins*, Appellate Case No. 2023-001735 (S.C. Aug. 13, 2025)
- Green was injured in a road-rage collision when McGee's vehicle struck her car after an altercation involving both McGee and Hudgins. Before suit, Green settled with McGee's liability insurer for \$100,000 in exchange for a covenant not to execute judgment.
- A jury found McGee 60% at fault and Hudgins 40% at fault, and that both acted recklessly, willfully, and wantonly. Jury awarded: \$88,546.78 actual damages plus \$35,000 punitive damages against each defendant.
- Trial court applied setoff of the \$100,000 settlement against total verdict (including punitive), then allocated remainder pro-rata by fault. Court of Appeals altered setoff allocation, resulting in net judgment of \$58,546.78 against Hudgins and \$0 against McGee.

Bowman and Brooker

40

S.C. Common Law Developments in 2025
Palmetto Point: More Setoff

- The Supreme Court held that under S.C. Code § 15-38-50, a non-settling defendant's right to setoff applies where settlement funds were paid for the same injury as the claim tried to verdict when settlements involve multiple claims, reasonable allocation by the trial court is required and reviewed for abuse of discretion
- The Court affirmed that TCR was not entitled to set off the full amounts of the pretrial settlements paid by Novus, Atlantic, HSA, and Cohen's beyond the partial amounts conceded — because these settlements involved multiple distinct alleged defects not all attributable to TCR's work, and the trial court reasonably allocated proceeds to categories of damage not tried to the jury

Bowman and Brooker

43

S.C. Common Law Developments in 2025
Retreat: Indemnity and Collateral Estoppel

- *Retreat at Charleston Nat'l County Club Home Owners Ass'n, Inc. v. Winston Carlyle Charleston Nat'l, LLC*, 445 S.C. 566, 915 S.E.2d 736 (Ct. App. 2025), **part granted** (Dec. 16, 2025)
- Construction company that provided framing, windows, doors, and related components for townhome development brought contractual indemnity claims against its subcontractors after homeowners association sued company for construction defects
- The Circuit Court, Charleston County, Jennifer R. McCoy, J., granted subcontractors' motions for summary judgment, finding the indemnity provisions in the subcontracts were unclear, violated state law and public policy, and were unconscionable and unenforceable. Construction company appealed.

Bowman and Brooker

38

S.C. Common Law Developments in 2025
Shannon: Punitives and Setoff

- Supreme Court granted certiorari to review application of the Uniform Contribution Among Tortfeasors Act
- Court held that because both defendants were found to have acted recklessly, willfully, and wantonly, joint and several liability applies to actual damages, rendering the fault percentages irrelevant for contribution purposes
- The \$100,000 covenant payment may be set off only against actual damages, not punitive damages, because punitive damages do not compensate the "same injury" as actual damages
 - Net judgment against McGee: \$23,546.78 (actual damages after setoff)
 - Net judgment against Hudgins: \$35,000 (punitive damages)
- The underinsured motorist (UIM) carrier's obligations are governed separately — entitling the carrier to credit for the \$100,000 under the statutory framework and applicable case law

Bowman and Brooker

41

Questions?

Bowman and Brooker

44

S.C. Common Law Developments in 2025
Retreat: Indemnity and Collateral Estoppel

- **Holdings:** The Court of Appeals, McDonald, J., held that:
 - 1) Construction company could not enforce unclear and equivocal indemnity clauses that sought to indemnify against company's sole negligence;
 - 2) Indemnity clauses in company's contracts with subcontractors violated both public policy and statute governing "hold harmless" clauses in construction contracts;
 - 3) Company was collaterally estopped from enforcing indemnity clauses that were identical to provisions found in other court judgments to be unenforceable;
 - 4) Indemnity provisions were not severable; and
 - 5) Warranty, contractual indemnity, and duty to defend provisions of company's contracts with subcontractors were unconscionable and unenforceable as a matter of law.

Bowman and Brooker

39

S.C. Common Law Developments in 2025
Palmetto Point: More Setoff

- *Palmetto Points at Paws Island Condominium Property Owners Association, Inc. v. Tri-County Roofing, Inc.*, Appellate Case No. 2023-001422 (S.C. Apr. 30, 2025)
- Condominium owners sued multiple defendants, including general contractor CBC and subcontractor Tri-County Roofing (TCR), for negligence, gross negligence, and breach of warranty over construction defects at the Palmetto Pointe project
- Before trial, Palmetto received \$6.8M in settlements from various defendants, including \$1M from CBC's insurer in exchange for a covenant not to execute and \$1.975M from four other settling subcontractors
- At trial, a jury returned a \$6.5M actual damages verdict and \$500,000 punitive damages each against CBC and TCR; other defendants were apportioned minimal liability
- TCR sought setoff credits for the pretrial payments under S.C. Code § 15-38-50

Bowman and Brooker

42

Thank You!

Patrick J. Cleary
 Patrick.Cleary@bowmanandbrooke.com

Samuel Boyd
 Samuel.Boyd@bowmanandbrooke.com

Bowman and Brooker

45

Supreme Court & Fourth Circuit
 Employment Law Developments
 2025-2026

February 19, 2026

Chris Lauterbach
 Jackson Lewis P.C.
 christopher.lauterbach@jacksonlewis.com

Cristina Oleske
 Senior VP - Employment & Litigation Counsel
 United Community Bank

JacksonLewis

46

E.M.D. Sales, Inc. v. Carrera

SCOTUS –
 (No. 23-217)
 Decided Jan. 15, 2025

- Held:** Employers need only establish an FLSA exemption applies through a “preponderance of evidence,” not the higher “clear and convincing evidence” standard. (9-0 decision)
- Reverses an outlier decision by the Fourth Circuit that required a heightened standard of proof for employers.
- Case involved applicability of the FLSA’s outside sales exemption, but the reasoning applies to all statutory exemptions.
- Potential broader application: J. Kavanaugh noted the preponderance of evidence standard is the default standard of proof in civil cases.
- “It is the rare instance when the higher clear and convincing standard has been applied, such as when the standard is expressly set forth in the statute or where important constitutional liberties are at stake.”

49

Ames v. Ohio Dept. of Youth Services
 (No. 23-1039)

SCOTUS, Decided
 June 5, 2025

- Issue:** Does a plaintiff who belongs to a majority group need to demonstrate “background circumstances suggesting that the defendant is the unusual employer who discriminates against the majority” in order to establish a *prima facie* case of discrimination under Title VII?
- Held:** No. Title VII does not support imposing a heightened burden (the “background circumstances” test) on majority-group plaintiffs.
- Textual Analysis:** Title VII “draws no distinctions between majority-group plaintiffs and minority-group plaintiffs” and “Congress left no room for courts to impose special requirements on majority-group plaintiffs alone.”
- Takeaway:** The decision emphasizes that Title VII’s protections are broad and symmetrical and this may invite additional discrimination claims by members of majority groups.

52

Disclaimer

The presenters have prepared the materials contained in this presentation for the participants’ reference and general information in connection with education seminars. Attendees should consult with counsel before taking any actions that could affect their legal rights and should not consider these materials or discussions about these materials to be legal or other advice regarding any specific matter.

47

POP QUIZ

Question 1:

Why is the Sixth Circuit not allowed to make up a requirement to prove a Title VII claim?

50

What does this mean for employers?

- Eliminates a barrier that some courts had imposed on “reverse discrimination” claims, confirming that Title VII does not distinguish between majority and minority status when evaluating allegations of intentional discrimination.
- Employers should anticipate that plaintiffs of any background can invoke the same *prima facie* standards when bringing Title VII claims.
- This decision may lead to an increase in claims, including by those challenging DEI initiatives as unlawful discrimination.

53

Notable 2025 Supreme Court Cases

- E.M.D. Sales v. Carrera* (January 15, 2025) – good news for employers defending FLSA-exempt classifications
- Ames v. Ohio Dept. of Youth Services* (June 5, 2025) – one evidentiary standard for all Title VII plaintiffs
- Stanley v. City of Sanford, Florida* (June 20, 2025) – roadmap for post-employment ADA claims
- Trump v. CASA, Inc.* (June 27, 2025) – major limit on District Courts’ injunction power

48

Answer:

COUNTERTEXTUALISM

51

POP QUIZ

Question 2:

Why do Justices Thomas and Gorsuch believe that *McDonnell Douglas* may not be appropriate for summary judgment?

54

Answer: COUNTERTEXTUALISM

55

Trump v. CASA, Inc.
(No. 24A884)
SCOTUS, Decided June 27, 2025

- The case stemmed from an Executive Order by President Trump attempting to restrict birthright citizenship under the Fourteenth Amendment.
- Significantly narrowed the ability of District Courts to issue "universal" or "nationwide" injunctions—through which enforcement of a federal policy can be halted or blocked across the United States, rather than only as to the parties (plaintiffs) in the case.
- The 6-3 Court majority held that universal injunctions likely exceed the equitable authority granted to federal courts under the Judiciary Act of 1789 (signaling that limited avenues for nationwide relief still exist).

58

Notable 2025-2026 Fourth Circuit Cases

- Hollis v. Morgan State University (May 7, 2025)
- Higgins v. Wilson Air Center (January 14, 2026)
- Turner v. Town of Narrows (January 28, 2026)
- Duvall v. Novant Health, Inc. (March 12, 2024)

61

Ames v. Ohio Dept. of Youth Services
(June 5, 2025)

Justice Thomas's Concurrence

- "Atextual Legal Rules and Frameworks"
- "Improper Judicial Lawmaking"
- McDonnell Douglas at risk?
 - "Judge made construct"
 - "Evidentiary tool" developed for courts to use in a bench trial"

56

Employer Takeaways from Trump v. CASA

- Changed litigation strategy – plaintiffs will now have a much harder time obtaining so-called "universal" injunctions to block federal executive orders and agency actions that they oppose. Plaintiffs must rely more on class actions, associational standing, or suing as states to achieve broad effects.
- Shift in power – reallocates power, giving the executive branch more authority to implement national policies while federal courts offer localized remedies.
- May lead to more state Attorneys General filing suits to block federal actions.

59

Hollis v. Morgan State University
(No. 24-1476)
(August 27, 2025)

- Tenure Denial Claim – Summary Judgment for University – reversed, in part
- Unsavory comments offered as direct evidence of discriminatory animus
- Alleged favorable treatment of comparators
- Shifting rationales for denial of tenure

62

Stanley v. City of Sanford, Florida
(No. 23-997)
SCOTUS, Decided June 20, 2025

- In Stanley, the Court held that the ADA does not protect a former employee who no longer holds or seeks an employment position from disability-based discrimination in post-employment benefits. The employment provisions of the ADA apply only to "qualified individuals" who currently hold or want a position and can perform its essential functions with or without an accommodation.
- Barred a retiree's ADA discrimination claim over retirement health benefits.

57

Changing Employment Litigation Landscape

- Federal employment filings continue to climb, from 20,895 in 2022 to 25,367 in 2025
- Trials of employment claims in federal courts have also increased, from 169 in 2024 to 194 in 2025
- Plaintiffs' winning percentage at trial also increased, from 47% in 2024 to 60% in 2025
- Increase of nuclear verdicts (> \$10 million) and "policy-limits" settlement demands incentivizes plaintiffs' counsel to proceed to trial unless they obtain an inflated settlement
- Resulting pushback from employers who more frequently turn to "bet-the-company" approach to high stakes litigation

* Statistics from Lex Machina as of 12/6/25

60

POP QUIZ

Question 3:

Why does Judge Quattlebaum believe the courts should do away with McDonnell Douglas?



63

Answer: COUNTERTEXTUALISM

64

Turner v. Town of Narrows
(No. 25-1298)
Fourth Circuit
January 28, 2026

- Plaintiff applied for position as Parks and Recreation Director
- None of the candidates met all of the stated qualifications
- Younger candidate was hired, and plaintiff claimed age discrimination
- The successful candidate was "well prepared, enthusiastic and interviewed better"
- The plaintiff claimed that the subjective nature of the interviews established pretext

67

Duvall v. Novant Health, Inc.
(No. 22-2142)
Fourth Circuit
March 12, 2024

- Fourth Circuit found that sufficient evidence was presented to support the verdict finding discrimination
- "Fired in the middle of a widescale D&I initiative at Novant Health"
- Demographic data
- Executive bonuses tied to "closing gaps"
- Duvall performed "superbly" and fired "abruptly"
- Reversed award of punitive damages

70

Hollis v. Morgan State University

Judge Quattlebaum's Concurrence

- McDonnell Douglas is "Counter Textual"
- Does not apply when there is direct evidence of discrimination (TWA)
- Supreme Court has never held that McDonnell Douglas is the only means of establishing a claim
- Imposes a higher burden than Rule 56
- Predates Title VII jury trials
- Standard should be – "has the plaintiff raised a genuine dispute of material fact as to intentional discrimination"

65

Turner v. Town of Narrows
(No. 25-1298)
Fourth Circuit
January 28, 2026

- Fourth Circuit affirmed summary judgment for the employer
- "The use of subjective criteria is relevant" but it does not prove pretext "standing alone"
- Same questions in all interviews
- No irrelevant questions
- "Cogent, objective reasons" for rejecting plaintiff

68

EEOC's Objectives + Priorities

"[R]ooting out unlawful DEI-motivated race and sex discrimination; protecting American workers from anti-American national origin discrimination; defending the biological and binary reality of sex and related rights, including women's rights to single sex spaces at work; protecting workers from religious bias and harassment, including antisemitism; and remedying other areas of recent under-enforcement."

01.21.25 EEOC Press Release

71

Haggins v. Wilson Air Center, LLC
(No. 24-1010)
(January 14, 2026)

- Plaintiff (Dx – Breast Cancer) was allowed to work from home during the pandemic
- Employer needed her to return to the office
- Employer "exceeded the call of duty" to interact and provide accommodation
- Plaintiff reported to the office only 2 days in 3 months
- Concluded plaintiff was not a "qualified individual" and affirmed summary judgment for the employer

66

Duvall v. Novant Health, Inc.
(No. 22-2142)
Fourth Circuit
March 12, 2024

- Jury found that Duvall had been discriminated against based on his race, sex, or both
- Front pay, back pay, and punitive damages (\$10,000,000)
- Duvall claimed that he was fired "merely to achieve racial and gender diversity"
- "Diversity and Inclusion Strategic Plan"
- "Targets," not quotas to make sure "our work force reflects the community we serve"
- "Diversity & Inclusion Metrics Framework"

69

Areas to Review for Potential DEI Risks

- "DEI" references
- Numeric representation goals
- Mission statements/values (of the organization or of a DEI Council)
- Pronoun policies
- ERG/diversity groups
- Celebration days (Black History Month, Women's History Month, etc.)
- Workplace training distribution/opportunities, leadership training
- Mentorship, intern and fellowship opportunities
- DEI related philanthropy or scholarships
- External surveys and partnerships
- DEI training
- Diverse slates, diverse hiring panels and other recruiting practices.
- Supplier diversity
- Self-identification of protected characteristics

72

What Is "Illegal DEI"?

If you are running a program, whether you call it DEI or something else, and you are using race or sex or another protected characteristic in an employment decision, even if it's only just part of the decision... that's unlawful discrimination

—Andrea Lucas

<https://www.esj.com/articles/turning-employment-bias-fighter-into-dei-in-her-crosshairs-3bd456d>

Jackson Lewis P.C.

73

Thank you.

JacksonLewis

76

Corporate Immigration Programs



What we will discuss:

- > Immigration Fundamentals
- > Assessing Employer Needs
- > Establishing an Immigration Program
- > Managing Immigration Programs

S

79

Questions?

JacksonLewis

74

WYCHE

AI AND LEGAL ETHICS

Navigating the New Frontier

77

Immigration Fundamentals

Who is considered an "immigrant"?

A foreign-born person who is NOT a U.S. citizen by birth.



- Non-immigrant
- Refugee/ Asylee
- Unauthorized immigrant
- Lawful permanent resident
- Naturalized citizen

80

Don't Miss a Beat!

Scan the QR code for updates and insights from Jackson Lewis attorneys, delivered straight to your inbox.



JacksonLewis

75

Shumaker

Corporate Immigration Programs, I-9 Compliance, and Navigating Today's Shifting Immigration Landscape

Olivia Johnson, ImmigrationPartner - Shumaker



78

Immigration Fundamentals

What is "status"?

An individual's **lawful admission to the U.S.** and the **duration of their authorized stay**

****Common Misconceptions**:**

"Lawfully present" ≠ Permanent Immigration status
 Having a pending application ≠ Being in legal status
 Verified stay ≠ Status

Status may be extended or changed. Always look at the employee's documents to confirm, not just the I-94 records.

81

Establishing an Immigration Program

Consideration: COST



- Filing Fees
- Advertising Costs
- Consular Processing Fees
- Prevailing Wages

91

Managing Immigration Programs

Common Duties



- Creating a Standard Operating Procedure (SOP)
- Maintaining proper documentation and forms
- Preparing employees for immigration processing
- Meeting employer obligations to foreign employees
- Auditing immigration records to ensure compliance
- Preparing for corporate restructuring

94

I-9 Compliance



What we will discuss:

- ✓ General Requirements
- ✓ Conducting an Internal Audit
- ✓ Audit Overview
- ✓ Potential Fines for Failure to Comply

97

Establishing an Immigration Program

Consideration: OVERSIGHT



- What department will be responsible for management?
 - Legal
 - Human Resources
 - Recruitment
- Who will be in charge of training employees to manage the immigrant data and expirations?
- Who decides on type of visa offerings?

92

Managing Immigration Programs

Compliance



- Overall immigration status compliance
 - I-9 compliance
 - E-verify
- Specific visa compliance
 - Labor Condition Applications (LCAs)
 - Public Access Files (PAF)
 - Prevailing Wage Determinations (PWD)
- Employee individual documentation
 - Unexpired passport, etc.

95

Why are employers required to verify employment authorization and identity of new employees?



- Congress reformed U.S. immigration laws to preserve the "tradition of legal immigration while seeking to close the door to unlawful entry".
- Employment is often the magnet that attracts people to reside in the United States unlawfully. Congress worked to deter this attraction by requiring employers to hire only individuals who could legally work in the U.S.

98

Managing Immigration Programs



93

Managing Immigration Programs

Common Pitfall: Corporate Restructuring

Types of Restructuring

- Merger, acquisition, dissolution, change in ownership
 - Size, industry, geographic location, workforce
- Impact on Non-immigrant Visas**
 - example: H-1B LCAs and PAFs
 - example: L-1s Qualifying Organization
- Impact on Immigrant Visas**
 - PERM
 - I-140 Petition Ability to Pay



96

EMPLOYERS MUST

- ✓ Verify the identity and employment authorization of each person hired after Nov. 6, 1986. For employment in the Commonwealth of the Mariana Islands (CNMI), this verification requirement applies to persons hired after Nov. 27, 2009.
- ✓ Complete and retain Form I-9, Employment Eligibility Verification, for each employee who is required to complete the form.

99

DHS AUDIT AND PENALTIES

109

I-9 Inspection Outcomes

(Note: This slide contains very small, illegible text, likely a summary of inspection outcomes.)

112

ICE Enhancement Matrix

Once the base civil fine amount is determined, the 5 statutory factors (below) are considered to determine whether the fine should be enhanced, mitigated, or deemed neutral.

Factor	Aggravating	Mitigating	Neutral
Business size	+5%	-5%	+/- 0%
Good faith	+5%	-5%	+/- 0%
Seriousness	+5%	-5%	+/- 0%
Unauthorized Aliens	+5%	-5%	+/- 0%
History	+5%	-5%	+/- 0%
Cumulative			

115

I-9 Inspection: How it begins

If DHS is initiating an administrative inspection, they typically will provide the Employer with a Notice of Inspection (NOI)

- Employers receive AT LEAST 3 business days to produce Form I-9s requested.
- In addition, DHS can request:
 - A copy of the employer's payroll
 - A list of active and terminated employees
 - Articles of incorporation

110

Possible Penalties for Form I-9 Violations

- Civil Fines
- Contract penalties (when there is a pattern or practice of violations)
- Debarment from government contracts
- Cash order requiring back pay and/or to re-hire individual debarment-aggrieved

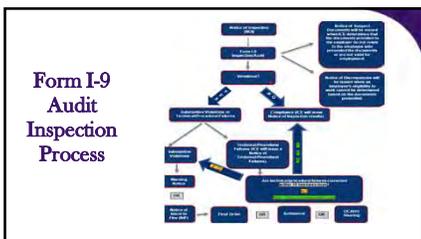
113

Best Audit Practices to Minimize Penalties

Good Faith Defense

- Initial Audit: Correct deficiencies, initial, and date (see **NEEDS**)
- After initial audit, re-check new Form I-9s every 6 months (two sets of eyes)
- Maintain a current employee list with full identification dates. Cross check against Form I-9 list
- Keep written record of all voluntary internal audits conducted to be kept with Form I-9 records

116



111

Civil Fines Calculations

(Note: This slide contains very small, illegible text, likely a summary of fine calculation rules.)

114

Navigating Today's Shifting Immigration Landscape

What we will discuss:

- Preparing for DHS Site Visits
- Immigration UPDATES
- Considerations under the Trump Administration

117

Preparing for an ICE Worksite Visit

- **Ensure Documentation is in Order:** Designate a team/individual to be responsible for managing Form I-9 compliance.
- **Develop a Preparedness Plan:** Partner with counsel to draft a plan to share with relevant personnel. Plan should outline clear steps.
- **Establish Communication Procedures:** Assign responsibilities for key personnel such as HR, security, and reception area. Ensure staff assigned to address ICE understands their rights and responsibilities.
- **Provide Training Materials for Staff**



118

UPDATE: President Trump's Gold Card



Corporate gold card

What we know now:

- \$15,000 DHS processing fee + Contribution of \$2,000,000 "per employee gift"
- Allows company to transfer access from one employee and grant it to another for a 5% transfer fee
- \$5,000 annual maintenance fee
- Filed under EB-1 or EB-2 category

121

If ICE is Seeking an Individual or Conducting an Enforcement Action



- Request and review any records of violations
- Follow your preparedness plan for answering questions and providing information
- Limit access to email and documents
- Notify about employee lists
- Communicate to your employees
- Document
- Discontinue access to all records

119

Additional Considerations under the Trump Administration

- Administration's focus is on enforcement over adjudication. Treatments are expanding. Benefits less advantage of premium processing and expedited strategies for short-term and long-term stay.
- Increased Security: Expect longer, comprehensive I-9's for cases you do not routinely expect requests.
- Confusion in Public Charge Rule, and temporary access to public benefits. Clear and concise evidence of ability to pay employees will be paramount.
- Be prepared for fast policy shifts and have updated information in employee status and future eligibility.
- Processing timelines for non-immigrant and immigrant visas.

122

IMMIGRATION UPDATE: President Trump's H-1B Proclamation

Requires a \$100,000 payment to accompany any new H-1B visa petitions submitted after 12:01 a.m. eastern daylight time on Sept. 21, 2025.

This includes the 2026 lottery, and any other H-1B petitions submitted after deadline.

Does not change any payments or fees required to be submitted in connection with any H-1B renewals or for current H-1B visa holders.

The fee is a one-time fee on submission of a new H-1B petition. Already being challenged in court for violating the Immigration and Nationality Act.

Alternatives to H-1B: L-1, O-1, E-2, TN, OPT



120



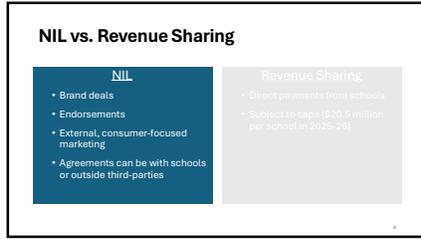
Contact Information:

Olivia Johnson, Partner
843.996.1948
ojohnson@shumaker.com

123



1



4



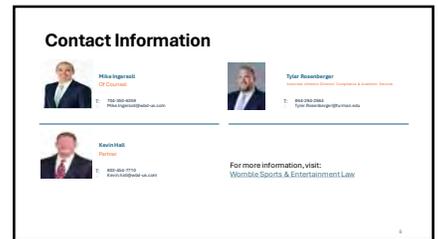
7



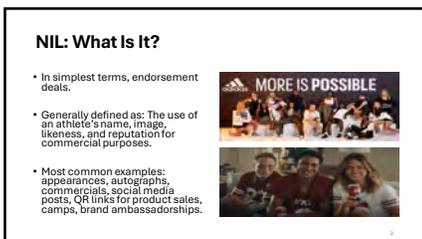
2



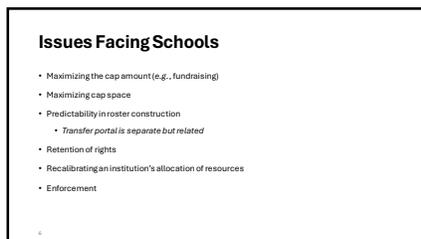
5



8



3



6



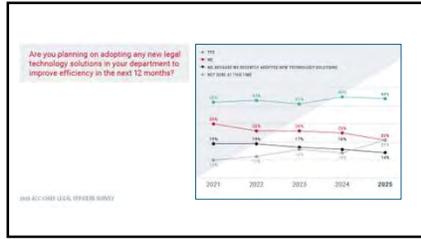
9

AGENDA

- ACC GC Survey Results
- Law Firm AI Adoption
- Baker Donelson's AI Strategy
- Identifying, Vetting, and Deploying AI Solutions Use Cases
- Leveraging AI Solutions Opportunities Use Cases Lessons Learned

BAKER DONELSON

10



13

AI ADOPTION AMONG LAW FIRMS IS INCREASING

The legal profession is experiencing a seismic shift that is creating winners and losers at breakneck speed. The AI Legal Divide: Why Three Quarters of Legal Teams are Racing to Catch Up. Evans, Inside Autom (June 2025). [Link](#)

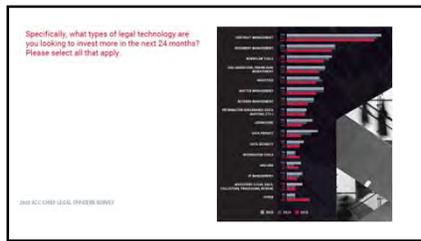
- 21 percent of organizations are aggressively using AI across their scope of work, actively expanding capabilities and reaping significant benefits.
- 66 percent remain stuck in proof-of-concept phases.
- 13 percent are only experimenting with AI tools.
- 80 percent of U.S. legal departments are increasing their AI budgets - they will expect their law firms to do the same.
- Employees will be the ones to make their organizations AI powerhouses. *Superagency in the Workplace: Empowering people to unlock AI's full potential.* McKinsey & Company (January 2025).

16

ACC GC SURVEY RESULTS

BAKER DONELSON

11

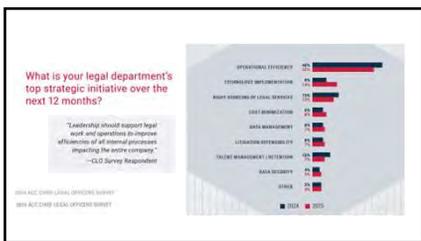


14

BAKER DONELSON'S AI STRATEGY

BAKER DONELSON

17



12

LAW FIRM AI ADOPTION

BAKER DONELSON

15

OUR POLICY ON THE USE OF GAI

Usage Requirements/Limitations

- Firm training is required before use of any generative artificial intelligence (GAI) programs
- Public GAI cannot be accessed for client work or sensitive confidential work for the Firm
- Do not load, input, or reference the following in unauthorized GAI:
 - Client names
 - Client confidential, privileged, or personal information
 - Client information
 - Client documents
 - Firm work product
 - Firm confidential information

Using Authorized GAI for Client Work

- Read the applicable client OCG, bar rules, court orders, and statutes
- Communicate to clients about the Firm's authorized confidential GAI tools
- GAI is not a substitute for your legal and professional judgment - review outputs of GAI for accuracy and completeness
- If used to generate work product, disclose the usage to colleagues
- If required by court orders or client guidelines, obtain consent for the use of GAI and keep records of prompts and outputs

18



19

GAI VETTING CRITERIA

Data

- Is the data right for the use case?
- Has it been gathered with consent or license?
- Is it comprehensive, or are there gaps in the data?
- Does it include biases that will undermine the reliability of conclusions?
- How often is the data warehouse updated?

Algorithms

- Has the application been tested/vetted for your use case?
- Does the application provide reference material to enable verification of results?
- How often does the algorithm produce hallucinations?

Processing

- Is personal or client information retained or deidentified?
- Are user inputs used to train the underlying model?
- Are sessions cleared after usage?
- Where does processing occur – locally, in the cloud, or on a vendor server?

22



25



20

APPROVED AI TOOLS AND STRATEGY

Research AI Tools

- Westlaw Precision now has generative AI
- Practical Law now has generative AI
- Lexis+ AI
- Bloomberg Law

Other AI Tools

- Harvey
- Copilot
- MAX
- Spellbook
- Orbital
- FILEVINE
- LEGALMATION

- AI policy adopted in March 2023 which requires GAI training for all users.
- Early adopter of Westlaw and Lexis AI tools in 2023.
- HarveyAI and Copilot implemented in 2024.
- NDMax and Spellbook implemented in 2025.
- Orbital, Filevine, and HarveyAI-Lexis implemented in 2026.
- AI Power User Group implemented in 2025 and includes professionals from every practice group.
- AI Sprint implemented in 2025 to identify opportunities for productized solutions and new revenue.
- Digital Transformation strategy developed in 2025 to increase AI adoption.

23

OPPORTUNITIES MATRIX

CLIENT NEED FOR AI	LEGAL PROJECT	DEVELOP	INDUSTRY	KNOWLEDGE	FEASIBLE	RESEARCH	APPROVAL
Legal cost control and predictability	+	+	+	+			+
Efficient budget and resource management	+	+	+	+			+
Increased and consistent client satisfaction							
Streamlined and automated legal research and analysis	+	+	+	+			+
Personalized and context-aware document generation							+
Blockchain-assisted and automated legal processes							+
More efficient document review and analysis							+
Streamlined and integrated legal research and document review							+
Enhanced legal research and document review							+
Automated legal research and document review							+

26



21

KEY TAKEAWAYS

IDENTIFYING AND ADDRESSING AI LEGAL NEEDS

All businesses, regardless of industry, need legal assistance to effectively govern and implement AI technology, including:

- A structured review process
- AI policies
- Technology transactions
- Training on AI risks, oversight of use, and corporate policies

Leverage AI counsel with knowledge and expertise to advise.

24

TRANSACTION AI USE CASES

- Document drafting and review
- Diligence
- Playing devil's advocate
- What is market?
- Legal analysis and review
- Blank page problem
- Summarizing large document sets (SPA draft, public filings, incentives)
- Initial drafts of evolving concepts (e.g., AI reps or securities disclosures)
- Post-acquisition integration
- Transaction management
- Client communications

27

LITIGATION AI USE CASES

- Facilitating Faster Record Access: Deposition Summaries, Chronologies, and Timelines
- Stress Testing Arguments: Predicting Opposing Arguments and Presentation
- Preparing Witness Outlines: Ability to Explore Multiple Angles
- Summarizing Case Opinions or Statutes: Source Material Analysis
- Regular Client Reporting: Summarizing Status and Faster Response Times
- Discovery Engagement: Document Analysis and Categorization

BAKER, DONELSON

28

Q&A DISCUSSION



Jennifer K. McCarty
Shareholder
Charleston
853.242.5911
jmcarty@bakerdonelson.com



Calvin Hellig
Senior Director of Client Solutions and Innovation
Baltimore
410.862.1357
chellig@bakerdonelson.com

BAKER, DONELSON

31

Today's Presenters



Steve Weber
Charleston, SC
sweber@parkerpoe.com



Kevin Durlag
Greenville/Spartanburg, SC
kdurlag@parkerpoe.com



Malory Sparks
Columbia, SC
malorysparks@parkerpoe.com

BAKER, DONELSON

34

ADMIN USE CASES

- Drafting policies, procedures, publications, articles, and department manuals.
- Draft and review memos and letters.
- Generating creative content, such as names for articles, team names, software names, logos, and other images.

BAKER, DONELSON

29

Parker Poe
Attorneys at Law

Navigating the PFAS Maze: Environmental, Legal and Commercial Impacts

February 20, 2026

SUBSCRIBE TO OUR CLIENT NEWS



BAKER, DONELSON

32

AGENDA

- "PFAS" Definitions and Chemistry
- PFAS History and Litigation
- PFAS Regulatory Landscape
- In what ways could PFAS touch operations?
- What are PFAS risk points?
- What's ahead?



BAKER, DONELSON

35

SOME PRACTICAL LESSONS FROM OUR USAGE

- Computational power limitations that result in LLMs skipping information in the dataset and incomplete answers
- Must manually "chunk" large data volumes to ensure accuracy of output and reduce hallucinations
- Output can also be improved for large datasets by stacking prompts or separately prompting the dataset versus building lengthy complex prompts
- Risk of hallucination by omission - incomplete answer based upon a very detailed and targeted prompt across a voluminous dataset
- Research tool algorithms may have privacy bias - i.e., recent changes in law may not be prioritized in the results due to the volume of cases or resources citing old law

BAKER, DONELSON

30

Housekeeping

- Questions** - We will have time for questions at the end of the presentation.
- CLE** - We will process CLE credit based on the information you provided at registration. Please contact AngelicaGumucio@parkerpoe.com for questions on CLE.
- Legal disclaimer** - Portions of this communication may qualify as "Attorney Advertising" in some jurisdictions. However, Parker Poe intends for it to be used for educational and informational purposes only. This communication also is not intended and should not be construed as legal advice. For questions, contact Paula.McCabe@parkerpoe.com.

BAKER, DONELSON

33

Businesses Potentially Impacted by PFAS

- Virtually all business are or will be impacted by PFAS at some point**
 - Manufacturing
 - Chemical, plastics, printing and coating, gaskets and seals, flooring
 - Public and private utilities
 - Development (industrial, commercial and residential)
 - Investment banking
 - Computer technology
 - Others (retail, food service, construction, etc.)

BAKER, DONELSON

36

C8 Litigation

DISPOSED HYPERTENSION
coronary artery disease
chronic kidney disease (the kidneys are damaged and cannot filter blood as well as they should)
liver disease
osteoporosis
Parkinson's disease
other autoimmune diseases (rheumatoid arthritis, lupus, type 1 diabetes, Crohn's disease, or multiple sclerosis)
common infections, including influenza, in children or adults
neurodevelopmental disorders in children, including attention deficit disorders and learning disabilities
birth of chronic obstructive pulmonary disease (COPD)
stroke
other cancers considered beyond testicular and kidney
type II insulin-resistant diabetes
birth defects
miscellaneous or unknown
system high at sea, high weight

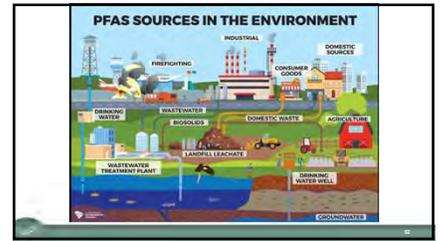
46

Litigation Landscape Today (cont.)



- Wastewater and Stormwater Litigation (follow NPDES permit holders upstream)
- Biosolids Litigation
- Carpet Litigation
- Consumer Product Litigation
- Likely More to Come

49



52

PFAS Blood Test Results

PFOS		T-PFOA		L-PFOA		NASEM
Whole Blood	Serum Equivalent	Whole Blood	Serum Equivalent	Whole Blood	Serum Equivalent	
3.9 ng/mL	7.41 ng/mL	0.60 ng/mL	1.2 ng/mL	0.60 ng/mL	1.2 ng/mL	14.88 ng/mL
1.8 ng/mL	3.42 ng/mL	0.82 ng/mL	1.64 ng/mL	0.82 ng/mL	1.64 ng/mL	8.10 ng/mL
5.7 ng/mL	10.83 ng/mL	1.3 ng/mL	2.6 ng/mL	1.3 ng/mL	2.6 ng/mL	17.54 ng/mL
1.3 ng/mL	2.47 ng/mL	0.49 ng/mL	0.98 ng/mL	0.49 ng/mL	0.98 ng/mL	4.63 ng/mL
1.8 ng/mL	3.42 ng/mL	0.65 ng/mL	1.3 ng/mL	0.65 ng/mL	3.42 ng/mL	6.07 ng/mL

47

PFAS Regulatory Landscape



Malloy Sparks
malloy.sparks@parkerpoe.com

50

Regulatory Landscape

Clean Water Act

- Maximum Contaminant Levels (MCLs) for drinking water for six PFAS originally in September, EPA moved for partial vacatur of the Rule.
- MCLs remain for PFOS and PFOA of 4.0 ppt.

Chemical	Maximum Contaminant Level Goal (MCLG)	Maximum Contaminant Level (MCL)
PFOS	0	4.0 ppt
PFOA	0	4.0 ppt
PFNA	0	4.0 ppt
PFHxS	0	4.0 ppt
PFNA	0	4.0 ppt
Mixture of two PFAS (PFNA and PFHxS)	0	4.0 ppt

53

Litigation Landscape Today

- Aqueous Film-Forming Foam (AFFF) Litigation
- Multidistrict Litigation – Charleston, South Carolina
 - Over 154,000 individual plaintiffs (including 1,000 water providers, 34 state sovereigns and others such as groundwater and firefighter turnout gear)
 - Water provider settlements - 3M (\$12.5 billion), DuPont (\$1.185 billion), Tyco/Chenguard (\$750 million) and BASF (\$316.5 million) entered into national water provider settlements. One defendant, Kiddle, is in bankruptcy (settled for \$730 million).
- Cases around the country in State and Federal courts outside MDL (DC discharger & Biosolid lawsuits)



48

Regulatory Landscape

Lee Zeldin

During his eight years in Congress, Administrator Zeldin supported key legislation that became historic, bipartisan success stories like the Great American Outdoors Act and Save our Seas Act to clean up plastics from our oceans. He also led the fight for Sea Grant, **combated PFAS in drinking water**, voted for the Lautenberg Chemical Safety Act, and supported clean energy projects on Long Island.



51

Regulatory Landscape



- CERCLA
 - PFOS and PFOS designated as hazardous substances under CERCLA. Also in September, EPA confirmed to the U.S. Court of Appeals for the D.C. Circuit that EPA will defend the final rule designating PFOA and PFOS as hazardous substances.
- Clean Air Act
 - No regulations yet, but states have petitioned for four PFAS to be added to the list of Hazardous Air Pollutants (HAPs).
- TSCA
 - Reporting requirements for manufacturers and importers of PFAS or PFAS-containing articles.
- EPICRA
 - EPICRA reporting requirements now apply to PFOA and PFOS releases over 1 pound.

54

State Analogs – South Carolina

SOUTH CAROLINA

- SCDES has been sampling for PFAS in ambient surface waters, drinking water provided by South Carolina Public Water Systems and private wells
- H.3116 introduced in January 2025 – Did not make it out of committee. No new bills for 2026 yet.



SC DEPARTMENT of ENVIRONMENTAL SERVICES

55

PFAS Risk Points

- At Operating Sites
 - AFFF
 - Landfills
 - Herbicides/pesticides
 - Prior impacts (legacy remediation)
 - Worker safety
- Permitting
 - NPDES Permits
 - Effluent and influent
 - States pushing regulations down to local agencies
 - Air Permits
- Products
 - “PFAS Free”
 - Consumer product advertising
 - Imports/exports
 - Certifications



58

Wrap-Up

- CLE – We will process CLE based on the information you provided at registration. Please contact angelicolumbo@parkerpoe.com for questions on CLE.
- Subscribe – For insights like today’s webinar, subscribe to Parker Poe’s insights at www.parkerpoe.com/subscribe or scan the QR code below.



RUBEN GLENN ALLEN

61



PFAS and Business Operations



Steve Weber
steve.weber@parkerpoe.com

56

Take-Aways

- What’s ahead
 - Litigation
 - Regulation
 - Science/Politics
- Conclusion
 - PFAS remain a big deal
 - No industry can avoid it
 - Be mindful and watchful

59

STRATEGIC INFRASTRUCTURE PROCUREMENT

ACCSC Chapter Winter Meeting

William F. Gibbs | February 20, 2026



62

How PFAS could touch business operations



Worker Safety | AI Active Facilities | Remediation | Purchased Products | Requests for Certifications | Influent and Effluent Water | Air Emissions

57



60

AGENDA AND ROADMAP



1. The Backdrop & Balancing Act
2. Contract Lifecycle
3. Business Speed & Legal Risk
4. Negotiation Best Practices
5. Critical Provisions & Business Position
6. Governance & Accountability

63

THE BALANCING ACT: BUSINESS, OPERATIONS, FINANCIAL & LEGAL

Speed and Location	Accelerate deal closure and contract execution to meet market needs. Enable rapid vendor onboarding without sacrificing quality. Maintain agility to capture on emerging opportunities.	Reduce to existing regulatory requirements across jurisdictions. Mitigate risks through enforceable arbitration terms and remedies. Protect operational with clear exit rights and indemnities.
Cost and Innovation	Control costs and ensure budget predictability through strategic sourcing. Align pricing models with business outcomes for performance incentives.	Define unambiguous terms to reduce disputes and litigation exposure. Ensure terms are scalable to avoid frequent renegotiations. Establish performance accountability mechanisms within contracts.
Operational Continuity	Ensure uninterrupted operations during vendor transitions or outages. Hold vendors accountable for performance and service levels. Support scalability to accommodate business growth without renegotiation.	Maintain operational continuity through robust contract governance. Monitor compliance and performance through contract lifecycle. Balance legal caution with business enablement to facilitate growth.

64

MANAGING SCALE

Challenges and Solutions for SaaS Contract Volume

- Organizations with 100K+ employees typically manage 300-400 SaaS applications, creating an overwhelming contract review volume that exceeds individual capacity.
- Traditional manual contract review by general counsel is no longer feasible due to sheer scale and complexity.
- Implementing scalable contract management systems, including playbooks and automated workflows, is essential to maintain efficiency and control.
- Delegating routine contract reviews to business units with standardized guidance and escalation procedures helps free those workflow critical managing risk.
- Trusted outside counsel must provide an understanding of both legal and business contexts to effectively support high-volume procurement.

67

LEGAL RISK VS. CONTRACTUAL RISK

Contract Risk	Legal Risk
Definition	
Character	
Mitigation	

70

LIFECYCLE OVERVIEW

Creation and Drafting	Negotiation	Approval and Execution	Performance Monitoring	Renewal or Termination
<ul style="list-style-type: none"> Develop initial contract terms aligned with business objectives and legal requirements. Engage relevant stakeholders to gather input and define scope. Finalize. Default Provisions and Remedies. Review & Escalation. 	<ul style="list-style-type: none"> Collaborate with vendors to refine contract terms and address concerns. Track changes, negotiate, and manage version control. Balance business needs with legal risk mitigation. 	<ul style="list-style-type: none"> Obtain necessary internal approvals. Finalize contract terms and address concerns. Finalize contract negotiations and formalize agreements. Ensure all essential documents and provisions are properly signed and executed. 	<ul style="list-style-type: none"> Track vendor performance against Service Level Agreements (SLAs) and contractual obligations. Monitor compliance with regulatory and contractual requirements. Proactively address issues to avoid operational disruptions. 	<ul style="list-style-type: none"> Review contract performance and determine if renewal or termination decisions. Plan negotiations and address concerns. Manage vendor contract renewals or terminations ensure compliance. Proactively address issues to avoid operational disruptions.

65

MULTI-VENDOR INFRASTRUCTURE

Systems Thinking for Vendor Coordination	Key Considerations for Legal Teams
<ul style="list-style-type: none"> Manage multiple vendor dependencies as components of a unified infrastructure ecosystem rather than isolated elements. Ensure vendor solutions are compatible and interoperable to minimize integration risk and technical conflicts. Adopt a holistic view to identify overlapping or conflicting contract terms such as data rights and privacy. Balance cross-vendor collaboration to streamline workflows and operational continuity across services. Reduce the complexity of vendor management by aligning contract terms and performance expectations enterprise-wide. 	<ul style="list-style-type: none"> Address cross-vendor dependencies. Coordinate contract positions on terms like liability, exit rights, and exit costs to ensure consistency and prevent gaps. Understand how vendors interact within the broader technology stack to anticipate operational risks. Develop governance frameworks that holistically oversee collective vendor performance and compliance. Identify risks and processes to monitor multi-vendor relationships as a single integrated contract portfolio.

68

ALIGNING LEGAL PROTECTION & BUSINESS ENABLEMENT

Key Strategies for Legal-Business Alignment

- Legal teams should harmonize compliance and risk mitigation with business objectives to promote growth and innovation.
- Process improvements like contract playbooks, standardized workflows, and governance systems reduce contract risk and streamline operations.
- Legal risk mitigation should focus on high-stakes issues while routine risks are managed through scalable processes.
- Building systems that empower buying "yes" makes often required balancing legal action with business agility.
- In-house legal experience shows businesses need smarter "yes" decisions, not more "no" responses, to maintain momentum.

Effective legal services do more than block risks—they strategically advance business goals by integrating legal safeguards with operational realities. By focusing on reducing contract risk through streamlined processes and reserving legal risk mitigation for critical issues, organizations can empower faster decision-making and foster innovation without compromising protection.

71

PROCUREMENT RISK DOMAINS

Financial Risks	Compliance Risks	Performance Risks	Legal Risks	Operational Risks
<ul style="list-style-type: none"> Includes unclear pricing structures, hidden costs, and payment terms that can lead to budget overruns. Unmanaged financial risk jeopardizes procurement and forecasting accuracy. Mitigation requires transparent pricing terms and clear payment structures. 	<ul style="list-style-type: none"> Arise from regulatory gaps, vendor control issues, or conflicts with contractual terms. Potential penalties, legal action, and reputational damage. Regular legal reviews, enforce compliance, ensuring regulatory requirements. 	<ul style="list-style-type: none"> Arise from vague or missing SLAs, unclear vendor obligations, and service disruptions. These risks impact operational continuity and business outcomes. Enforceable SLAs with clear metrics and remedies are essential for accountability. 	<ul style="list-style-type: none"> Result from ambiguous contract language, missing critical clauses, or enforceability issues. Legal risks expose organizations to costly disputes and enforcement actions. Regular legal reviews and proactive provisions. 	<ul style="list-style-type: none"> Includes integration failures, resource constraints, and workflow disruptions. Operational risks can cause project delays and increased costs. Regular legal reviews, strategic planning, specific contingencies, and contingency measures.

66

THE MYTHICAL CONFLICT BETWEEN BUSINESS SPEED & LEGAL CAUTION

Business Demands Speed	
Legal Demands Risk Prevention	

69

DEVELOP & DEPLOY TERMS TO ADVANCE BUSINESS OBJECTIVES

Flexible Scaling Provisions	
Performance-Based Pricing	
Clear Exit Rights	

72

NEGOTIATION TIMING AND LEVERAGE

Starting contract negotiations at least 60 days before expiration yields 33% greater savings by preserving negotiation leverage and allowing thorough risk assessment. Building renewal calendars that trigger negotiations 90-120 days in advance empowers procurement teams to avoid rushed decisions and secure better terms.

Analysis and Recommendations

- Start negotiations proactively by providing time to explore competitive alternatives and avoid last-minute concessions.
- Meeting negotiations 60 days before contract expiry results in significantly higher cost savings compared to later starts at 30 days.
- Building renewal calendars that initiate negotiations 90-120 days before expiration creates disciplined timelines and reduces decision pressure.
- Rushed negotiations close deals faster but increase the risks of unfavorable terms and missed cost-saving opportunities.
- Procurement teams should prioritize early engagement to maximize value capture and minimize contract risk exposure.

73

EFFECTIVE SERVICE LEVEL AGREEMENTS

Key Components of Enforceable SLAs

- SLAs should specify measurable performance metrics such as uptime percentages, response times, and resolution deadlines to provide objective standards for service delivery.
- Clear definitions of service availability, support response times, and escalation procedures ensure all parties have aligned expectations and understand the consequences of failure.
- Remedies and penalties for non-compliance, including service credits or financial penalties, create real incentives for vendors to maintain performance levels.
- Structured escalation paths enable timely issue resolution and reinforce accountability throughout the contract lifecycle.
- Enforceable SLAs protect organizations from repeated performance failures and ensure stakeholders can rely on vendor commitments.

76

2026 PRIVACY REGULATORY LANDSCAPE

Fragmented Multi-State Privacy Laws

- 38 U.S. states enforce comprehensive privacy laws as of 2025, creating a patchwork regulatory environment.
- California and C-States have expanded sensitive data definitions to include neural and biometric data, increasing compliance scope.
- Oregon has strengthened protections for children's personal data and banned the sale of precise geolocation data.
- Other states continue to evolve their statutes, adding unique consent, data handling, and breach notification requirements.
- Diverse privacy clauses no longer suffice; contracts must address unique and nuanced legal obligations.

Implications for Contract Clauses

- Contracts must explicitly address diverse data-specific data definitions and consent requirements to avoid non-compliance.
- Integrate flexible data protection provisions that can adapt to evolving regulations across jurisdictions.
- Ensure data residency and transfer clauses comply with existing regulatory demands and cross-border restrictions.
- Legal teams should develop modular contract templates, avoiding overly customizations for multi-state compliance.

79

COMMON NEGOTIATION MISSTEPS

Overemphasis on Price

Negotiating only on price while ignoring important non-price terms weakens contract value.

Auto-Renewal & Notice Periods

Accepting auto-renewal clauses without clear advance notice of renegotiation requirements creates lock-in risks.

Delayed Renewal Negotiations

Starting renewal discussions too close to expiration reduces negotiating power and leads to rushed decisions. Last-minute negotiations often force acceptance of unfavorable terms due to time pressure.

Early engagement enables a thorough risk assessment and exploration of renegotiation alternatives.

Ignoring these areas can lead to pricing, compliance, and costly disputes.

Failure to manage renewal terms results in unwanted extensions and lost negotiation leverage.

74

MULTI-VENDOR NEGOTIATIONS

As innovation accelerates, rights across different vendors create legal and operational complexities.

- Siloed Negotiations**
 - Conflicting security standards increase the risk of breaches and compliance failures.
 - Integration requirements may conflict, causing technical incompatibilities and service disruptions.
- Coordinated Negotiation**
 - Gaps expose the organization to unmanaged risks and inefficient contract management.
 - Fragmented accountability through uncoordinated performance monitoring and governance.

77

VENDOR ACCOUNTABILITY

Key Elements of Managing Vendor Performance

- Regular and robust performance monitoring is used to reported service failures without recourse, causing operational disruptions and business impact.
- Effective SLAs must include measurable performance metrics, defined response times, and specific remedies or penalties for non-compliance to hold vendors accountable.
- Stakeholders should rely on enforceable commitments to ensure consistent support and timely issue resolution from vendors.
- Incentives tied to performance encourage vendors to meet or exceed contractual obligations, aligning their interests with business outcomes.
- Performance provisions should be regularly reviewed and enforced throughout the contract lifecycle to prevent drift and maintain accountability.

80

SAAS FREQUENT FLYER ISSUES

Common SaaS Contract Pitfalls

- Auto-renewal clauses often require a cancellation notice months in advance, which can be easily overlooked and result in unwanted contract extensions.
- Missing uptime guarantees without defined liability exposes organizations to service interruptions without recourse or compensation.
- Lack of flexibility in scaling provisions locks organizations into fixed terms, hindering growth or adjustment to changing business needs.
- Many organizations do not push back on these provisions, even though vendors expect negotiation and push-back.
- Many SaaS contracts include vague or one-sided terms that expose organizations to vendor lock-in, service disruptions, and unfavorable economic. These pitfalls are negotiable, and proactive contract management can prevent costly engagements and hinder ability for growth and change.

75

DATA SECURITY: ESSENTIAL REQUIREMENTS

Expanded Data Ownership and Access Rights

Organizations must explicitly define data ownership terms with the best representation. Includes requirements for data access and export rights in standardized, interoperable formats. Ensure vendors provide timely access to data during and after contract termination.

Mandatory Security Certifications

Organizations should require vendors to hold ISO 27001 and SOC 2. Conduct regular third-party assessments to verify security controls and ensure compliance with industry regulatory standards. Regular penetration audits and updates must be contractually required.

Data Residency and Location Requirements

Address cross-border data transfer restrictions and necessary international safeguards. Ensure compliance with local data sovereignty laws through contractual language, wherever applicable.

Restrictions on Vendor Data Usage

Prohibit vendors from using client data for marketing, analytics without explicit consent. Grant vendor rights to use data strictly to support core service delivery objectives. Prohibit clauses regarding data destruction or return upon contract termination.

78

POST-SIGNATURE GOVERNANCE GAP

Risks and Solutions in Post-Signature Governance

- Organizations often rely on governance based on unenforced contractual provisions, risking service failure and compliance breaches.
- Auto-renewals without review can lock organizations into unfavorable terms or outdated agreements.
- Vendor relationships may drift without clear accountability, reducing responsiveness and increasing operational disruptions.
- Stale governance systems integrate outdated contract obligations, automated renewal alerts, and performance KPIs to maintain control.
- Cross-functional ownership and clear escalation procedures ensure timely issue resolution and continuous vendor management beyond contract signing.
- Many organizations heavily focus on contract negotiation and execution but neglect post-signature governance, leading to overlooked risks and loss. Implementing scalable governance systems—such as automated renewal alerts, performance tracking, and cross-functional vendor accountability—closes this gap, ensuring contracts deliver sustained business outcomes and reduce operational, financial, and compliance risks.

81

FOR QUESTIONS AND FOLLOW UP



William F. Gibbs
864.240.3280

Disclaimer: This presentation is provided for information only, and is to be taken as legal advice. All circumstances are different, and you should consult with legal counsel for specific advice.

HAYKSWORTH
SINKLER BOND

82