A POINT OF VIEW
LIKE NO OTHER

YEAR IN REVIEW: THE CHANGING RISK ENVIRONMENT

Noteworthy 2025 Litigation Themes Across The National Capital Region

March 19, 2026

ACC Association of Corporate Counsel
NATIONAL CAPITAL REGION

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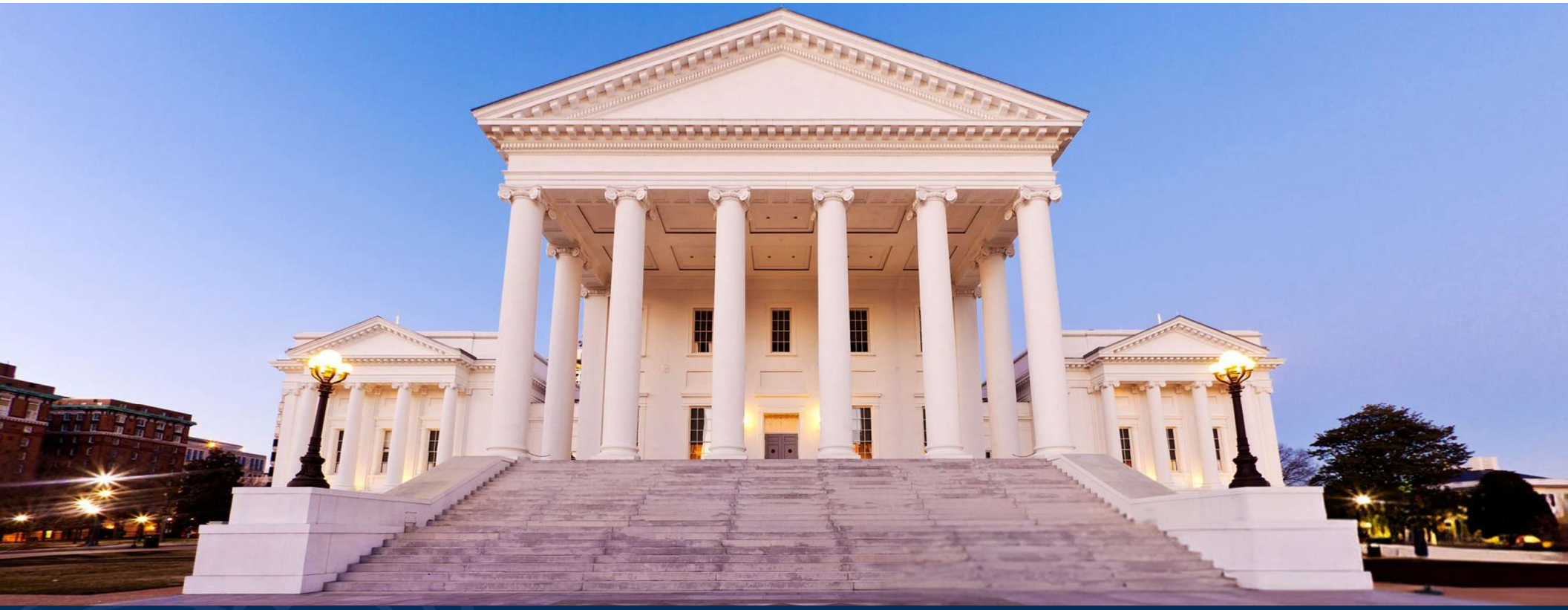
WHAT WE WILL COVER

- **2025 Local Legislative Activity Impacting Litigation**
  - Virginia Potential New Class Action Statute
  - Amendment to Virginia's Mini-TCPA and Impact for E-Commerce Business
  - Maryland's Proposed Third-Party Litigation Financing Bills
- **Noteworthy Cases And Enforcement Activity**
  - Review of Noteworthy State AG Enforcement Activity
  - Maryland Recognizes De Minimis Doctrine for Employment Claims
- **National Trends Impacting Capital Area Businesses**
  - Jurisdiction-by-Consent Statutes and Risk of "Nuclear Judgments"
  - State AGs Take Up Consumer Protection Mantle
  - Recent SCOTUS Tariffs Opinion
- **Questions, Answers And Discussion**



2025 LOCAL LEGISLATIVE ACTIVITY IMPACTING LITIGATION

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CLASS ACTIONS MAY BE COMING TO VIRGINIA

Virginia may soon allow class actions in state court for the first time.

- If enacted, the new SB 229 would:
  - Create a state class action procedure
  - Expand litigation exposure for businesses operating in Virginia
  - Allow statutory damages on a per-violation basis rather than one total award for an entire course of conduct
  - Eliminate reliance requirements for consumer protection claims

Potential impact: increased consumer class action litigation in Virginia state courts

VIRGINIA CLASS ACTION STATUTE: LEGISLATIVE HISTORY

- In 2024, Virginia legislators introduced identical companion bills to create a Virginia class action
- Although passed by both the House and the Senate, the bill was Vetoed by then-Governor Youngkin on March 14, 2024, which was then sustained by the Senate on April 17, 2024
- The 2024 bill mirrored FRCP 23(a) and required:
  - Numerosity
  - Commonality
  - Typicality
  - Adequacy of representation
- *Major difference:* Virginia would have added "contrary to judicial economy" to the numerosity requirement

PROPOSED STATUTE

- This year, the legislature proposed a revised class action statute
- The Senate bill is currently enrolled (passed both chambers and sent to Governor Spanberger)
- Both the proposed 2026 Virginia statute (SB 229) and FRCP 23 share the same four foundational prerequisites (numerosity, commonality, typicality, adequacy), but there are some very notable differences
  - Narrowed the numerosity requirement from the 2024 version to be more akin to the Federal standard
  - Provides a court "may award attorney fees as a percentage of the common fund, if applicable" (§ 8.01-267.13(C)). This codifies common-fund fee awards, which may encourage plaintiffs' counsel to pursue class actions in Virginia state courts.

VCPA INTEGRATION

One of the most significant aspects of SB 229 is its integration with the Virginia Consumer Protection Act (VCPA). The bill amends § 59.1-204 to make several plaintiff-friendly changes:

- **Damages Per Violation:** Explicitly provides for damages of "$500 per violation" (or $1,000 per willful violation), rather than per plaintiff. This could dramatically increase exposure in class actions involving repeated conduct affecting many consumers.

- **No Reliance Requirement:** Subsection E of the amended § 59.1-204 states that "Nothing in this section shall be construed to require proof that the person relied upon a prohibited practice or representation to establish that such person or class member has suffered a loss." This provision is expressly intended to reverse *Owens v. DRS Automotive Fantomworks, Inc.,* 288 Va. 489, 764 S.E.2d 256 (2014), which required individual reliance. Eliminating reliance as an element significantly eases certification of VCPA class actions.

- **Retroactivity:** Conduct occurring prior to January 1, 2027, may be filed as a class action after the statue becomes effective." Businesses could face class action exposure for past conduct once the law takes effect.

KEY TAKEAWAYS FOR BUSINESSES

- **Increased VCPA Exposure:** Class actions combined with per-violation statutory damages can multiply potential liability across affected consumers (e.g., $500 x 1,000 affected consumers = $500,000)
- **Easier Class Certification:** The "practical ability of individual class members to pursue their claims" factor may make it easier to certify classes involving smaller individual damages
- **Shorter Interlocutory Appeal Window:** Defendants have only 10 days (vs 14-days federally) to seek interlocutory review, requiring faster strategic decisions
- **Multi-Venue coordination:** Virginia courts anticipate significant class action activity and are preparing mechanisms to efficiently coordinate related cases
- **Retroactive Exposure:** The explicit retroactivity provision means past conduct may be subject to class actions, so companies should evaluate past conduct for potential exposure

AMENDMENTS TO VIRGINIA'S MINI-TCPA, THE VTPPA

- Virginia's state-equivalent TCPA statute, the Virginia Telephone Privacy and Protection Act ("VTPPA") had a major refresh in 2025

- The VTPPA imposes several restrictions on telephone solicitations which as defined includes text message solicitations:
  - (1) time restrictions (8 AM – 9 PM local time, unless prior consent);
  - (2) identification requirements (identify by first and last name);
  - (3) caller identification requirements (name and call back number); and
  - (4) opt-out requirements and DNC Registry

THE VTPPA: AN OVERVIEW

- A private right of action awards greater penalties than the TCPA:
  - $500 for first violation
  - $1,000 for second
  - $5,000 for any subsequent violations or willful violations

- 2025 revisions provide greater protections for e-commerce businesses operating in or doing business with Virginia residents particularly using text messaging as a marketing strategy.

CHANGES TO VTPPA EFFECTIVE IN 2026

- As to identification requirements, if solicitation is via text:
  - No requirement to identify by first and last name
  - Requirement is satisfied if the sending number accepts an opt-out message

- As to requests to opt out of text message solicitations, a person ***must*** opt out by replying to the text message with the word “UNSUBSCRIBE” or “STOP”
  - Different from TCPA which is ambiguous as to method of opt-out
  - Protects e-commerce businesses from frivolous litigation and gotcha-Plaintiffs seeking to benefit from the VTPPA’s enhanced damages

MD'S PROPOSED THIRD PARTY LITIGATION FINANCING BILLS

- In the 2025 session, Maryland's two legislative houses proposed companion bills to regulate third-party litigation financing
- As proposed, the bills would have created a standalone consumer protection framework for third party litigation financing
- While the bills stalled, this year the legislature has proposed a new bill with significant changes from its predecessor and would treat litigation financing as a loan, and require licensure under existing Maryland lending laws

COMPARISON OF 2025 AND 2026 BILLS

HB 1274/SB 985 – 2025

- Stand-alone statute regulating litigation finance conduct
- ❌ No licensing requirement
- Separate legal category (not a loan)
- Highly prescriptive disclosures
- Mandatory disclosure to parties and insurers; funding is discoverable
- Funder owes fiduciary duties to class members; heightened disclosure
- Contracts may be void and unenforceable; AG enforcement

HB 1298/SB 0894 – 2026

- Incorporates litigation finance into existing lending laws
- ✅ License required
- Deemed a loan for regulatory purposes
- Disclosure required, but far less prescriptive
- Mandatory disclosure; funding is discoverable
- No fiduciary duty provisions
- Regulatory exposure tied to licensing compliance

LITIGATION FUNDING & DISCOVERABILITY

- National Trend: Courts more likely to deny than allow discovery of third-party litigation finance and case-specific decisions

- ***Pecos River Talc LLC v. Dr. Emory, et al.*** (E.D. Va. Mar. 10, 2026)
  - Plaintiffs' motion to compel defendants to answer interrogatories about third party payors of their litigation costs denied (untimely)
  - In *dicta*, the court said it would have denied on the merits anyway because a party's sources of litigation funding is tangential and of little relevance to the merits of the liable claims
  - *See also Ashghari-Kamrani v. U.S. Automobile Ass'n*, 2016 WL 11642670 (E.D. Va. May 31, 2016) (denying motion to compel discovery about potential litigation funder and noting there must be an actual basis for relevancy, not speculation or fishing)

- ***Design With Friends, Inc. v. Target Corp.*** (D. Del. Sept. 27, 2024)
  - Court quashed subpoena to non-party litigation funder seeking funder's due diligence and evaluations of the claims and damages
  - Court found lit funder was a "representative" of Plaintiff entitled to work product protections of Rule 26(b)(3)(A)
  - Disproportionate and not relevant to copyright infringement and breach of contract claims

NOTEWORTHY CASES AND ENFORCEMENT ACTIVITY

MD LOCAL GOVERNMENTS' NOVEL THEORIES TO ATTEMPT TO RECOVER DAMAGES FOR ENVIRONMENTAL HARMS

- *Mayor and City Council of Baltimore v. B.P. P.L.C. et al.; Anne Arundel County v. B.P. P.L.C., et al.; and City of Annapolis v. B.P. P.L C. et al.*
  - BP Litigation: City of Baltimore and Anne Arundel County allege energy companies create public and private nuisance, fossil fuels with hazardous environmental consequences: Climate Change Litigation
- *Mayor and City Council of Baltimore v. PepsiCo, Inc., Frito-Lay, Inc., Frito-Lay North America, Inc., Coca-Cola, Inc., W.R. Grace, Mercury Plastics, MD, Polymershapes, Adell Plastics*
  - PepsiCo Litigation: City of Baltimore claims defendants' production, manufacturing and/or distributing of single-use plastic products litter City and waterways depressing property values and reducing tax revenue, and break down to micro- and nano-plastics that threaten food supply via plants and marine organisms

BP LITIGATION

- Preemption Defense: Constitution's federal structure does not allow application of state law to claims based on global emissions and such claims are barred by the Clean Air Act.
  - Circuit Courts dismissed all claims against all defendants on Motions to Dismiss
  - 4/24/25 – MD Supreme Court Granted Certiorari
  - 10/6/25 – Oral Argument Held; Decision Pending

BP LITIGATION

- <u>Key Defense Appellate Issues:</u>
  - Do the federal Constitution and Federal law preempt and preclude stat-law claims seeking redress for injuries allegedly caused by the effects of out-of-state and international greenhouse-gas emissions on the global climate?
  - Whether MD law precludes nuisance claims based on injuries caused by worldwide production, promotion and sale of a lawful consumer product?
  - Does MD law preclude failure to warn claims premised on duty to warn every person in the world whose use of a product may have contributed to a global phenomenon with effects that allegedly harmed the plaintiff?
  - Does MD law preclude trespass claims based on harms allegedly caused by global climate changes arising form the use of a product by billions of third parties around the world outside of the producer's control?

PEPSICO LITIGATION

3/19/25 – City dismissed 5 claims for MD Illegal Dumping and Litter Control Act and other City Code violation theories.

7/18/25 Memorandum Opinion

- Granted motions to dismiss by Grace, Polymershapes, Mercury, and Adell
- Granted food and beverage defendants' motions to dismiss for product liability and consumer protection type claims
- Claims for public nuisance against food/beverage companies stayed pending outcome of BP Litigation.

PEPSICO LITIGATION: KEY SUCCESSFUL DEFENSE ARGUMENTS

- Alleged Material Supplier Defendants
  - Plaintiffs' allegations failed to specify which defendants were responsible for causing which single-use plastic waste and how – alleged materials suppliers prevailed in part on insufficient group pleading grounds

  - Some of the alleged suppliers also:
    - Denied being suppliers of plastics
    - Denied being subject to jurisdiction in Baltimore City
    - Argued lack of allegations connecting them to any of the food and beverage co-defendants

PEPSICO LITIGATION: KEY SUCCESSFUL DEFENSE ARGUMENTS

- Food and Beverage Defendants:
  - Count VI - Baltimore City Code, Art. 2, § 4 – prohibits unfair and deceptive trade practices with criminal penalties
    - Constitutional lack of notice of theory of liability given criminal penalties
    - Insufficient factual pleading to illustrate a violation of the statute on a failure to warn theory
    - Lack of causation
  - Count VII – MD Consumer Protection Act (Md. Code Ann., Com. Law §13-303)
    - Only consumer purchasing a product can bring action under CPA, not local government that was not the consumer of the products
    - Failure to adequately allege reliance on an alleged failure to warn misrepresentation

PEPSICO LITIGATION: KEY SUCCESSFUL DEFENSE ARGUMENTS

- Food and Beverage Defendants:
  - Count VIII – Trespass
    - Trespass requires that the defendant intentionally invade a property interest and have control over the thing trespassing – but Defendants are not accused of actually dumping litter themselves
    - Defendants do not have control over consumers of their products so cannot be held liable for consumers' acts of leaving trash on City property
    - Defendants do not have control over the single-use plastic containers themselves at the time the allegedly trespass on City property

PEPSICO LITIGATION: KEY SUCCESSFUL DEFENSE ARGUMENTS

- Food and Beverage Defendants:
  - Count VI - XIII – Product Liability Claims: Design Defect, Failure to Warn, Negligence, Strict Liability
    - Design Defect: theory is eventual environmental harm but in design defect the harm must be cause to the consumer at the point of consumption – City is 3rd party
    - Failure to Warn: Duties to warn are with respect to proper use of a product that must be heeded by a consumer to avoid danger
    - Negligence: No duty of care to stop 3rd parties from littering – unsavory policy implications of imposing a duty on product manufacturers to prevent misuse of products via litter
    - Strict Liability: Theory contravenes MD General Assembly decision not to ban plastic packaging and allow it subject to certain requirements

MARYLAND CONSUMER PROTECTION AND THE DIGITAL SECTOR

4/11/25 – MD AG Issues Consumer Alert re FTC Click to Cancel Rule anticipating it going into effect 5/14/25

FTC Click to Cancel Rule Rose and Fell In 2025:

- Response to consumers finding themselves unwittingly enrolled in recurring subscription plans and paying for unwanted products or services because they neglected to cancel a subscription
- Rule barred sellers from misrepresenting material facts and required disclosure of material terms, express consumer consent, and a simple cancellation mechanism, 16 C.F.R. § 425
- 7/8/25 - *Custom Communications, Inc. v. Federal Trade Commission*, 142 F.4th 1060, (8th Cir. 2025), vacated the FTC rule amendment for failure to conduct a regulatory analysis after an ALJ determined that amendment would have an estimated annual economic effect of $100 million or more
- 2026 ANPRM re negative option plans and comment process presently underway

MARYLAND CONSUMER PROTECTION AND THE DIGITAL SECTOR: MD'S NEW AUTO RENEWAL STATUTE

- 4/22/25 – MD Automatic Renewals Law, MD Code, Comm. Law, § 14-1329 (effective 6/1/26) – requirements of lawful auto-renewals:
  - Must present auto-renewal terms in clear and conspicuous manner before consumer agrees to purchase, in visual proximity to the request for consent to the auto-renewal term offer, including:
    - The price the consumer will be charged after initial term ends
    - How agreement will change at the end of the initial term
  - Must present consumer easily accessible disclosure of how to cancel auto-renewals and allow to terminate without delaying or hindering termination

MD'S NEW AUTO RENEWAL STATUTE (CONT'D)

- Additional requirements where there is a free gift;
- Must allow consumers to terminate via cost-effective, timely and easy –to-use mechanism
- Termination/cancellation features must be as easy to use as the initial subscription purchase medium and available through the same medium as initial purchase
- Cancellation by electronic medium must be easy to find
- Notice of auto-renewal required 15-45 days before expiration and auto-renewal
- Limited businesses exempt (e.g. FCC or FERC regulated)

MARYLAND CONSUMER PROTECTION AND THE DIGITAL SECTOR: NEGATIVE OPTION MARKETING ENFORCEMENT ACTIONS

- ***What is a Negative Option?***
  - **Sales practice that treats a consumer's silence or failure to act as acceptance of an offer**
  - 5/8/25 MD AG settlement with AdoreMe., Inc.
    - Website offered discount on purchase of apparel if consumer enrolled in VIP Membership but doing so subjected consumers to monthly $39.99 charges to be put towards additional purchases and consumers accumulated big balances
    - Settlement: Consumer refunds, $250,000 fine
  - 10/23/25 MD AG settlement with TFG Holdings, Inc.
    - VIP membership, alleged hidden fees, alleged difficult cancellation
    - MD joined multistate settlement: company changed VIP subscription practices and disclosures, ceased billing recurring charges, restitution to consumers who did not use membership, $1 million fine

CONSUMER PROTECTION AND THE DIGITAL SECTOR: UBER ONE MULTISTATE UDTP LITIGATION

- 12/15/25 – MD joined VA and DC in lawsuit against Uber Technologies, Inc. and Uber USA, LLC
- 22 State Coalition, filed in NDCA – trial scheduled February 2027
  - Alleges Uber used deceptive enrollment, billing and cancellation practices in its Uber One subscription product
    - Lawsuit alleges improper use of negative option marketing tactics in connection with offer for “free” trial subscriptions, which auto-charges if free subscription is not cancelled
    - Lawsuit alleges Uber misled consumers about amounts that could be saved with the subscription
    - Lawsuit alleges Uber made it extraordinarily difficult to cancel
    - Lawsuit alleges Uber charged consumers before billing date including free trial users before the free trial was over
  - FTC currently seeking comment on ANPRM re whether to amend rules better addressing negative option practices

DC AG ENFORCEMENT ACTIVITY

- 2/7/25 – $3.95 million settlement with Amazon.com, Inc. and Amazon Logistics, Inc.
  - $2.45 penalties, $1.5 costs
  - 2022 lawsuit alleged Amazon misled DC consumers by assuring them 100% of tips would go to Amazon Flex delivery drivers; lawsuit alleged tips were diverted to Amazon to offset labor costs without adequate disclosure of changed policy to consumers.

- DC Non-Compete Ban & Enforcement Action Settlements
  - In October 2022 DC banned non-compete agreements for certain workers, as of January 2025:
    - Workers who earn less than $158,363 and medical specialists that earn less than $263,939
    - 2-year limit for medical specialists earning more than the threshold and 1-year limit for workers earning more than the non-medical specialist threshold
  - 4/11/25 – Equinox Settlement
  - 4/21/25 – AllCare Settlement

DC AG ENFORCEMENT ACTIVITY

- 7/23/25 – Wage Transparency Act, D.C. Code § 32-1451 – Business Advisory
  - Wage Transparency Act Summary:
    - Employers with District Employees – applies to employers with at least one employee in the District
    - Protects employee discussions about compensation
    - Prohibits employers from requiring employees to disclose prior employment compensation history
    - Requires employers to disclose salary ranges for job listings and position descriptions advertised and disclose healthcare benefits before first interview
  - OAG Workers' Rights And Antifraud Section dedicated to enforcement of the Act

MARYLAND RECOGNIZES DE MINIMIS RULE FOR WAGE-AND-HOUR CLAIMS

This year the Maryland Supreme Court recognized that the de minimis defense was available for employers in response to claims under the Maryland Wage and Hour Law and Maryland Wage Payment and Collection claims.

Already recognized in other jurisdictions like California, by affirmatively adopting this defense as part of the state claims, employers will not be held liable for *de minimis* violations meaning truly trivial, administratively impractical amounts of unpaid time.

BENEFITS TO MARYLAND EMPLOYERS

REDUCES EXPOSURE FROM CLASS ACTIONS BASED ON SECONDS OR MINUTES OF ALLEGED OFF-THE-CLOCK WORK

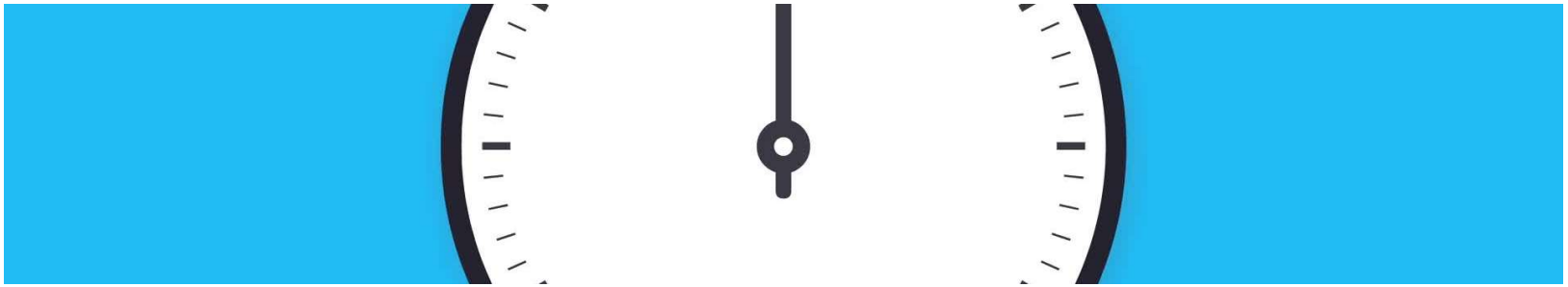
ALIGNS MARYLAND LAW MORE CLOSELY WITH FEDERAL FLSA PRINCIPLES

REJECTS A STRICT “PAY FOR EVERY SECOND” THEORY UNDER STATE WAGE LAWS

LIMITS ON DE MINIMIS RULE IN MARYLAND

- No fixed time threshold – fact specific analysis still required
- Regular, measurable, or easily tracked time may not qualify as de minimis
- Documentation and consistency remain critical

PRACTICAL TAKEAWAYS



- Review policies involving security checks, clock-out procedures, and end-of-shift activities
- Ensure any unpaid time is irregular, minimal, and difficult to record
- Consider whether technology or process changes could transform de minimis time into compensable time
    - **Virginia** – In 2022, the Overtime Wage Act was modified to incorporate the FLSA requirements into Virginia law. Va. Code Ann. § 40.1-29.2
    - **DC** – No affirmative stance on the de minimis rule

NATIONAL TRENDS IMPACTING CAPITAL REGION BUSINESSES

STATE JURISDICTION-BY-CONSENT STATUTES OR RULES

- ***What Are Jurisdiction-By-Consent?*** Statutes or rules that subject foreign companies to general personal jurisdiction through their registration to do business in that state or by transacting business in that state

- ***Why Should You Care?*** Businesses that are registered in or that transact business in states with a jurisdiction-by-consent statute or rule will govern the regulatory baseline and legal risks for a business' activity even if Illinois, for example, is not the target market

  - ***Example***: A Texas plaintiff injured by a toxic substance manufactured in Texas and purchased in Texas can sue the manufacturer and its insurance company in Illinois, a plaintiff-friendly jurisdiction, if they are registered to do business or transact business in Illinois even if that product is not sold in Illinois

ILLINOIS PASSED A JURISDICTION-BY-CONSENT STATUTE IN 2025

- Illinois, a state known for asbestos litigation, “no-injury” lawsuits, and high-dollar “nuclear” verdicts, recently passed a jurisdiction-by-consent statute for toxic tort liability

- Illinois, Public Act 104-0352 was signed into law August 2025:
  - By registering as a foreign corporation in Illinois or “transact[ing] business” there, a foreign corporation now consents to general personal jurisdiction for an “action alleg[ing] injury or illness resulting from exposure to a substance defined as toxic” regardless of whether it arises in Illinois. *See* 805 Ill. Comp. Stat. §§ 5/13.20(b), 5/13.70(c-5)

ILLINOIS JURISDICTION-BY-CONSENT STATUTE

- Definition of "**toxic**" is broad
  - "any substance (other than a radioactive substance) which has the capacity to produce bodily injury or illness to man through ingestion, inhalation, or absorption through any body surface." *See* 430 Ill. Comp. Stat. § 35/2-5.

- Other Requirement: at least one other named co-defendant must be subject to specific personal jurisdiction in Illinois. *See* 735 Ill. Comp. Stat. § 5/2-209(b)(5).

- ***Can consent be withdrawn?*** Yes, but only upon "formal withdrawal from [Illinois]." *See* 805 Ill. Comp. Stat. §§ 5/13.20(b), 5/13.45.

OTHER STATES WITH JURISDICTION-BY-CONSENT

Pennsylvania has a broad jurisdiction-by-consent provision that provides for general personal jurisdiction for all foreign corporations that are carrying on a continuous and systemic part of their general business in Pennsylvania. *See* 42 Pa. Cons. Stat. § 5301.

Other states, including Georgia and Minnesota, have historically interpreted their business and agent registration statutes and rules as consent by foreign corporations to general personal jurisdiction.

WHAT QUALIFIES AS DOING OR TRANSACTING BUSINESS?

- Illinois (805 Ill. Comp. Stat. 5/13.75), Pennsylvania (15 Pa Cons. Stat. § 403), Georgia (GA Code § 14-2-1501), and Minnesota (MN Stat § 322C.0803) have provisions that include a non-exhaustive list of activities that do not constitute transacting business, with categories such as:
  - Maintaining bank accounts with financial institutions
  - Conducting isolated transaction that is not one in the course of repeated transactions of a like nature (time period applicable varies by state)
  - Sales through independent contractors (not included in Minnesota)
  - Owning, without more, real or personal property
- Applicable categories vary by state. Because these definitions are based on non-exhaustive lists of what is not included in the definition of doing or transacting business, border-line cases may require fact intensive, case-by-case legal analysis.

STATE JURISDICTION-BY-CONSENT STATUTES

- ***Have These Statutes Been Challenged?*** SCOTUS upheld Pennsylvania's consent-by-registration statute in *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122 (2023) because it did not violate the due process clause of the Fourteenth Amendment. However, additional challenges as to the scope of these statutes are likely to continue.

- ***Are There Any Guardrails?*** "In my view, there is a good prospect that Pennsylvania's assertion of jurisdiction here—over an out-of-state company in a suit brought by an out-of-state plaintiff on claims wholly unrelated to Pennsylvania—violates the Commerce clause." *Mallory*, 600 U.S. 122, 160 (2023) (Alito, J. concurring).

- ***What to Expect From Here?*** More states are likely to explore jurisdiction-by-consent statutes

  - New York (Senate Bill S8186) passed the New York Assembly and New York Senate, but it was vetoed by Governor Kathy Hochul in December 2025

STATES ATTORNEYS GENERAL ARE FILLING THE ENFORCEMENT VOID LEFT BY THE CFPB

- State Attorneys General are expanding enforcement of federal law

- Across the country state AGs are taking aim at FinTech industry specifically
  - New litigation in EDVA (*Virginia ex rel. Miyares v. Waller*) asserting Truth in Lending Act, Consumer Financial Protection Act, and Virginia claims against multiple lenders for alleged deceptive practices and hidden loan fees associated with high-priced solar systems

STATE AGS FILLING THE CFPB VOID

- Increased Attention to Non-Traditional Financial Products
  - There is a renewed focus on fintech companies that provide cash advances as part of a model involving subscription fees, fees for quick access to money, and/or tips
    - Baltimore City's lawsuits against MoneyLion Technologies, Inc. and Dave, Inc.
    - DC Attorney General's lawsuit against Activehours, Inc. d/b/a EarnIn
    - These lawsuits have focused on marketing employed by these companies to represent their services as different from payday loans, as interest free, and without any hidden fees. DC and Baltimore City have primarily asserted unfair and deceptive trade practices claims under State law along with failure to obtain a license or charging usurious interest rates.

TARIFFS OPINION

PROCEDURAL TIMELINE

a. April 2, 2025, Liberation Day, IEEPA tariffs announced
b. May 28, 2025, CIT rules against the administration
c. August 29, 2025, Federal Circuit upholds CIT decision
d. February 20, 2026, SCOTUS upholds Federal Circuit decision
e. March 4, 2026, CIT orders CBP to take action relative to SCOTUS decision

TWO QUESTIONS

1. Am I entitled to a refund?
2. How do I get one?

TARIFFS OPINION

SCOPE OF THE MARCH 4, 2026 ORDER

✓ Covered by This Order

- Entries that remain **unliquidated as of March 4, 2026** — CBP must liquidate these entries without applying IEEPA duties.
- Entries **liquidated on or after September 6, 2025** (i.e., within the 180-day protest period as of March 4, 2026) — CBP must reliquidate to remove IEEPA duties and issue refunds, potentially with statutory interest.
- Entries for which a **protest was timely filed and remains pending**, regardless of liquidation date — those entries remain administratively open and subject to correction.
- This framework promotes **uniform treatment** across importers by correcting all entries that remain administratively open under customs law.

✗ NOT Covered by This Order

- Entries **liquidated before September 6, 2025** for which no protest was filed — the 180-day protest period for those entries had expired before March 4, 2026.
- Entries where the **protest deadline has passed** without a protest being filed.
- Entries that are **fully final under 19 U.S.C. § 1514** — once liquidation becomes final and conclusive, CBP's authority to reopen the entry is extremely limited.
- Voluntary reliquidation under **19 U.S.C. § 1501** is limited to correcting clerical errors or mistakes of fact within one year of liquidation and generally does not apply to duties later invalidated as unlawful.

⚠ **Key Principle:** Once the 180-day protest window closes without a timely protest, the liquidation becomes **final and conclusive** under 19 U.S.C. § 1514(a). At that point, the entry is generally locked and CBP has very limited authority to reopen it — even when the underlying tariff has been judicially invalidated.

QUESTIONS / ANSWERS / GENERAL DISCUSSION

QUESTIONS? Please reach out.

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