



May 9, 2024
The Ritz-Carlton (Clayton, MO)



Agenda

7:30 – 8:30 Registration, Continental Breakfast and Visit Exhibitors

8:30 – 8:40 Welcome & Kick Off Remarks

President, Association of Corporate Counsel

President, Bar Association of Metropolitan St. Louis

8:40 – 9:30 Session Title: This is Not a Game (Show)! Ethical Issues in Internal Investigations That Could Land Your Company in Jeopardy!
I-Hour Ethics
Law Firm: Bryan Cave

9:40 – 10:30 Session Title: Hot Topics from the Highest Courts
Law Firm: Lewis Rice

10:30 – 10:45 Break: Visit Exhibits

10:45 – 11:35 Session Title: Organizing Trends and Employer Strategies after the NLRB's CEMEX Decision.
Law Firm: McMahon Berger

11:35 – 1:00 Lunch and Presentation
St. Louis is Resurgent: How Business and Civic Leaders Are Coming Together to Move the Metro Forward

Speakers:

Carolyn Kindle, CEO and Co-Owner at St. Louis CITY SC

Gabe Gore, City Attorney, City of St. Louis

Travis Sheridan, Chief Community Officer for Wexford Science and Technology and Co-Chair of the Brickline Campaign

Moderator: Jason Hall, CEO, Greater Saint Louis

1:00 – 1:15 Break: Visit Exhibits

1:15 – 2:05 Session Title: The Building Blocks of M&A: Key M&A Issues and Trends
Law Firm: Armstrong Teasdale

2:05 – 2:15 Break: Visit Exhibits

2:15 – 3:05 Break Out A: Thriving Under the Corporate Transparency Act
Law Firm: Polsinelli

Break Out B: Finding the Fodder of Fraud: Strategies for Your Practice
Law Firm: Thompson Coburn

3:05 – 3:20 Break; Visit Exhibits

3:20 – 4:10 Session Title: Challenges & Opportunities Posed By Artificial Intelligence in the Practice of Law
Law Firm: Husch Blackwell

4:20 – 5:10 Session Title: Inclusive Leadership: The 6 To Do's (Title Updated 3-28-2024) I-Hour Elimination of Bias
Law Firm: Ogletree Deakins

5:10 - 6:30 Reception and Prizes Awarded



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RECEPTION

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8:40 AM - 9:30 AM

**This is Not a Game (Show)! Ethical
Issues in Internal Investigations That
Could Land Your Company in Jeopardy!**

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THIS IS NOT A GAME (SHOW):
 ETHICAL ISSUES IN INTERNAL INVESTIGATIONS THAT COULD LAND YOUR COMPANY IN JEOPARDY!

May 9, 2024
 Presented by Chris Blasring, Ali Olaszki, Barbara Smith, Ben Ford and Mark Lemihan



PANEL

PRIVILEGE & CONFIDENTIALITY	WHO IS THE CLIENT?	BEST PRACTICES	DISCLOSURES	"S" WORDS	POTENTIAL PORTABLES
\$100	\$100	\$100	\$100	\$100	\$100
\$200	\$200	\$200	\$200	\$200	\$200
\$300	\$300	\$300	\$300	\$300	\$300
\$400	\$400	\$400	\$400	\$400	\$400
\$500	\$500	\$500	\$500	\$500	\$500

PRIVILEGE AND CONFIDENTIALITY - \$100

Defining these early and effectively will enhance claims of privilege regarding internal investigations.

— BACK TO PANEL

Answer

What are the purpose and scope of an investigation?

- Be deliberate: Why is the investigation needed? Scope? Charge/directive?
- Business purpose vs. legal purpose
 - *Diversified Indus. Inc. v. Meredith*, 572 F.2d 596 (8th Cir. 1977) (internal investigation report was not privileged because there was no legal purpose and it was not done in anticipation of litigation)
 - *Doe v. Kirkwood R-7 Sch. Dist.*, 2023 WL 8697806 (E.D. Mo. Dec. 15, 2023) (good discussion of relevant factors)
 - *Bd. of Registration for Healing Arts v. Spinden*, 798 S.W.2d 472 (Mo. Ct. App. 1990) (report done in ordinary course not privileged)
- Is litigation anticipated?

This term refers to the principle of keeping sensitive information and communications private during an internal investigation.

BEST PRACTICES - \$100

— BACK TO PANEL

PRIVILEGE & CONFIDENTIALITY	WHO IS THE CLIENT?	BEST PRACTICES	DISCLOSURES	“S” WORDS	POTENT POTABLES
\$200	\$100	\$100	\$100	\$100	\$100
\$300	\$200	\$200	\$200	\$200	\$200
\$400	\$300	\$300	\$300	\$300	\$300
\$500	\$400	\$400	\$400	\$400	\$400
\$500	\$500	\$500	\$500	\$500	\$500

PANEL

Answer

What is confidentiality?

- Missouri Rule 4-1.6: Confidentiality of Information.
- Limit circulation of legal advice and privileged communications internally to those who need to know.
- When interviewing your company’s employees, do not make a blanket statement that the investigation will be kept strictly confidential.

PANEL

PRIVILEGE & CONFIDENTIALITY	WHO IS THE CLIENT?	BEST PRACTICES	DISCLOSURES	"S" WORDS	POTENT PORTABLES
	\$100		\$100	\$100	\$100
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\$400	\$400	\$400	\$400	\$400	\$400
\$500	\$500	\$500	\$500	\$500	\$500

WHO IS THE CLIENT - \$100

— BACK TO PANEL

This is the counsel's client when engaged to perform an internal investigation.

Answer

Who is the company?

- The answer is simple but easy to lose sight of:
- Under Missouri Rule 4-1.1.3, "[a] lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents."
- Easy to confuse the client with the client representative, particularly, a CEO or other officer or executive.

PANEL

PRIVILEGE & CONFIDENTIALITY	WHO IS THE CLIENT?	BEST PRACTICES	DISCLOSURES	"S" WORDS	POTENT PORTABLES
			\$100	\$100	\$100
\$200	\$200	\$200	\$200	\$200	\$200
\$300	\$300	\$300	\$300	\$300	\$300
\$400	\$400	\$400	\$400	\$400	\$400
\$500	\$500	\$500	\$500	\$500	\$500

BEST PRACTICES - \$200

To uphold objectivity and independence during the investigation process, this key principle must be prioritized to prevent biases and conflicts of interest from undermining the integrity of the investigation.

— BACK TO PANEL

Answer

What is impartiality?

- Consider whether **you** are in the best position to lead the internal investigation.
- Investigations of suspected wrongdoing by senior management should be conducted by someone outside the company.
- The company is best served to portray itself to the government, its independent auditors, the investment community, and the media as having complete integrity and a commitment to uncovering the facts.

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PANEL

PRIVILEGE & CONFIDENTIALITY	WHO IS THE CLIENT?	BEST PRACTICES	DISCLOSURES	"S" WORDS	POTENTIAL BLES
			\$100	\$100	\$100
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\$500	\$500	\$500	\$500	\$500	\$500

PRIVILEGE AND CONFIDENTIALITY - \$200
This doctrine may protect communications between multiple parties implicated in an internal investigation.

— BACK TO PANEL

Answer

What is the common interest or JD privilege?

- This is an extension of the attorney-client privilege.
- Beware of optics (e.g., Yates memo/cooperation credit).
- This applies “where a joint defense effort or strategy has been decided upon and undertaken by the parties and their respective counsel.”
 - *United States v. Schwimmer*, 892 F.2d 237, 243 (2d Cir. 1989).
- Beware of “unofficial” waiver:
 - *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 940 (8th Cir. 1997) (explaining that the “[j]oint defense privilege cannot be waived without the consent of all parties to the defense”).

PRIVILEGE AND CONFIDENTIALITY - \$300

This agreement, named after a 1961 Supreme Court decision (not the infamous St. Louis cheese), is between a lawyer and consultant and aims to protect the lawyer’s and consultant’s communications with the client as privileged and is the best way to shield communications with an accountant.

— BACK TO PANEL

PANEL

PRIVILEGE & CONFIDENTIALITY	WHO IS THE CLIENT?	BEST PRACTICES	DISCLOSURES	“S” WORDS	POTENT PORTABLES
\$500	\$500	\$500	\$500	\$500	\$500
\$400	\$400	\$400	\$400	\$400	\$400
\$300	\$300	\$300	\$300	\$300	\$300
\$200	\$200	\$200	\$200	\$200	\$200
\$100	\$100	\$100	\$100	\$100	\$100

Answer

What is a Kovel agreement?

- Based on *U.S. v. Kovel*, 296 F.2d 918 (2d Cir. 1961).
- Serves to protect privileges with outside consultants, like CPAs.
- Overall Structure: Law Firm engages Consultant to assist with providing legal advice to Client.
- Exercise Caution: Courts scrutinize *Kovel* agreements. Over-reliance is a risk.
 - See, e.g., *In re Am. Med. Collection Agency, Inc., Customer Data Sec. Breach Litig.*, No. 19MD2904MCAMAH, 2023 WL 8595741, at *8 (D.N.J., Oct. 16, 2023).

PANEL

PRIVILEGE & CONFIDENTIALITY	WHO IS THE CLIENT?	BEST PRACTICES	DISCLOSURES	"S" WORDS	POTENTIAL POTABLES
			\$100	\$100	\$100
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	\$300	\$300	\$300	\$300	\$300
\$400	\$400	\$400	\$400	\$400	\$400
\$500	\$500	\$500	\$500	\$500	\$500

PANEL

BEST PRACTICES- \$300

This crucial step must be taken at the outset of an interview in an internal investigation so things don't go downhill!

— BACK TO PANEL

Answer

What is an *Upjohn* warning?

- *Upjohn Co. v. United States*, 449 U.S. 383 (1981).
- In an *Upjohn* warning, employees are told whom the attorney represents, that the attorney-client privilege belongs to the corporation, and that the corporation may waive the privilege and disclose the substance of the interview to third parties.
- Interview notes should reflect that the warning was given and the employee acknowledged she/he understood.

PANEL

PRIVILEGE & CONFIDENTIALITY	WHO IS THE CLIENT?	BEST PRACTICES	DISCLOSURES	"S" WORDS	POTENTIAL POTABLES
	\$200		\$100	\$100	\$100
	\$300		\$200	\$200	\$200
	\$400	\$400	\$300	\$300	\$300
\$400	\$400	\$400	\$400	\$400	\$400
\$500	\$500	\$500	\$500	\$500	\$500

BEST PRACTICES: \$400

This refers to the provision of legal counsel that is separate from the organization conducting the internal investigation.

— BACK TO PANEL

Answer

What is independent representation?

- Missouri Rule 4-1.7: Conflict of Interest: Current Clients.
- *In re Information Management Services, Inc., Derivative Litigation*, 81 A.3d 278 (Del. Ch. 2013).

PANEL

PRIVILEGE & CONFIDENTIALITY	WHO IS THE CLIENT?	BEST PRACTICES	DISCLOSURES	"S" WORDS	POTENTIAL DAMAGES
			\$100	\$100	\$100
		\$200	\$200	\$200	\$200
		\$300	\$300	\$300	\$300
\$400	\$400		\$400	\$400	\$400
\$500	\$500	\$500	\$500	\$500	\$500

PRIVILEGE & CONFIDENTIALITY: \$400

This may destroy privilege that would otherwise protect an internal investigation and documents created from disclosure.

— BACK TO PANEL

Answer

What is a waiver?

- Disclosure to third-party = waiver.
- Beware of over-disclosure within an organization.
 - *Ryan v. Gifford*, No. CIV.A. 2213-CC, 2007 WL 4259557 (Del. Ch. Nov. 30, 2007) (privilege waived when report shared with full board, some of whom were implicated in the matters investigated).
- "Selective disclosure" to regulators.
 - *United States v. Shyras*, 898 F.2d 647 (8th Cir. 1990) (holding that "selective privilege" does not constitute general waiver).
 - *United States v. Massachusetts Inst. of Tech.*, 129 F.3d 681 (1st Cir. 1997) ("rejecting "selective disclosure").

"S" WORDS: \$100

On guard! Be careful, selective disclosure of privileged materials or information might result in a full waiver, or what courts often call the misuse of privilege.

— BACK TO PANEL

PANEL

PRIVILEGE & CONFIDENTIALITY	WHO IS THE CLIENT?	BEST PRACTICES	DISCLOSURES	"S" WORDS	POTENT POTABLES
			\$100	\$100	\$100
			\$200	\$200	\$200
			\$300	\$300	\$300
			\$400	\$400	\$400
\$500	\$500	\$500	\$500	\$500	\$500

Answer

What is sword and shield?

- The attorney-client privilege and work product doctrine are incredibly important.
- But don't be too clever by half!
- If you try to disclose privileged communications or work product when it helps you, but hide privileged information on a privilege log when it hurts you, courts will not take kindly to this tactic.
 - *Sherman v. Berkadia Commercial Mortgage, LLC*, 2018 WL 4300322 (E.D. Mo. Sept. 10, 2018) (sword and shield principle; fairness doctrine).
 - *Baker v. Gen. Motors Corp.*, 209 F.3d 1051, 1055 (8th Cir. 2000) (at issue waiver).

PANEL

PRIVILEGE & CONFIDENTIALITY	WHO IS THE CLIENT?	BEST PRACTICES	DISCLOSURES	"S" WORDS	POTENTIAL DAMAGES
			\$100		\$100
	\$200		\$200	\$200	\$200
	\$300		\$300	\$300	\$300
	\$400		\$400	\$400	\$400
\$500	\$500	\$500	\$500	\$500	\$500

DISCLOSURES - \$100

— BACK TO PANEL

This is a good evidentiary-minded practice when providing periodic updates on the investigation to management.

Answer

What is an oral report?

- Lawyers have an ethical duty to keep clients reasonably informed about the status of matters. Missouri Rule 4-1.4.
- Privilege disputes are won and lost. Anticipate the loss!
- Providing oral reports about sensitive matters or preliminary conclusions is a good practice to employ.

PANEL

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					\$100
	\$200		\$200	\$200	\$200
	\$300		\$300	\$300	\$300
	\$400		\$400	\$400	\$400
\$500	\$500	\$500	\$500	\$500	\$500

DISCLOSURES - \$200

Two of these events might apply to in-house counsel before they may reveal information relating to the representation of a client.

— BACK TO PANEL

Answer

What is “to secure legal advice about the lawyer’s compliance with” the Missouri Rules of Professional Conduct AND “to comply with other law or a court order”?

- Missouri Rule 4-1.6(b): Confidentiality of Information.
- We all know that lawyers generally cannot disclose information related to the representation of a client.
- Missouri Rule 4-1.13(b): Organization as Client.
- But Missouri Rule 4-1.6(b) provides limited exceptions to this general rule.

PANEL

PRIVILEGE & CONFIDENTIALITY	WHO IS THE CLIENT?	BEST PRACTICES	DISCLOSURES	“S” WORDS	POTENTIAL DAMAGES
					\$100
	\$200			\$200	\$200
	\$300		\$300	\$300	\$300
	\$400		\$400	\$400	\$400
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DISCLOSURES - \$300

Under the ABA Model Rules, but not the Missouri Rules of Professional conduct, if in-house counsel believes that a violation is reasonably certain to result in substantial injury to the organization, only then may counsel take this action.

— BACK TO PANEL

Answer

What is reveal information relating to the representation outside of the organization?

- ABA Model Rule 1.13(c).
- But see Missouri Rule 4-1.13(c): Organization as Client.
- Under the ABA Model Rules, the lawyer may reveal information relating to the representation outside of the organization.
- But under Missouri Rule 4-1.13(c), if an organization's highest authority refuses to act and the attorney believes a violation of law or substantial injury to the organization will occur, then the lawyer "may resign in accordance with Rule 4-1.16."

DISCLOSURES - \$400

While rare, the SEC will sometimes allow in-house counsel to serve as this role, even if they're typically bound by confidentiality obligations.

— BACK TO PANEL

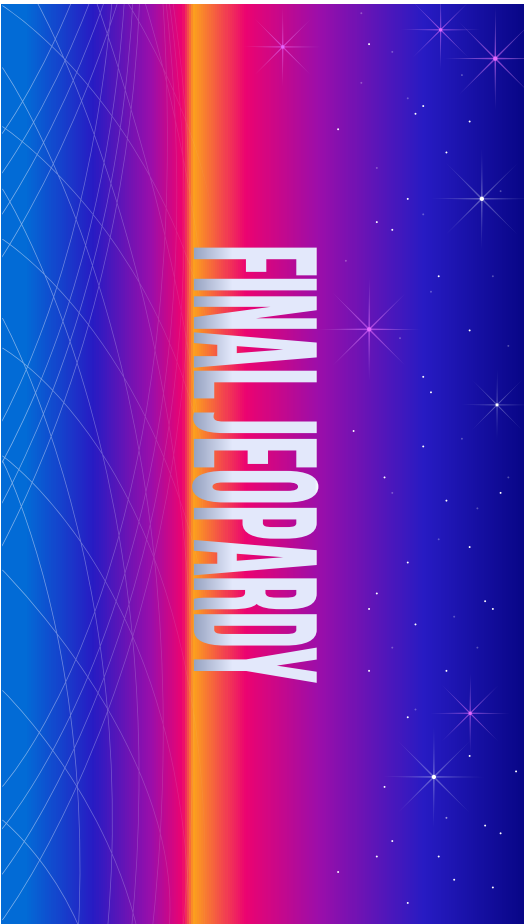
PANEL

PRIVILEGE & CONFIDENTIALITY	WHO IS THE CLIENT?	BEST PRACTICES	DISCLOSURES	"S" WORDS	POTENT POTABLES
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					\$200
					\$300
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					\$500

Answer

What is a whistleblower?

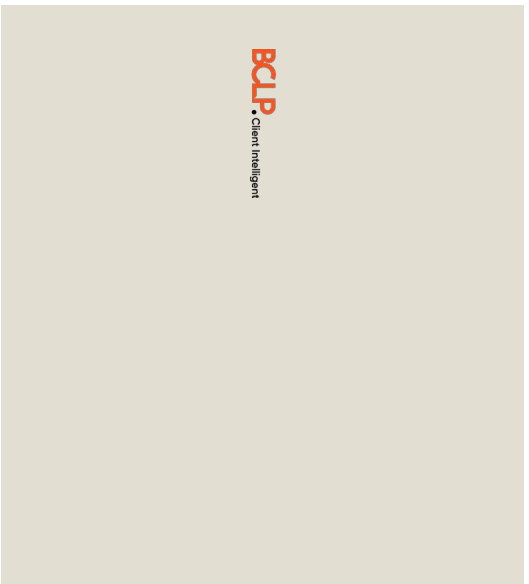
- 17 CFR § 240.21F-4(b)(4)(i).
- 17 CFR § 205.3(d)(2).
- Section 240.21F is the SEC whistleblower regulation.
- Section 240.21F-4(b)(4)(i) provides generally that if the whistleblower's information was obtained subject to the attorney-client privilege, then the Commission will not consider the information to be derived from independent knowledge or analysis.
- But, Section 205.3(d)(2) is an exception, which allows an attorney practicing before the Commission in the representation of an issuer to reveal information without the issuer's consent to prevent perjury or to prevent or rectify material violations that would cause substantial injury to the financial interests of the issuer or investors.



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9:40 AM - 10:30 AM

Hot Topics from the Highest Courts

LEWIS RICE

Hot Cases at the High Court: The Supreme Court at Mid-Term, 2023-24

ACC Corporate Counsel Institute



Evan Z. Reid

May 9, 2024

LEWIS RICE

Actually, It's The Six:



LEWIS RICE

The Nine:



LEWIS RICE

Understanding the Majority

- Must look at the individual justices
- Thomas and Alito: long-serving, socially conservative
- Gorsuch: strong textualist, originalist
- Kavanaugh: values comity, not strong textualist or originalist
- Barrett: Cautious, precise, inquisitive
- Roberts: New role, but still leading

LEWIS RICE

The Last Two Terms—Constitutional Cases

- *Dobbs*: The ultimate prize of the conservative legal movement.
- Majority was 5-1-3, as Roberts fails to craft a compromise that would preserve a limited *Roe*
- *N.Y. Rifle & Pistol Ass'n v. Bruen*: For the first time, recognizes the right to carry firearms outside the home. Discards balancing test in favor of historical review standard: (6-3)
- *Students for Fair Admission*: 6-3 majority holds that use of race in admissions violates the Equal Protection Clause
 - A student's race can be considered in the context of how it influenced their character—but the student must be considered as an individual

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Where Is the Majority Strongest?

- Broad constitutional changes:
 - Abortion
 - Gun Ownership
 - Affirmative Action
 - Religious exercise
- Curbing government power:
 - Environmental
 - Rule-making

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More from the Last Two Terms—Government Power

- *West Virginia v. EPA*: Using “Major Questions Doctrine”, says that economic and political significance of the issue requires express Congressional authorization for emissions caps (6-3)
- *Sackett v. EPA*: The Clean Water Act extends only to wetlands that have a continuous surface connection with “waters” of the United States—i.e., with a relatively permanent body of water connected to traditional interstate navigable waters (5-4)
- *Biden v. Nebraska*: The Secretary of Education does not have authority under the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act) to establish a student loan forgiveness program that will cancel roughly \$430 billion in debt (6-3)

LEWIS RICE

Any Signs of Fracture?

- Over two full and one partial term, no sign of fracture
- Cases where conservative justices disagree as to holding are few, and not about core concerns of conservative legal movement
- Gorsuch’s tribal cases, Thomas’s frequent dissents, at times with Alito (Indian Child Welfare case)
- No indication of disagreement with in majority of what rulings to overturn

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The Exception—Moore v. Harper

- The Federal Elections Clause does not vest exclusive and independent authority in state legislatures to set the rules regarding federal elections
- 6-3 majority: Roberts, Barrett, Kavanaugh, Kagan, Sotomayor, and Jackson
- Thomas, Alito, and Gorsuch dissent on mootness grounds
- BUT: *Trump v. Anderson*, 5-4 majority, less Barrett, takes strong position to limit reach of Sec. 3 of Fourteenth Amendment

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Not to Read Too Much Into It...

- Thomas Jefferson High School for Science and Technology is a selective, public Virginia institution
- In 2020, school board made changes to admissions policies: no fee, no test, consideration of factors such as free lunch, non-English learner
- Lawsuit claimed disparate impact on Asian-American students
- 4th Circuit upheld policy, Supreme Court refused case
- Alito files 10-page dissent

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The Real Story

- Not fracture, but cases where majority has declined to fully embrace core conservative issues:
 - *Haaland v. Brackeen*—Upholding the Indian Child Welfare Act
 - *Groff v. DeJoy*—Passing on the opportunity to overturn *Smith*
 - *United States v. Texas*—No standing for state to challenge DHS immigration guidelines
 - *National Park Producers v. Ross*—Court splits, no attack on Dormant Commerce Clause

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Muldrow v. City of St. Louis

- Plaintiff is a St. Louis police sergeant, transferred from intelligence division to regular patrol
- 8th Circuit precedent requires proof of “adverse employment action”—loss of position or pay. District Court grants summary judgment to City
- Affirmed by 8th Circuit and cert. granted by Supreme Court—other circuits do not require proof of adverse employment action beyond discrimination

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Muldrow—Victory for Workers?

- Supreme Court overturns 8th Circuit unanimously
- Six justices join majority opinion, which holds that under the text of Title VII plaintiff need only show some harm with respect to an identifiable term or condition of employment, but that harm need not be significant
- Discrimination + Some Harm = Title VII violation
- Concurrences: “Some harm” isn’t definite enough

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Murray v. UBS Securities

- Analyst at UBS was required to certify independence and accuracy of his reports
- Claims that he was pressured to skew his research
- Reported the pressure tactics to his supervisor
- UBS terminated Murray, and he sued under Sarbanes-Oxley anti-retaliation provision
- District Court ruled in Murray’s favor after trial and Second Circuit reversed
- Circuit Court said Murray had to prove “retaliatory intent”

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Muldrow—The Next Battleground

- Pleading stage—did you state enough facts to plausibly show discrimination? “Prism” to determine plausibility
- *Ingram v. Arkansas Department of Corr.* (8th Cir. 2024): affirming dismissal for failure to state a claim
- Don’t have to show prima facie case at pleading, but here plaintiff failed to plead facts that she was “similarly situated in all relevant respects” to differently treated co-workers, so no discrimination
- “Similarly situated” is supposed to come in after employer rebuts prima facie case at the end, not at pleading stage

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Murray v. UBS Securities—Supreme Court Reverses

- Supreme Court rules unanimously that Murray did not have to prove “retaliatory intent” on the part of UBS
- Statute does not refer to retaliatory intent; bars retaliation in employment “because of” whistleblowing
- Whistleblower who sues under SOX need only show that the protected activity “was a contributing factor in the unfavorable personnel action alleged in the complaint.”
- Employer must then show that it would have taken same action regardless of whistleblowing

LEWIS RICE

Loper Bright—The End of Chevron?

The “Chevron Deference” doctrine under which courts *must* defer and give “controlling weight to” an administrative agency’s interpretation of a particular statute over which Congress has entrusted it to administer and promulgate rules of enforcement *if*: (i) the statute is ambiguous or silent; and (ii) the agency’s interpretation is not “arbitrary, capricious, or manifestly contrary to the statute” but is “permissible” and “reasonable.”

Chevron U.S.A., Inc. v. Nat. Resources Def. Council, Inc., 467 U.S. 837 (1984)

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Loper Bright—Question Presented

- Two cases, *Loper Bright Enterprises v. Raimondo* and *Relentless v. Dep’t. of Commerce* presenting the same question:
“Whether the court should overrule *Chevron v. Natural Resources Defense Council*, or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency.”
- How to judge the interpretation of the Magnuson-Stevens Act in requiring herring boat owners to pay part of cost for monitors?

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Rising Criticism of Chevron Deference

“Rather than say what the law is, we tell those who come before us to go ask a bureaucrat... **At this late hour, the whole project deserves a tombstone no one can miss. We should acknowledge forthrightly that *Chevron did not undo ... the judicial duty to provide an independent judgment of the law’s meaning in the cases that come before the Nation’s courts.*”** *Buffington v. Dep’t of Veteran Affairs*, 598 U.S. ____, 143 S.Ct. 14 (2022), Gorsuch, J., dissenting

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Loper Bright—Oral Arguments

- Three-and-a-half hours of argument on January 17
- Justice Kavanaugh criticized *Chevron* for producing unstable results, stating that the framework “ushers in shocks to the system every four to eight years when a new administration comes in.”
- Justice Barrett and Justice Jackson expressed concerns about a potential flood of litigation if regulations approved under *Chevron* come under fresh attack
- Strong conservative push against *Chevron*, but are courts ready to be a supra-regulatory agency?

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A Complication for Chevron's End—Corner Post

- *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*
- Regulation II caps the fees that banks can charge for each debit card transaction, originally published in 2011
- Six-year statute of limitations
- Does a plaintiff's claim under the Administrative Procedure Act "first accrue" under 28 U.S.C. § 2401(a) when an agency issues a rule, or when the rule first causes harm to the plaintiff?
- If *Chevron* falls and *Corner Post* wins, will courts be overwhelmed by new challenges to old regulations? Is a rule ever final?

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SEC v. Jarkesy—Oral Arguments

- Arguments focused on Seventh Amendment issue alone
- Justices Gorsuch and Thomas unhappy with SEC-imposed fines
- Can Congress sidestep Seventh Amendment by having an agency adjudicate under "public rights" doctrine? Gorsuch says that since the charges here look like common law fraud, can't escape jury trial
- Justice Kagan: Seventh Amendment is no bar to creation of new public rights and enforcement by agencies outside of courts of law
- Barrett, Kavanaugh, and Roberts are the swing votes

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SEC v. Jarkesy—Independent Agency Power

- SEC investigates and brings in-house complaint against hedge fund founder Greg Jarkesy
- ALJ finds Jarkesy committed securities fraud
- Commission affirms the finding and imposes penalties
- 5th Circuit says that Seventh Amendment bars SEC from imposing fines, Nondelegation clause means Congress can't delegate decision to proceed administratively to SEC, and ALJ appointment procedures violate the Appointment Clause

LEWIS RICE

How Far to Go? Post-Dobbs Abortion Cases

- *FDA v. Alliance for Hippocratic Medicine*:
 - Doctors challenging FDA approval of abortion drug mifepristone
 - Standing?
 - Arbitrary and Capricious?
 - If court reaches merits, what deference to FDA?
- *Moyle v. U.S.*:
 - Does the federal Emergency Medical Treatment and Labor Act preempt an Idaho law that criminalizes most abortions in that state?
 - How to balance language of EMTALA with state sovereignty?

LEWIS RICE

First Amendment Cases—Gov't Meets Social Media

- Three Categories:
 - Government anti-discrimination requirements collide with private views
 - State governments restrict moderation activities of social media platforms
 - Gov't Officials' influence on social media companies

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Civil Rights v. Free Speech Rights

- Gorsuch: Public accommodations are important, but the First Amendment controls and so individuals cannot be compelled to create messages with which they disagree
- Sotomayor: "the Court, for the first time in its history, grants a business open to the public a constitutional right to refuse to serve members of a protected class."

LEWIS RICE

303 Creative v. Elenis

- Colorado statute prohibits businesses that are open to the public from from discriminating on the basis of numerous characteristics, including sexual orientation
- Graphic designer, owner of 303 Creative, challenges law because she does not want to design websites for gay marriages
- By 6-3 majority, Court holds that the First Amendment bars a state from forcing someone to create expressive designs containing messages with which the designer disagrees

LEWIS RICE

Moody v. NetChoice

- Florida law treats social media companies as common carriers
- Imposes restrictions on content moderation
- Allows for imposition of substantial fines and civil suits
- Aimed at the largest platforms: 100 million monthly users or excess of \$100 million annual gross revenue
- 11th Circuit: law isn't narrowly tailored and doesn't serve a legitimate state interest, so can't survive strict scrutiny

LEWIS RICE

NetChoice v. Paxton

- Texas law seeks to ban large social media companies from moderating content based on views of users
- Section 2 requires platforms to disclose how they moderate and promote content, publish an "acceptable use policy," and maintain a complaint-and-appeal system for their users
- Section 7 prohibits viewpoint-based censorship of users' posts, except for content that incites criminal activity or is unlawful
- 5th Circuit overrules district court injunction; says platforms do not have "free-wheeling" First Amendment right to edit others

LEWIS RICE

NetChoice Oral Arguments

- Overall tone toward state laws is skeptical
- Justice Kavanaugh: First Amendment protects against government limitations on speech, not private business
- Justice Barrett: If platforms are exercising editorial control in removing posts, then it's like more a newspaper than a general forum
- Possible dissents from Justices Thomas and Alito. Thomas: When have we ever said the First Amendment gives a right to censor?

LEWIS RICE

Murthy v. Missouri

- Plaintiffs claim that federal agencies have targeted conservative speech on social media platforms, resulting in posts being removed, violating their First Amendment rights
- District Court in Louisiana issued broad injunction limiting specific federal officials from contacting social media companies
- 5th Circuit affirms, but shortens list of officials covered by order
- Supreme Court issued emergency stay

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Murthy Oral Arguments

- Did the federal government's request that private social media companies take steps to prevent the dissemination of purported misinformation transform those companies' content-moderation decisions into state action and thus violate users' First Amendment rights?
- Standing: one plaintiff has a restricted Facebook account, but what is the cause? Arguments focus on merits
- Justices Kagan and Kavanaugh: contacts between government and media companies are normal
- Justice Roberts says government is not monolithic; if one part provides pressure, another may provide relief
- Justice Alito: social media companies may be more vulnerable

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National Rifle Assoc. v. Vullo

- After school shootings in Florida, head of NY Dept. of Financial Services issues press statement and guidance letters urging insurance companies and banks of reputational risk of doing business with the NRA
- Several companies and banks cut ties with NRA
- Did Vullo cross the line between trying to convince and trying to coerce?
- Court seemed sympathetic, but even if NRA has a First Amendment claim, lower court found Vullo had qualified immunity

LEWIS RICE

Harrington Oral Arguments

- Court appears deeply divided; code allows “any” and “appropriate” releases and Justice Kavanaugh notes breadth
- Justice Gorsuch: “appropriate” doesn’t mean “anything goes”
- Justice Jackson points out that the releases are only “appropriate” because the Sacklers wouldn’t fund the settlement in the plan without the releases
- Chief Justice Roberts asks the government why it didn’t rely on the major questions doctrine and argue that Congress didn’t provide express authority for these types of settlements?

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Harrington v. Purdue Pharma, L.P.

- Bankruptcy Court approved a plan that blocked third party claims against the Sacklers, founders of Purdue Pharma, distributor of Oxycontin. In return, Sacklers help fund payments to claimants
- 2nd Circuit affirmed bankruptcy plan
- Can a bankruptcy extinguish claims by nondebtors against nondebtor third parties, without claimants’ consent?

LEWIS RICE

The Mid-Term Report Card

- Incomplete, except for employment cases like *Muldrow* and *Murray*
- Top-of-the-Headlines Cases are Trump immunity and abortion
- BUT, this term promises much more:
 - How far will the majority push on *Chevron*?
 - Will the Court revisit fundamental First Amendment principles?
 - Will the majority resume its push on the Second Amendment by voiding statute barring firearm possession by persons under domestic violence order?
- Will signs of caution on core issues continue?

LEWIS RICE

QUESTIONS?

LEWIS RICE

10:45 AM - 11:35 AM

**Organizing Trends and Employer
Strategies after the NLRB's CEMEX
Decision.**



LABOR/EMPLOYMENT LAW AFTER THE NLRB CMEZK DECISION AND NLRB RULES CHANGE

Presented by:

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How the New Rule Changes the Election Process

- Scheduling Pre-Election Hearings**
 - Pre-hearings will be scheduled to occur eight (8) calendar days from the service of Notice of Hearing (approximately 10 days sooner).
 - Prior rule: Fourteen (14) business days from the service of Notice of Hearing.
- Postponing Pre-Election Hearings**
 - Regional Directors may postpone pre-election hearing for just two (2) business days (special circumstances).
 - May postpone for more than two days only if extraordinary circumstances can be shown.
 - Prior rule: Regional Directors had discretion to postpone for good cause.



An Overview of the NLRB's New December 2023 rule

- No notice and comment process.
- Published: August 25, 2023
- Effective: December 28, 2023
- Essentially restores the 2014 "ambush" rules.
- Sets aggressive timeline for union election.
- Designed to remove unnecessary barriers to the "fair, efficient, and expeditious resolution of representation cases." *Representation-Case Procedures*, 88 FR 58076 (Aug. 25, 2023).



How the New Rule Changes the Election Process

- Due Date for Employer's Statement of Position**
 - Statement of Position due by noon the business day before pre-election hearing (7 calendar days after Notice of Hearing).
 - Prior rule: Due 8 business days after Notice of Hearing.
- Postponing Statement of Position**
 - Regional Director may grant additional time of two (2) business days (special circumstances).
 - May grant more than 2 days if extraordinary circumstances can be shown.
 - Prior rule: Regional Directors had discretion to postpone for good cause.



How the New Rule Changes the Election Process

- Responsive Statement of Position**
 - Petitioners will respond orally to the employer's statement of position at the hearing and not in writing.
 - Prior rule: Petitioners were required to submit written response 3 business days prior to pre-election hearing.
- Posting and Distributing the Notice of Petition for Election**
 - After the Notice of Hearing is served, employers have 2 business days to post the Notice of Election.
 - Must be distributed electronically if employer customarily communicates with employees electronically.
 - Failure to post or distribute may be grounds for setting aside election.
 - Prior rule: Employers had five business days to post the Notice.



How the New Rule Changes the Election Process

- Election Details**
 - Regional Directors will specify election details in the decision and direction of election.
 - Type, date, time, location, eligibility period.
 - Notice of Election will be sent simultaneously.
 - Prior rule: Regional Directors conveyed election details at their discretion.
- Scheduling Elections**
 - Elections will be scheduled for the "earliest date practicable."
 - Prior rule: mandatory 20-day waiting period.



How the New Rule Changes the Election Process

- Litigating Eligibility and Inclusion Issues**
 - Issues of eligibility and inclusion will be deferred to the post-election stage.
 - May deprive employees of the ability to understand who is included in the bargaining unit.
 - Prior rule: Eligibility and inclusion issues had to be resolved before the election could occur.
- Post-Hearing Briefs**
 - Must obtain special permission from Regional Director or hearing officer.
 - Prior rule: Parties were entitled to the post-hearing briefs without obtaining permission.



Election Timeline Under New Rule

- **DAY 0 – Petition Filed**
 - Region serves notice of hearing which sets hearing date (Day 8) and statement of position due date (Day 7).
- **DAY 2 – Petition Notice Posting**
 - Within 2 business days of service of Notice of Hearing, Employers must post notice of petition in conspicuous places, including all places where notices to employees are customarily posted until petition is dismissed or withdrawn or is replaced by the Notice of Election.
- **DAY 7 – Submit Statement of Position to NLRB**
 - Whether proposed unit is appropriate.
 - List containing full names of unit employees, including work location, skills and job classifications – submitted via online link.
 - Employer's proposed election details.
- **DAY 8 – Pre-election Hearing**
 - Regional Directors will ordinarily postpone litigation of eligibility and inclusion issues.
- **DAY 10 – Last of eligible voters furnished to NLRB and Union**
 - Full names and addresses, work locations, shift, job classification, contact information – personal email addresses, cell phone and telephone numbers
- **DAY 11-23 – Election Date**



Implications of the NLRB's New Rule

- Employers have significantly less time to prepare for hearing.
- Regional directors have less discretion to postpone the hearing and due date for statement of position.
- Employers have 3 less days to submit statement of position.
- Because the union does not respond to the employer's statement of position until day of the hearing, the employer is left in the dark on relevant issues until the day of the hearing.
- Employers have 3 less days to distribute Notice of Petition.
- Employees have less time to become fully informed voters.

*Speed is more important than any other consideration in determining whether the Board is fulfilling its duty to protect one of the fundamental rights protected by the Act: the right of employees to choose whether or not to be represented by a Union. 89 FR at 58933 (Kaplan, M., dissenting).



NLRB Joint Employer Rule

What qualifies as essential terms and conditions of employment?

1. Wages, benefits, and other compensation;
2. Hours of work and scheduling;
3. The assignment of duties to be performed;
4. The supervision of the performance of duties;
5. Work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline;
6. The tenure of employment, including hiring and discharge; and
7. Working conditions related to the safety and health of employees.



NLRB Joint Employer Rule

- On October 26, 2023, the NLRB issued a new rule that significantly expands who qualifies as a joint employer under the National Labor Relations Act.
- The new rule is effective February 26, 2024, and will be applied only to cases filed after it becomes effective.
- An entity may be considered a joint employer of another entity's employees if the employers "share or codetermine" the employees' essential terms and conditions of employment.



Joint Employer Rule

Impacts of the New Rule

- Joint employers can be held jointly liable for violating employees' rights to organize and act together to seek to improve working conditions or to become represented by a union.
- Shared collective bargaining responsibility.
- Joint employer may lose its status as a "neutral employer" and become involved in strikes, boycotts, and pickets.



The New Standard Under *Cemex*

- If a union presents an employer with a demand for recognition and authorization cards signed by a majority of employees, an employer must either:
 1. Recognize the union as the bargaining representative; or
 2. Promptly file an RM petition if the union has not already filed an election petition.
 - Promptly: within 2 weeks of the union's demand for recognition.
- If the employer neither recognizes the union nor promptly files a petition, the employer risks an unfair labor practice charge.
- If the employer commits any violation of the NLRA during the election's "critical period", the NLRB may dismiss the RM petition and issue a bargaining order.



The *Gissel* Order

- NLRB in *Cemex Construction* issued a *Gissel* order.
- If ULPs were so egregious that they prevented a full and fair election, a judge can issue a *Gissel* order. (*NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969)).
- Must show:
 1. That the union at one time had majority support; and
 2. That the employer's unlawful conduct diminished that support.
- If met, NLRB can order that the union is the employees' certified bargaining representative and order the employer to recognize and bargain in good faith with the union.



Unfair Labor Practice Allegations – 8(a)(1)

- Threatened drivers with discipline for having pro-union stickers on their hardhats.
- Told drivers they were not allowed to speak to union organizers.
- Engaged in surveillance and created an impression of surveillance by lingering while organizers answered questions.
- Told drivers their work opportunities would be limited if they unionized.
- Told drivers wage increases could be delayed if they unionized.
- Threatened closure or movement of a plant.



Consequences of *Cemex* Decision

- A single violation of the NLRA during the "critical period", no matter how slight may result in a bargaining order.
- Threatens to enforce collective bargaining without holding a secret ballot election.
- If the employer fails to recognize the union or promptly file a petition, ULP may be filed which could result in issuance of a bargaining order.
- Employees can lose their right to vote in a secret ballot election.



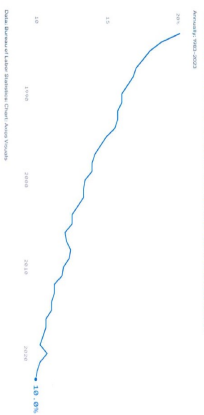
Unionization rate drops to new low in 2023

AXIOS Unionization rate dropped to new low in 2023

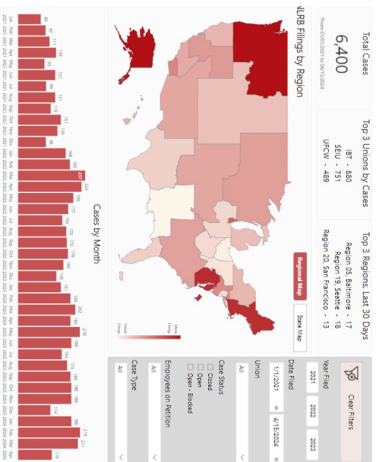
By Nathan Horney

January 23, 2024

Share of American workers who are union members



Union Organizing Activity Map Cases by Month

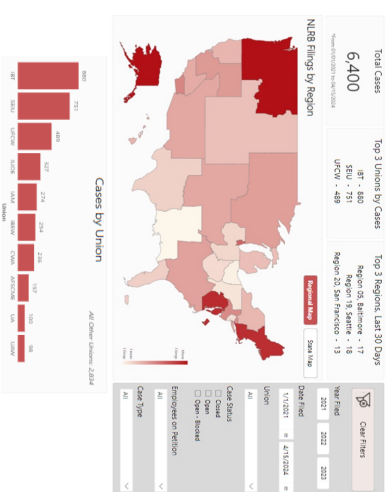


Union Election Petitions in 2024: The Story So Far; Employer Petitions Skyrocket, but Don't Detract from Union Petition Rates

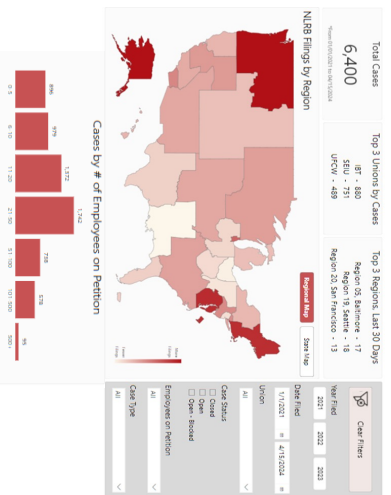
Year(s) Filed	RC Petitions	Employer Petitions
2024 (through 2/28)	389	70
2023*	2,115	62
2022	2,072	32
2021	1,269	34
2020	1,440	41
2019	1,673	37
2018	1,597	50
2017	1,854	54
2016	2,029	45
2015	2,198	61
2014	2,053	49
2014-2022 (average)	1,798	45



Union Organizing Activity Map Cases by Union



Union Organizing Activity Map Cases by # of employees on petition



Are you Ready for a union demand for recognition

ADVICE:

Get Your Labor Lawyer's Phone Number
and
Put it on Speed Dial!!!



Questions?



1:15 PM - 2:05 PM

**The Building Blocks of M&A:
Key M&A Issues and Trends**



**Armstrong
Teasdale**



Armstrong
Teasdale



The Building Blocks of M&A: Key M&A Issues and Trends

MAY 9, 2024

Robert Mahon, Armstrong Teasdale
Daniel Lett, Bunzl North America
Ryan Fehlig, Bunzl North America

Always exceed expectations through teamwork and excellent client service.

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Agenda

- M&A Market – Recent Trends, Current Influences and 2024 Expectations
 - Middle Market M&A Trends
 - M&A Headwinds and Tailwinds
 - M&A Expectations for 2024
- Panel Perspective – Effects of such Trends, Influences and Expectations on:
 - Target Selection
 - Surfacing Deals
 - Pre-Transaction/LOI Process and Timeline
- M&A Deal Terms – Key Study Findings
 - ABA Deal Points Study
 - SRS Acquisition Deal Terms Study
- Panel Perspective – Deal Terms and Process
 - Use of Studies
 - Interaction Between In-house and Outside Counsel
 - Impact of RWI on SPA Negotiations
 - Other Key Considerations



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Robert Mahon

Partner
Armstrong Teasdale
A partner in Armstrong Teasdale's Corporate Services practice group focusing primarily on outside corporate counsel services and mergers and acquisitions. Work's included over 100 million-dollar acquisitions. Rob has significant experience counseling clients through all stages and types of mergers and acquisitions across a wide range of industries.



Daniel (Dan) Lett

Executive Vice President, Corporate Development and General Counsel
Bunzl North America
Dan is a partner in Armstrong Teasdale's Corporate Services practice group focusing primarily on outside corporate counsel services and mergers and acquisitions. Work's included over 100 million-dollar acquisitions. Dan has significant experience counseling clients through all stages and types of mergers and acquisitions across a wide range of industries.



Ryan Fehlig

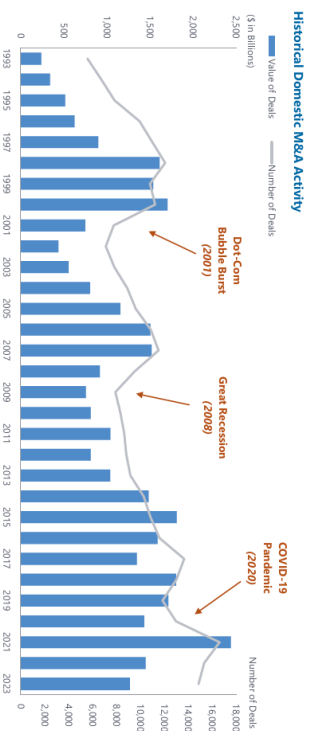
Assistant General Counsel
Bunzl North America
Ryan is a senior member of Bunzl's acquisition team, leading the legal and non-financial due diligence workstreams as well as general transaction management. Since joining Bunzl in 2013, he has worked closely with Dan Lett in the acquisition more than 50 companies.



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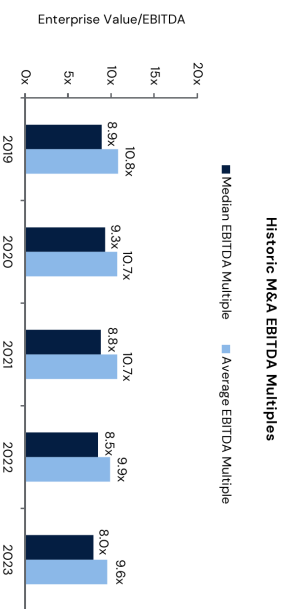
Middle Market M&A—2023



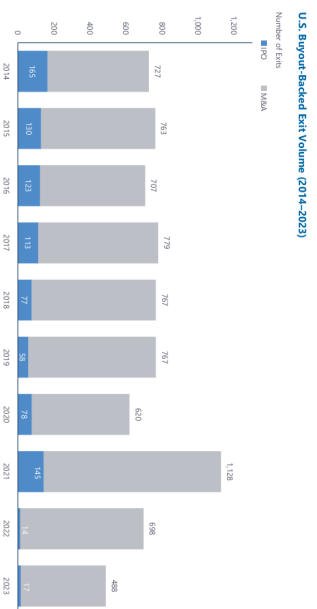
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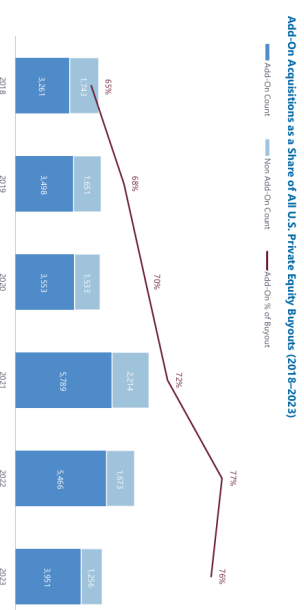
Middle Market M&A—Trends: Valuation



Middle Market M&A—Trends: Deferred Exits



Middle Market M&A—Trends: Add-ons

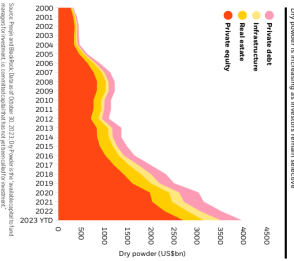


Middle Market M&A—Headwinds and Tailwinds

- Headwinds:**
 - High interest rates
 - Regulatory uncertainty
 - JetBlue and Spirit Airlines called off
 - FTC pursuing Kroger and Albertsons
 - Deals dying in board room
 - FTC issues new M&A Guidelines
 - Tight syndicated debt markets
 - Geopolitical factors
 - Pending election
 - Valuations
- Tailwinds:**
 - Reduced inflation, could come with rate cuts
 - Bolder private credit markets
 - Higher values in stock market
 - Market presents opportunity for strategic buyers
 - Some early 2024 megadeals announced
 - \$328 Synovis/Amys
 - \$248 Diamondback/Endeavor
 - Potential tax increases
 - Valuations
 - PE need to address deferred exits
 - PE interest in add-ons
 - "Silver tsunami"
 - Significant "dry powder"

Middle Market M&A—Tailwinds

On the sidelines



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Panel Perspective

- **Effects of Current M&A Trends, Influences and Expectations on:**
 - Target Selection
 - Surfacing Deals
 - Pre-Transaction/LOI Process and Timeline



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M&A Expectations for 2024

- **Though significant headwinds and tailwinds exist, many expect deal volume to increase in 2024:**
 - The **EP-Partnership Deal Barometer** (which uses economic and financial market indicators to predict M&A trends) predicts a recovery for M&A activity in 2024, with US private equity deal volume up 13% and corporate M&A up 12%.
 - **PwC** expects that 2024 will see continuing earnings recovery, which could result in additional deals. Valuation gaps between sellers and buyers seem to be closing except for the largest deal, providing additional optimism for deal flow picking up in 2024.
 - **Deloitte's** survey found that more than three-quarters of respondents—79% of corporate leaders and 86% of private equity leaders—expect an increase in deal volume over the next 12 months.
 - Mergers and acquisitions are due for a comeback in 2024 after a slowdown in 2023, according to **Morgan Stanley Investment Banking**.
 - **J.P. Morgan** indicates that M&A momentum improved through the second half of 2023 with volume up 30% over the first half, with Q4 being the most active quarter of the year. They expect that momentum to continue into 2024.



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ABA “Private Target” Deal Points Study

- **Based upon small sample of publicly available deals (private target, public acquirer)**
 - 2022-Q1 2023 study based upon 108 transactions (approximately 0.7% of market)
- **Seems to have some impact on the market**
 - While the quantity of deals is not statistically significant, it is likely more than the number of deals recently done by your counterpart who is confidently describing what terms are “market”
- **Useful in identifying clear conclusions, clear trends and potential trend reversals**



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Clear Conclusion – Material Adverse Effect

- 95% of sampled deals define "Material Adverse Effect" (MAE)
- 93% of those include "forward looking language" (i.e., "would reasonably be expected to have" a MAE)
- But 90% of the transactions don't include the impact on the target's prospects as a part of an MAE
- While still a dominant position, all of these trended a little more buyer favorable since the last study

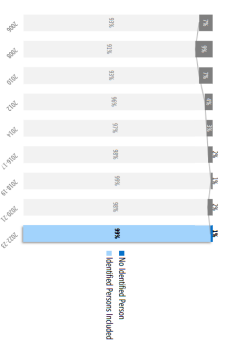
"Material Adverse Effect" means any result, occurrence, fact, change, event, or effect that has, or *could reasonably be expected to have*, a materially adverse effect on....



Clear Conclusion – Seller Knowledge

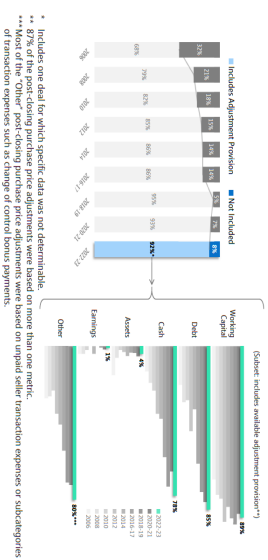
- "Constructive" knowledge standard is included in 92% of sampled deals (up from 81%)
- 73% of the time, requires "due or reasonable" inquiry
- 98% of the time the "knowledge parties" are specifically identified

Knowledge – Whose knowledge is imputed? (Subset: deals with available definitions of knowledge)



Clear Conclusion – Purchase Price Adjustments

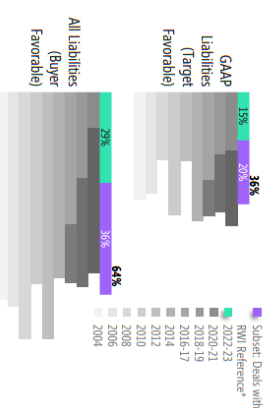
Post-Closing Purchase Price Adjustments



Clear Conclusion – Financial Statements

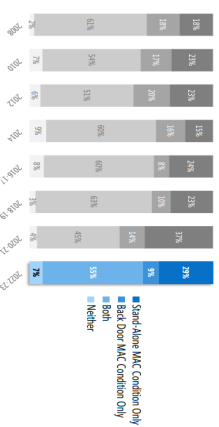
- 97% of the deals contemplate a "Fair Presentation" Representation:
 - In 81% of those, it is not qualified by reference to Generally Accepted Accounting Principles (GAAP)
 - May still have "prepared in accordance with GAAP" rep
- 96% include a "no undisclosed liabilities" representation (none of which are subject to a "knowledge" qualification)
- 64% have a buyer-favorable formulation that includes more than GAAP liabilities

(Subset: includes "No Undisclosed Liabilities" representation)



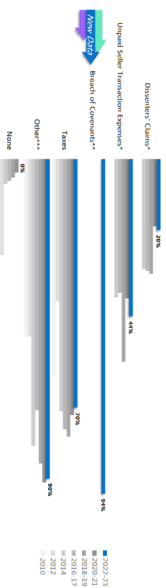
Clear Conclusion – MAC Condition to Close

- 93% of sampled deals include some type of MAC Condition:
- Allows buyer to walk in the event of a “Material Adverse Change”
- Buyers generally view this as the seller’s business risk before closing, only shifting to buyer at closing
- Frequently, buyer’s funding commitments are subject to the same condition, such that buyer feels strongly about passing this along to seller



Clear Conclusion – Stand-Alone Indemnities

Stand-Alone Indemnities
(Items for which indemnification specifically provided regardless of indemnification for breaches of representations and warranties)
(Subset: deals with survival provisions)



Not measured before date in 2014.
 * Not measured before date in 2018.
 ** Other remedy reporting stand-alone indemnities were ERISA, environmental, legal, independence, misstatement of consideration, PPP loans, and excluded Indemnities.

Clear Conclusion – Exclusive Remedy

- 89% of sampled deals include indemnification as exclusive remedy:
- Intended to limit common law claims that might circumvent negotiated limits on indemnification
- Can be subject to exceptions (e.g., fraud, restrictive covenants, etc.)
- Reflects buyer-favorable movement from prior study, but still a dominant majority position



Clear Conclusion – Fraud Carve-Outs

- Fraud is Typically Carved-Out of Numerous Limitations:**
- Survival Limitations 84%
- Indemnity Baskets 90%
- Indemnity Caps 90%
- Exclusive Remedy Provisions 87%
- But note potential effect of “Non-Reliance” Provisions on fraud claims “outside of the contract”

Clear Trends – “10b-5” Reps

- 10b-5 and similar representations are steadily disappearing (94% absent)
- Puts burden on buyer to seek representations on areas where buyer is reliant
- Be careful about “add-backs” and other adjustment to financials for valuation purposes

“10b-5” FORMULATION

No representation or warranty or other statement made by [Target] in this Agreement; the Disclosure Letter, any supplement to the Disclosure Letter, the certificates delivered pursuant to Section 8.3, or otherwise in connection with the Contemplated Transactions contains any untrue statement of material fact or omits to state a material fact necessary to make the statements in this Agreement or therein, in light of the circumstances in which they were made, not misleading.

(ABA Model Stock Purchase Agreement, Second Edition)

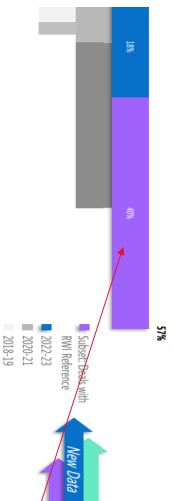


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Clear Trends – More Deal-Specific Representations

Includes #Merco Representation*



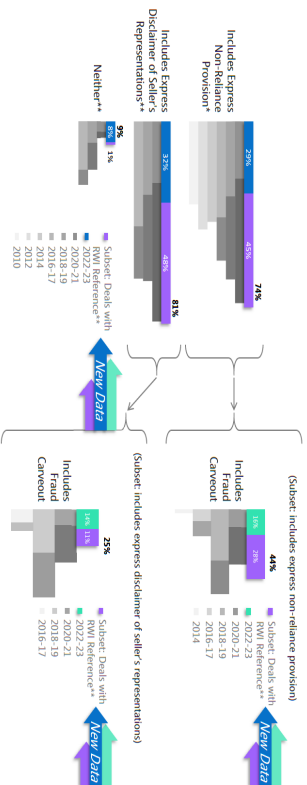
- Perhaps related to the loss of generic representations above, we are now seeing deal specific representations on the increase:
 - 57% had a “me too” representation
 - 78% had a “privacy” representation
 - 81% had a cybersecurity representation
 - These may be more common in RWI deals



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Clear Trends – Non-Reliance Clauses

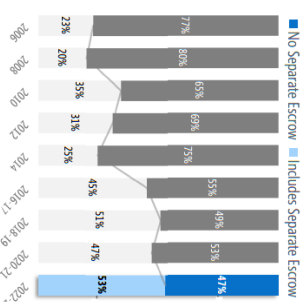


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Clear Trends – Separate Escrows for Price Adjustment

- Escrows are common to support post-sale obligations of Sellers
- Sellers commonly have risk both for indemnification and for post-closing purchase price adjustment
- Separate escrows can allow the purchase price escrow to be released more quickly (seller beneficial), but can also be seen as beneficial to the buyer as it might allow a larger escrow than the indemnity escrow which is often focused at around 5-15% of deal price (when there is no RWI)



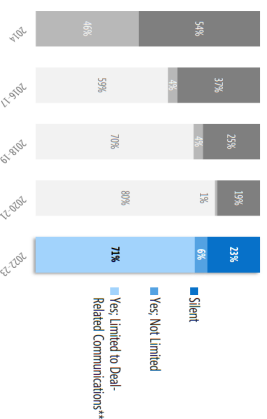
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Trend Reversals? Attorney/Client Matters

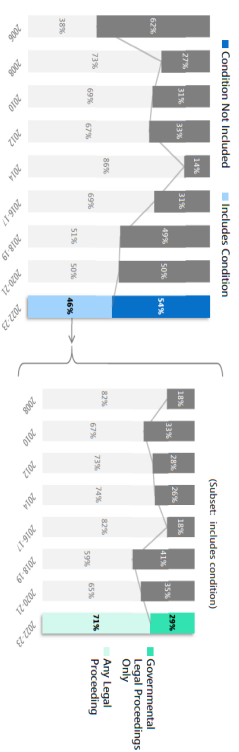
Attorney/Client Carve-Out increasingly recognized:

- Steadily increased after some early litigation
- Trend started to move more buyer-oriented as compared to last study



Trend Reversals? Legal Proceedings as a Condition

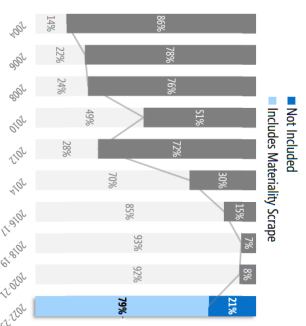
There will not be pending (or threatened) any action, suit, or similar legal proceeding brought by any Governmental Entity (or third party) challenging or seeking to restrain or prohibit the consummation of the Transactions.



Trend Reversals? Materiality Scrape

Some form of "Materiality Scrape" is still common:

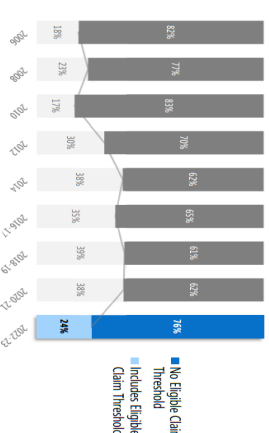
- Favors buyer, limits "materiality" qualification to "basket"
- In 31% of these deals, the scrape is limited to calculation of damages only (i.e., doesn't also impact determination of whether breach occurred)
- More buyer-oriented structure from prior survey



Trend Reversals? Eligible Claim Threshold

Limits recovery for smaller claims:

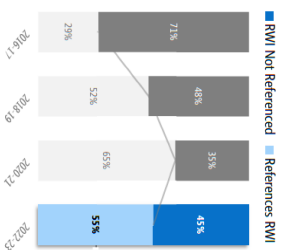
- Buyer's see this as duplicating the "Basket"
- Seller's see this as avoiding being "nickel and dimed." More buyer-oriented structure from prior survey
- Buyers seem to have won this more frequently in the recent data
- Similar buyer-favorable movement on offsets for tax benefits and insurance proceeds



Trend Reversals? Use of RWI

Does Agreement Reference RWI?

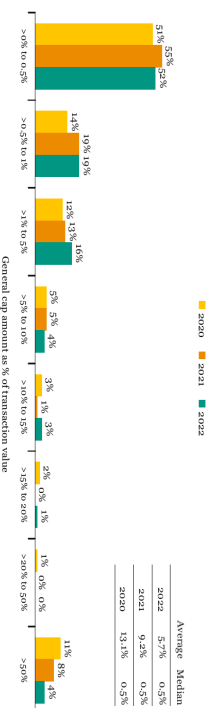
- Representations and Warranties Insurance (RWI):
 - Seems to have peaked after steady increases
 - Insurer diligence has become more significant
 - Can create last-minute issues at a time when seller's negotiating leverage is relatively low



Other Places to Look—SRS; Analysis of CAPs and RWI

When deals in which the buyer has definitively purchased an RWI policy are eliminated from the data set, the average cap for the remaining deals in 2022 was 5.7%, the median was 0.5%. Note that buyers do not always disclose the presence of a buy-side RWI policy, so this sample set likely omits some deals with policies.

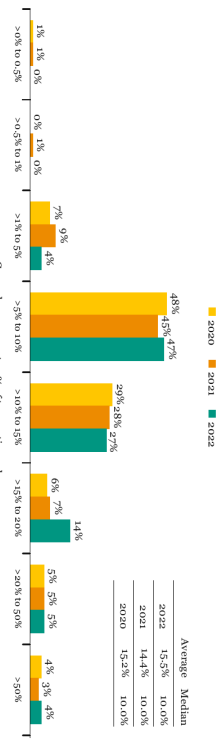
Details: 2020-2022



Other Places to Look—SRS; Analysis of CAPs and RWI

When deals in which the buyer has definitively purchased an RWI policy are eliminated from the data set, the average cap for the remaining deals in 2022 was 15.5%, the median was 10%. Note that buyers do not always disclose the presence of a buy-side RWI policy, so this sample set likely includes some deals with policies.

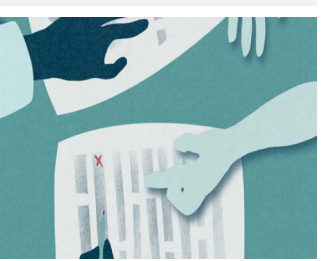
Details: 2020-2022



Panel Perspective

Deal Terms and Process:

- Use of Studies
- Interactions between In-house Counsel and Outside Counsel
- Impact of RWI on SPA Negotiations
- Other Key Considerations



Sources

- Houlihan Lokey, Private Equity M&A Market Update (Jan. 27, 2024)
- Capstone Partners Middle Market M&A Valuations Index (2023)
- 2024 Private Markets Outlook: Opportunities in Mega Forces, Black Rock
- “The ‘Silver Tsunami’ and Its Effects on the M&A Landscape”, Presented by ITR CEO Brian Beaulieu and ButcherJoseph & Co. Managing Partner Keith Butcher (Oct. 28, 2022)
- PwC US Deals 2024 Outlook: Signs of a Potential Rebound in M&A (Jan. 12, 2024)
- EY M&A Outlook Points to Gradual Rebound in Deal Market in 2024 (Jan. 17, 2024)
- Deloitte 2024 M&A Trends Study: Mind the Gap
- Morgan Stanley 2024 M&A Outlook: Ready for a Rebound (Jan. 22, 2024)
- JPMorgan 2024 Global M&A Outlook
- ABA Private Target Mergers & Acquisitions Deal Points Study, 2022 and Q1 2023
- SRSACQUIONM 2023 M&A Deal Terms Study



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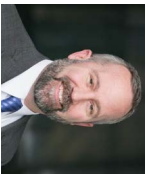
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Questions?



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2:15 PM - 3:05 PM - Break Out A
**Thriving Under the Corporate
Transparency Act**



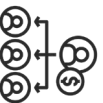
Corporate Transparency Act

The Corporate Transparency Act went into Effect
January 1, 2024. Are You Prepared?



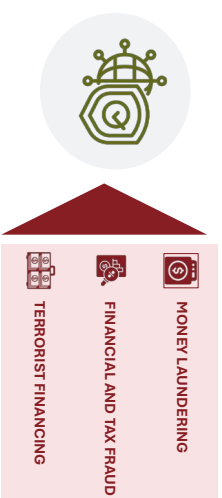
About the CTA Requirement

The CTA requires certain businesses (including privately held and non-profit entities) to report direct and indirect, human, beneficial ownership, control and service provider information to the Financial Crimes Enforcement Network of the US Department of Treasury (i.e., FinCEN).



About the Corporate Transparency Act (CTA)

The CTA is intended to combat the use of “shell” companies in the commission of illicit activity and corrupt practices, as well as protect national security.

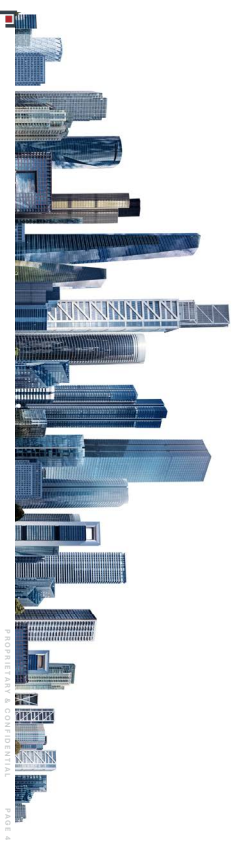


The CTA was enacted by Congress on January 1, 2021. It went into effect on January 1, 2024.

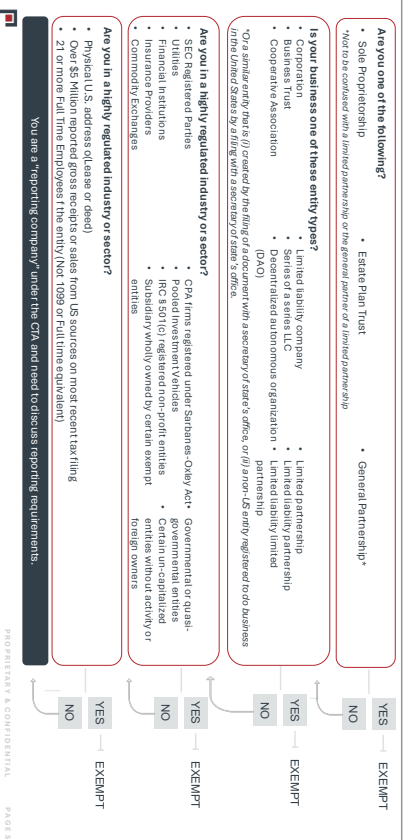


How Many Business Entities Are Implicated?

FinCEN estimates that approximately **32 million** “reporting companies” existed as of January 1, 2024, and that approximately **5 million** new reporting companies will be formed this year. On March 1, 2024, a federal district court in Alabama ruled that the Corporate Transparency Act is unconstitutional. This alert briefly describes the ruling and what it means for CTA compliance moving forward. In short, the ruling enjoins enforcement of the CTA only as to the parties to the case, and FinCEN has made clear that it expects everyone else to continue to comply with the CTA.



CTA Reporting Exemptions



Who are Beneficial Owners?

1. Individuals with substantial control over the reporting company
 2. Individuals who own or control at least 25% of the ownership of a reporting company
- *** Note that a "Company applicant" is (or a maximum of two are) also required to be included for entities formed in 2024 and thereafter. The "Company applicant" is the individual(s) responsible for the entity's formation. It must submit PII similar to that of beneficial owners.

Subsidiaries of Pooled Investment Vehicles

- Subsidiaries of pooled investment vehicles do not have their own CTA exemption.
- The mark marketplace has developed alternative approaches to find exemptions for subsidiaries of pooled investment vehicles.
- Primary approach - Establish that an Exempt IA has complete indirect control of the subsidiary of the Exempt PIV.
- "Control" is fact-dependent, but generally an Exempt IA is deemed to have control over the subsidiary so long as no one unaffiliated with the Exempt IA can (i) freely transfer its equity, (ii) cause a dissolution, or (iii) exercise meaningful veto rights.
- FINCEN has not blessed such approach, so FINCEN could provide contrary guidance in the future.
- Mitigation of risk to client - The director of FINCEN told Congress on 2/14/2024 that the agency is not pursuing "gotcha" enforcement when it comes to companies complying with new rules for reporting their beneficial ownership information.
- Thus, we think that reliance on a widely-adopted approach is reasonable for clients to take unless and until FINCEN provides further guidance.

What is Substantial Control?

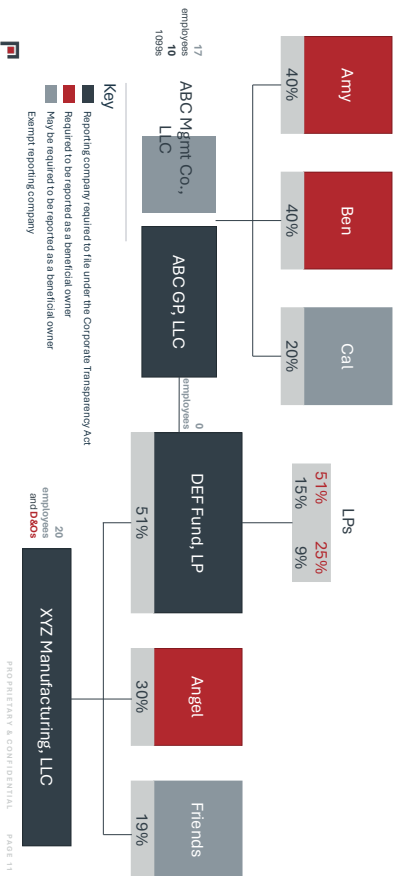
- A person who has substantial control over a Reporting Company includes senior officers, important decision-makers, and a broad catch-all category of persons with any form of substantial control over a Reporting Company.
- Board or Board members may be deemed to have substantial control upon a finding of some additional control mechanism other than simply being on the Board. (e.g. Majority of the Board or consent or veto rights).
- A trustee of a trust may have substantial control over a Reporting Company if they are on the board, the trust owns or controls a majority of the voting power or voting rights of the company, or the trust has rights associated with financing or major decisions.

What is Personal Identifying Information (PII)?

1. Full legal name.
 2. Date of birth.
 3. Current residential street address.
 4. Photo ID with a unique identifying number from an acceptable identification document defined in 31 U.S.C. § 5336 (a)(1) (which may be a nonexpired U.S. passport, a nonexpired identification document issued by a state or local government or Indian tribe to the individual for the purpose of identifying that individual, a nonexpired driver's license issued by a state, or if the individual does not have any of the foregoing documents, a nonexpired passport issued by a foreign government).
- OR** Utilization of a FinCEN ID number.

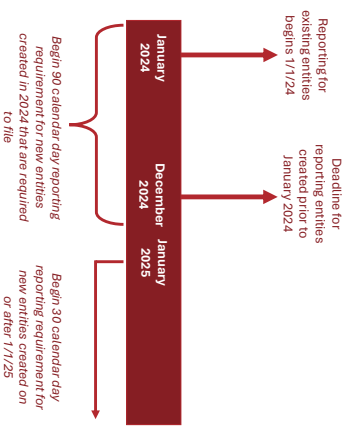


Hypothetical: Who Needs to Report and What Needs to be Reported?

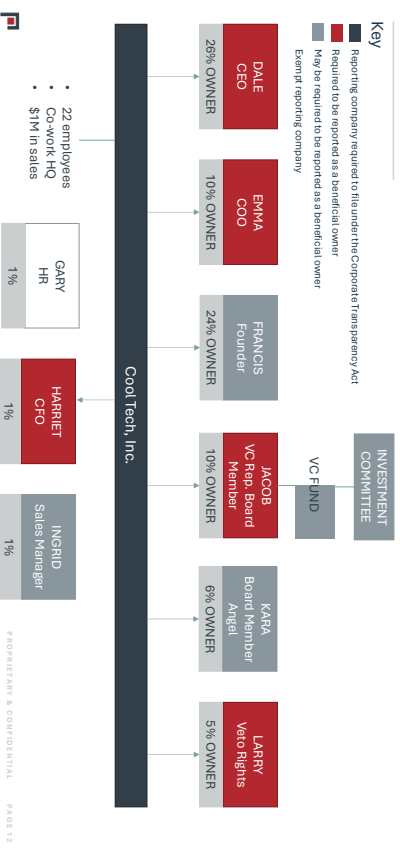


What is the timing?

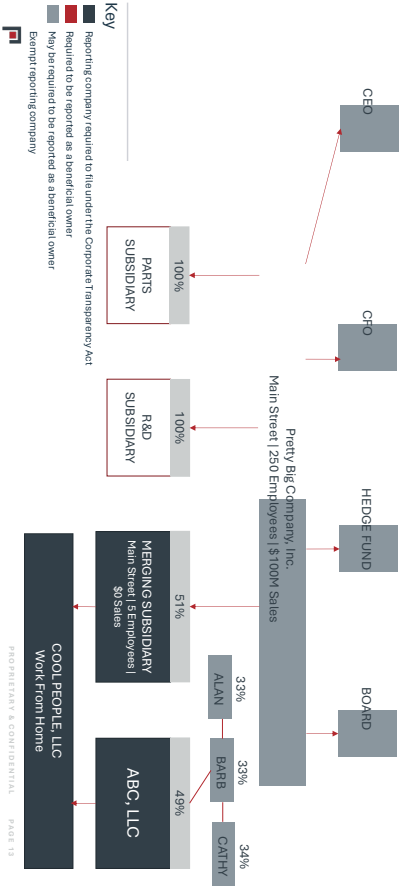
- If the reporting company was formed prior to January 1, 2024, it will have until December 31, 2024 to submit its initial BOI report.
- If the reporting company is formed during 2024, it will have 90 calendar days to file its initial BOI report.
- If the reporting company is formed on or after January 1, 2025, it will have 30 calendar days to file its initial BOI report.



Corporate Structure I



Corporate Structure II



What Can I Do Now?

- Determine if your existing business entities are reporting companies
- Determine who is in your control group for each entity
- Identify and notify your beneficial owners (direct and indirect) in each entity and gather BOI
- Establish policies, procedures and protocols, and responsible parties, to ensure timely compliance (including for corrections and changes)
- Develop system for tracking and retaining reported information
- Determine when you will file in 2024 for pre-2024 entities
- Establish protocols and deadlines for new entities formations steps
- Keep apprised of new CTA developments

Penalties – Am I Going to Jail?

- Civil penalties of \$500 each day a violation continues up to \$10,000 per violation*
- Criminal penalties include up to 2 years of imprisonment (for willful misconduct or evasion)

* These have now been adjusted as of January 25, 2024, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), to \$591.00 per day up to a maximum of \$11,920.00 per violation.

PROPRIETARY & CONFIDENTIAL PAGE 14

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PROPRIETARY & CONFIDENTIAL PAGE 17

2:15 PM - 3:05 PM - Break Out B

**Finding the Fodder of Fraud:
Strategies for Your Practice**





3:20 PM - 4:10 PM

**Challenges & Opportunities Posed By
Artificial Intelligence in the
Practice of Law**

**HUSCH
BLACKWELL**



AI in the Legal Industry

Blake E Rooney
Rudy Telscher

May 9th, 2024

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1

“You won’t be replaced by AI. But you could be replaced by a person who understands AI.”

- Scott Galloway

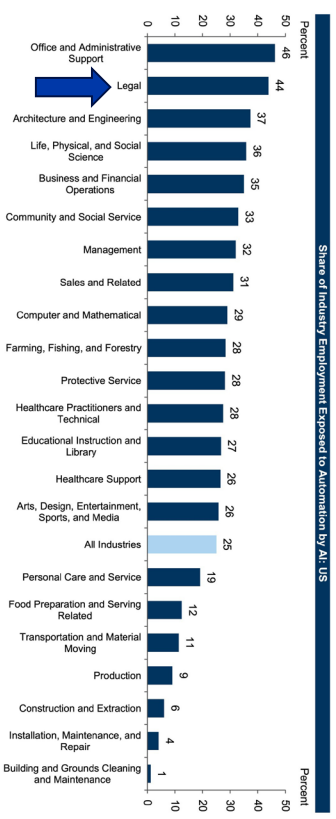
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2

Goldman Sachs

Global Economics Analyst

Exhibit 5: One-Fourth of Current Work Tasks Could Be Automated by AI in the US and Europe



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3

**In 2019 Husch Blackwell sets out to become
a Data Driven firm**

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4

How are we looking at AI from a **legal**, ethical and operational perspective?

AI Working Group

- Understand the opportunity
- Evaluating industry solutions
- Creating policies
- Providing usage guidance
- Managing security and privacy

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5

The Husch Blackwell **Data Science** Data Warehouse

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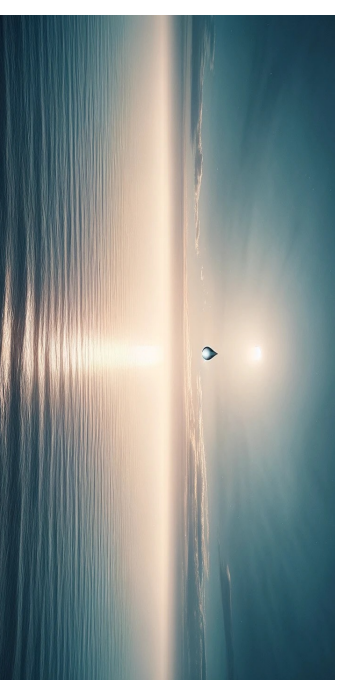
7

How does Husch Blackwell use AI?
AI **starts** with data

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Why Now?



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8

How do we interact with it?

I'm going to provide you the text of an interview which will appear between <interview> </interview> tags, and then the text of the bio that will appear between <bio> </bio> tags. I want you to take the text and separate it into a paragraph, first, and readable bio for a new attorney at Husch Blackwell.

This should summarize the abilities of the attorney in a way that would make someone want to hire this firm using few words. I want you to be conversational and direct, and avoid using unnecessary adjectives.

- DO NOT SOUND DRAMATIC; this should not be a narrative, but a statement.
- Use the following guidance to write the bio:
- Start with brief experience, one of what the attorney does, in its own paragraph that should be less than 25 words, don't mention where they work in this sentence.
 - Explain why the attorney went to law school.
 - Talk about any past experience that is relevant to this practice area.
 - Talk about any relevant law school experience or clerkships.
 - Mention that they worked as a summer associate at Husch Blackwell.
 - End by telling us what the attorney is good at or known for (i.e., detail-oriented, passionate advocate, good communicator, etc.)
 - Do not use the words expert, expertise, specialist, specialize, or specialty.
 - Do not mention other firms by name, professional memberships, or languages spoken in the narrative.
 - Avoid using adverbs and adjectives, find a better term, or avoid it all together.

Makes multiple passes over this guidance and the provided information to ensure that ALL of this guidance is followed.

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How do we interact with it?



"a white German shepherd intent on getting his puppuccio"

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How do we interact with it?

- Many python code to identify identical values in distinct columns of a CSV file then write those values to a separate file.

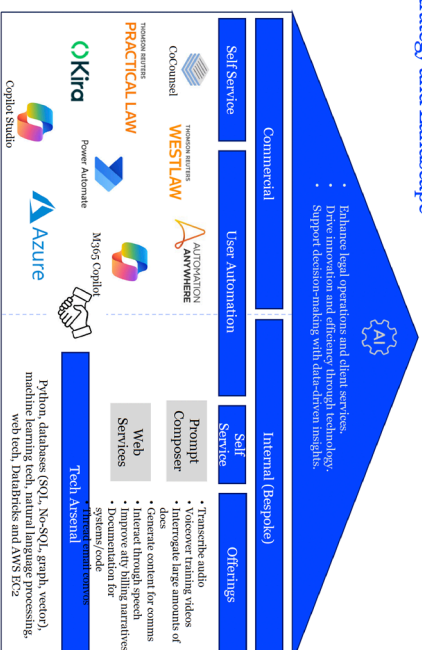
```
python
Certainly Below is an example of Python code that reads a CSV file, identifies identical values in distinct columns, and writes those values to a separate file.

import csv
def find_identical_values(csv_file, column, output_file):
    identical_values = set()
    with open(csv_file, 'r') as file:
        reader = csv.reader(file)
        for row in reader:
            value = row[column]
            if value in identical_values:
                continue
            identical_values.add(value)
    with open(output_file, 'w') as file:
        writer = csv.writer(file)
        writer.writerow(['Identical Values'])
        for value in identical_values:
            writer.writerow([value])
```

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AI Strategy and Landscape



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What is Co-Counsel?

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(4) FedEx Restructures to Combine Ground and Express Delivery Networks.pdf

Pages 1-3

- FedEx is combining its Express and Ground delivery units into a single business
- This change is meant to simplify interactions with customers and accelerate cost-cutting efforts
- The reorganization is supported by founder Fred Smith and the company's board
- FedEx is also aiming to increase utilization of trucks and planes by getting rid of surplus equipment and better forecasting customer demand
- The company is grappling with a downturn in shipping demand and is looking to cut billions in operating expenses
- FedEx expects its U.S. head count to be down by roughly 25,000 by the end of May
- The reorganization will be completed by June 2024, with the full transition to an integrated air-ground network taking several years
- FedEx Freight will continue to operate as a standalone company
- FedEx Express CEO Richard Smith and FedEx Ground CEO John Smith will gain additional responsibilities in the new structure
- The company is also making changes to its flight schedules and freight-rail network to improve efficiency
- FedEx is boosting its annual dividend rate by about 10%

Example 2: Article Summarization

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Prepare for a Deposition

REQUEST

Hide text

Depose the director of research and development for an auto manufacturer regarding testing of autonomous vehicles.

RESPONSE

The extent to which the company has tested autonomous vehicles in various driving conditions

- What types of driving conditions have you tested autonomous vehicles in?
- How many hours or miles have you logged in each type of driving condition?
- What have been the most challenging driving conditions for your autonomous vehicles to navigate?
- Have you encountered any driving conditions in which your autonomous vehicles were unable to operate safely?
- What are your plans for expanding your testing to include additional driving conditions?

- The company's process for identifying and addressing safety concerns with autonomous vehicles
- What safety concerns have you identified with autonomous vehicles?
- How do you prioritize which safety concerns to address first?
- What methods do you use to address safety concerns?
- Have you made any changes to your autonomous vehicles as a result of safety concerns?
- Are there any safety concerns that you have not been able to address yet?

Example 1: Prepare for a Deposition

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How does a finding of deportability under 8 U.S.C. § 1227 affect an alien parolee's application for asylum?

RESPONSE

Answer

A finding of deportability under 8 U.S.C. § 1227 does not necessarily preclude an alien parolee from applying for asylum, but it may affect the outcome of the application.

Analysis

The cases and statutes I reviewed suggest that a finding of deportability under 8 U.S.C. § 1227 does not necessarily preclude an alien parolee from applying for asylum. However, the finding may affect the outcome of the application.

Example 3: Legal Research

For example, in *Bona v. Gonzales*, the Ninth Circuit held that a finding of deportability did not prevent the alien parolee from applying for adjustment of status. However, the court noted that the finding of deportability could affect the outcome of the application. Similarly, in *Bamba v. Elwood*, the court held that the expedited removal provision in 8 U.S.C. § 1228(b) applies to all aliens convicted of an aggravated felony who are not lawfully admitted for permanent residence, including parolees.

In contrast, in *Cummings v. Attorney General*, the Third Circuit held that a finding of deportability under 8 U.S.C. § 1227 precluded the alien from applying for relief from deportation. However, the court noted that the alien could still challenge the deportation order under 8 U.S.C. § 1326(a).

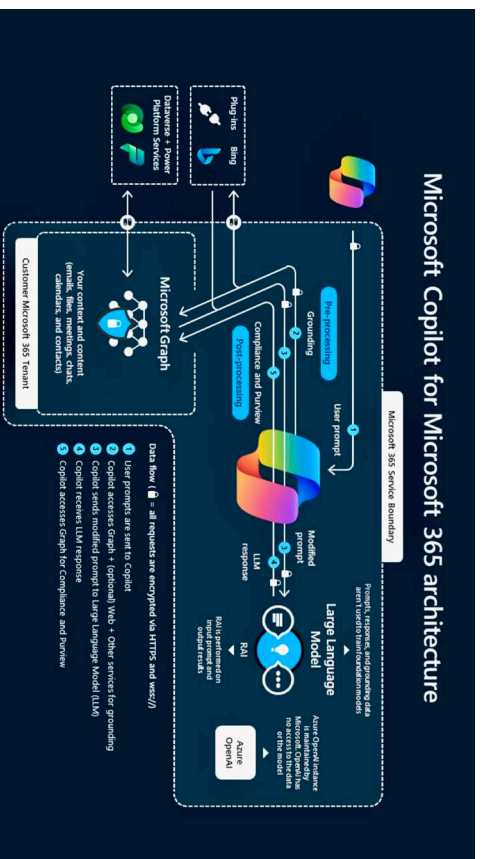
Overall, the cases suggest that a finding of deportability under 8 U.S.C. § 1227 may not necessarily prevent an alien parolee from applying for asylum, but it may affect the outcome of the application. The cases also suggest that the outcome may depend on the specific circumstances of the case, such as the type of relief sought and the jurisdiction in which the case is heard.

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What is Co-Pilot?

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AI Industry Update

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AI Strategy and Landscape – A Sampling of Successes...



- **Automating Claim Processing:** Current case processing is being made more efficient and accurate by leveraging the CoCounsel API to automate the extraction of key claim information, verify it through QC, and disseminate to relevant systems.
- **Automating Real Estate Document Review:** Harnessing RPA and large language models to transform Real Estate's document review. The first phase will automate the compilation of title-related documents, saving work hours. The second phase will extract and summarize data into a standardized form—further saving time.
- **Streamlining Discovery Responses:** We're partnering with CoCounsel to develop a custom discovery response bank that leverages past interrogatories and production requests for consistent new responses.
- **Streamlined Research:** CoCounsel and Prompt Composer streamlined research for DOJ inquiries. The library team curated 50+ sources and CoCounsel analyzed those against the DOJ's questions. Prompt Composer synthesized info together into deep insights and the process saved the Senior Counsel **25 hours** of research.
- **Automated Text Extraction:** In a construction litigation case, the team automated the challenge of handling a vast document collection and manually extracting Bates numbers by using MS Power Automate and Azure AI. This tool is being used on 1000+ documents, saving an estimated **40 hours** monthly across various projects.

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Competition for Chips



INTEL
\$183.1B

NVIDIA
\$1.782B

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Industry Issues:

- Compute demand far exceeds capacity
- Applications are immature or unreleased
- Pending regulation
- Rate of change

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Big Four Investment:

- KPMG – \$ 2 billion over 5 years
- PWC - \$1 billion over 3 years
- Deloitte – \$1.4 billion
- E&Y - \$1 billion over 4 years
- Accenture – \$3 billion over 3 years

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Ethics and Risks of AI

For all applications of AI there **must** be a Human in the Loop

Generative AI is fluent, but it doesn't *know* anything

Generative AI speaks with the language it was trained

Classical AI learns the **bias** in its training data as well

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Hallucinations...

<https://www.islawa.com/news-and-insights/circuit-court-of-appeals-rules-debtors-need-insider-preference-six-two-years-before-bankruptcy-may-be-challenged>
<https://www.islawa.com/news-and-insights/islrand-advises-habitators-on-sale-of-shorecare-to-dwgo>
<https://www.islawa.com/news-and-insights/will-manaco-be-next-to-open-up-to-60-regg-casinos>
<https://www.islawa.com/news-and-insights/hls-proposes-rule-to-resolve-key-issues-for-aeo-participation>
<https://www.islawa.com/news-and-insights/final-hearings-rule-rethinks-low-walk-to-reform>
<https://www.islawa.com/news-and-insights/significant-dis-rulings-early-joint-employment-misclassification>
<https://www.islawa.com/news-and-insights/department-of-justice-issues-guidance-on-employee-stock-corporations>
<https://www.islawa.com/news-and-insights/will-ustrailis-new-government-deliver-on-the-climate-promises>
<https://www.islawa.com/news-and-insights/federal-solar-tax-credits-what-you-need-to-know>
<https://www.islawa.com/news-and-insights/obc-issues-new-general-licenses-authorizing-certain-transactions-involving-russian-entities-on-adm-list>
<https://www.islawa.com/news-and-insights/sec-adopts-pay-versus-performance-disclosure-rule>
<https://www.islawa.com/news-and-insights/is-perspective-what-the-infrastructure-bill-means-for-the-renewable-energy-sector>
<https://www.islawa.com/news-and-insights/ny-state-bar-assoc-environmental-and-energy-law-section-winter-meeting>
<https://www.islawa.com/news-and-insights/of-ecdotam-sets-manufacturing-supply-chain-clean-energy>
<https://www.islawa.com/news-and-insights/ny-state-bar-assoc-environmental-and-energy-law-section-winter-meeting>
<https://www.islawa.com/news-and-insights/article/2022-01-18/regulators-nmpj-presentation-of-eg-investing-climate>
<https://www.islawa.com/news-and-insights/speeches-and-presentations/kenny-styling-commerce-primer-on-the-risks-and-rewards>
<https://www.islawa.com/news-and-insights/hat-hat-top-solar-power-potential-and-opportunity-ahead-of-the-curve>
<https://www.islawa.com/news-and-insights/solar-spas-how-the-solar-industry-can-promote-beneficial-electrification-through-pool-pump-regulation>
<https://www.islawa.com/news-and-insights/tax-equity-market-outlook-for-2023-jillian-in-finding-for-deep-hydrogen-hubs>
<https://www.islawa.com/news-and-insights/department-of-energy-issues-guidance-on-employee-stock-corporations>
<https://www.islawa.com/news-and-insights/department-of-energy-issues-guidance-on-employee-stock-corporations>
<https://www.islawa.com/news-and-insights/biden-harris-administration-announces-steps-to-spear-domestic-clean-energy-manufacturing>
<https://www.islawa.com/news-and-insights/biden-harris-administration-jumps-starts-offshore-wind-with-new-lease-sale>
<https://www.islawa.com/news-and-insights/firm-insight-k-s-energy-transition-practice-recognized-for-representation-of-renewable-energy-clients-and-transactions>
<https://www.islawa.com/news-and-insights/firm-insight-kang-spalding-secures-245-million-tax-equity-investment-for-oreed-onshore-wind-and-solar-portfolio>
<https://www.islawa.com/news-and-insights/reinforcing-renewable-pipes-in-light-of-the-inflation-reduction-act-2022>

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Ethical AI does not have a simple solution

Models **must** be deployed and designed by experts.

Training data must be **reviewed** and managed with an eye toward implicit bias

Certain domains like HR decisions, including hiring and firing, should be **walled off** from AI

There must be a **human** in the loop, looking for problems

There are areas where AI can be used, but its application must be **carefully** considered, and reviewed by experts. Just because we have data doesn't mean answers can be found in it or that AI is the appropriate way to look.

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Key Legal Issues

- Protection of Inputs to LLMs
- Ownership of Outputs of LLMs
- Labor & Employment Issues
- Unexpected Outputs of LLM's

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What keeps me up a night?

Hackers have access to AI Tools – 350m log records per day, MSFT 2.5 trillion per day

Human Capital - Capacity and Retention

Mistakes will happen – Humans are key

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Questions?



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HUSCH BLACKWELL



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4:20 PM - 5:10 PM

**Inclusive Leadership:
The 6 To Do's**

**Ogletree
Deakins**

Inclusive Leadership: The 6 To Do's

Dennis A. Davis, Ph.D.

Ogletree
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A Quick Review...

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Diversity means difference

**Diversity matters
because talent matters**

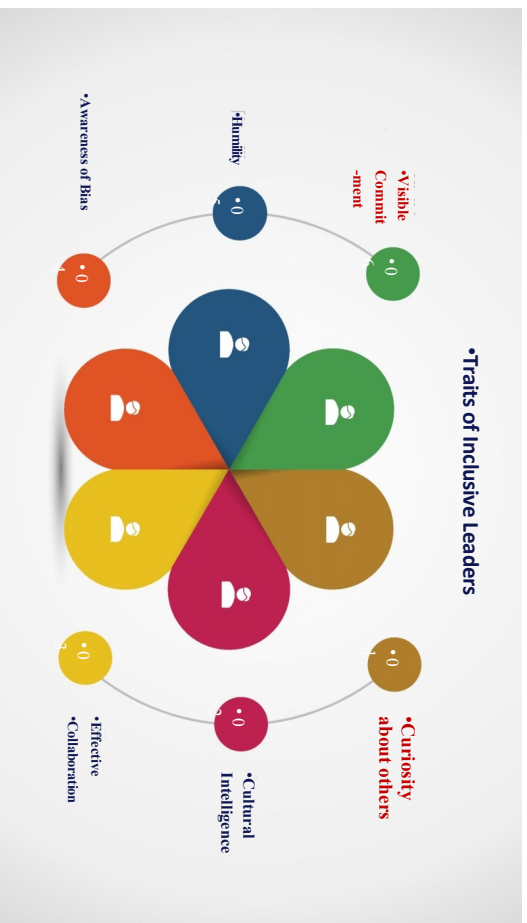
Inclusion: Feeling like an informed and trusted member of the team... one has a sense of belonging.

**Inclusion also gives us
a competitive
advantage**

Inclusive Leadership?

- *"A set of proactive behaviors that leverage the unique attributes of each person in the workplace with the goal of enhancing overall performance potential."*

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Meet Daisy...

- 3 month old puppy we rescued
- She experiences wonderment and curiosity dozens of times per day

- "...a sense of joy, and surprise... the feeling of not quite believing what you see, but liking it..."
- "...a strong desire to know or learn something..."



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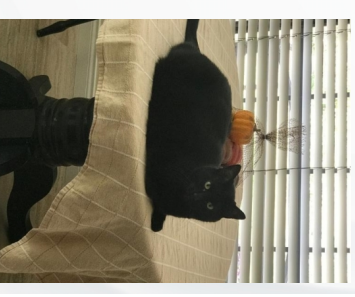
Curious... Or Satisfied?

- A quick assessment...

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This is Jack...

- He is 9 years old and also a rescue...
- He has always been temperamental
- "...liable to unreasonable changes of mood... unyielding, and unpredictable..."
- "...completely sure, and certain about things..."
- These days he is just... mad



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Do You Relate More To...

- Daisy
- Jack

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If You Relate More To Jack...

- Maybe you are in an intellectual/occupational rut?
- Maybe your curiosity about others has diminished?
- But...you are NOT necessarily a bad person because of it!



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- **Curiosity** (from Latin cūriōsitiās, from cūriōsus "careful, diligent, curious", akin to cura "care") is a **quality** related to inquisitive thinking such as exploration, investigation, and learning, evident by observation in humans and other animals

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Curiosity...

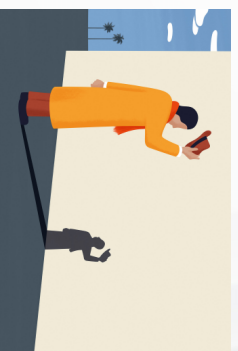
- Everyone is born with it; it's innate and natural to every child. But somewhere along the way, we lose our sense of how to use curiosity to expand our minds.
- As we reach school age, answers become more important than curious thought. In fact, Hal Gregersen says, "The average 6-18 year old asks only 1 question per one-hour class per month."

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Next, We Focus On ...

HUMILITY...

What Does It Mean To You?



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We Will Focus On ...

HUMILITY...

THE FEELING OR ATTITUDE THAT YOU HAVE NO SPECIAL IMPORTANCE THAT MAKES YOU BETTER THAN OTHERS...

HAVING A LACK OF PRIDE

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Humility...

- Sometimes people confuse humility with low self-esteem
- Sometimes people confuse humility with low/no self-confidence
- In reality, being confident and being humble are NOT mutually exclusive

Humility
Is not thinking less of yourself
but thinking of yourself less.
-C. S. Lewis

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Humility...

- One can feel good about their ability to do a task (confidence)...and a) recognize that there is room to improve; b) recognize that they don't do everything well; c) recognize that others might be better at the task (humility)

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Humility...

- Often, people who are humble, are described by others as 'approachable'
- People who lack humility are sometimes perceived as 'believing they are perfect, and always right'

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Can You Increase Humility?

- The research says "Yes"
- Humility can be 'learned' ...and 'achieved'

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5 Steps to Building Humility

1. Build Confidence
 - Recognize what you do well
 - Use those strengths to become better
 - Help increase the confidence of others

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5 Steps to Building Humility

2. Ask Questions
 - This is an outward demonstration of your recognition that you do not know it all

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5 Steps to Building Humility

- 3. Get Out Of Your Comfort Zone
 - When was the last time you tried something new, or different?
 - When we attempt new things, we place ourselves in the position of being vulnerable, and of not being the expert

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5 Steps to Building Humility

- 4. Remember Your Goals
 - Remind yourself every morning why it is that you do what you do
 - Set high expectations for yourself, and don't beat yourself up when you don't achieve them on the very first attempt, or if they take longer to achieve than you imagined

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5 Steps to Building Humility

- 5. Reflect On Your Behavior
 - Introspection is a great way to inspire humility.
 - Some things to reflect on include...
 - When was the last time I said I was sorry?
 - On whose toes did I step on today, and did I acknowledge it?

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Next - We Focus On ...

Awareness of Bias...

Self

Others

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Of Course... We Are Not Seeking Perfection!



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Bias

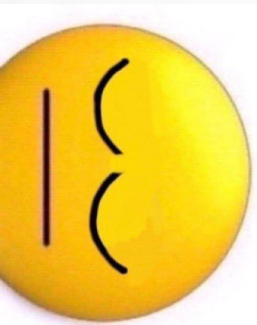
- A. The leaning in toward, or out away from certain individuals and or groups...
- B. Pre-conceived notions about what something or someone is like...
- C. Prejudice in favor of or against one thing, person, or group compared with another, usually in a way that is considered to be unfair

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Biases Are NOT Inherently Evil!

- It is the failure to **recognize** biases that can lead to bad decision-making, and bad work relations

I Cannot See



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Let's Focus On ...

Cultural Intelligence



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Cultural Intelligence

- Cultural intelligence refers to the skills one has developed which allow one to relate to and work effectively with in culturally diverse settings...
- It is the capacity to cross boundaries and prosper in multiple settings...
- People with high cultural intelligence are attentive to others' cultures and can/do adapt when necessary...

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What Gets In The Way?

- Anger
- Sadness
- Guilt
- Fear

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Fostering Understanding

- Guilt and sadness are not relevant...important or recommended, they don't inspire change
- Guilt generally occurs AFTER a behavior...
- Empathy/understanding...generates change and must exist before people can "move on"

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Fostering Understanding

- You don't have to change every time the winds blows
- Be respectful

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Now, We Will Focus On ...

- Effective Collaboration
 - ...Empowering others and focusing on team cohesion...



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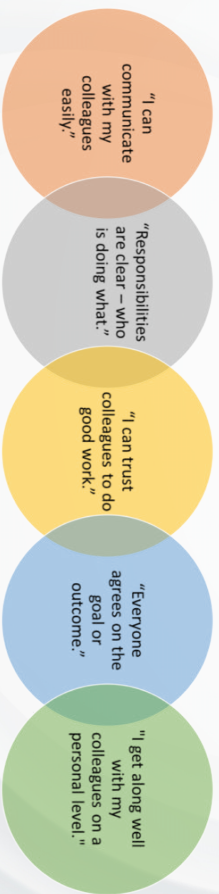
Effective Collaboration ...

- Collaboration means **two or more people working together to achieve a goal...**
- Studies have found that working together makes people more motivated and helps them perform much better. People who are collaborating on tasks stay interested for longer, feel less tired and get better results than people who are working alone.

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What We Know...

What makes for good team collaboration?



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Effective Collaboration...

- There has been research into what components are necessary for a workplace to be perceived as collaborative...

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Effective Collaboration...

- Trust...
 - ...a high level of confidence in another...
 - There are 4 elements of trust
 - Consistency
 - Compassion
 - Communication
 - Competency

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Effective Collaboration...

- Celebration...
 - The Celebration of successes is important to collaboration
 - It is from the Latin word 'celebrare' meaning...to assemble to honor...to rejoice in or have special festivities...

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Effective Collaboration...

- Discourage Isolation (silos)
- Isolation can lead to feelings of loneliness and hostility

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Effective Collaboration...

- No Bullying...
 - Repeated infliction of intentional, malicious, and abusive conduct which interferes with a person's ability to do his/her work and is substantial enough to cause physical and/or psychological harm...
 - The problem is...we all see it a little differently

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Anything Look Familiar?

- Negative comments about intelligence
- Consistently failed to return calls or emails
- Contributions ignored by others
- Someone interferes with your work activities
- Subjected to mean pranks
- Been lied to
- Others fail to give you important information
- Denied a raise without valid reason
- Subjected to derogatory name calling
- Target of rumors or gossip
- Show little empathy when you were having a tough time

Effective Collaboration ...

- Mutual Respect...
 - Exists when 2 (or more) people do not agree on everything but do not get upset over little things, and are willing to work it out, because they care about each other...
 - Learning among team members based on the diversity of opinions and expertise...
 - It allows team members to know that they are valued for their achievements, abilities, and qualities...
- What Are Some Common Examples?

Thank you!

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