



Claims Judicial
and Legislative Affairs



Regional Recap

Claims Judicial and Legislative Affairs (CJLA)

May 2024



Welcome to CJLA Communications

Zurich's goal is to share information, combat social inflation and thereby, create fairness in the civil justice system for the benefit of our customers.

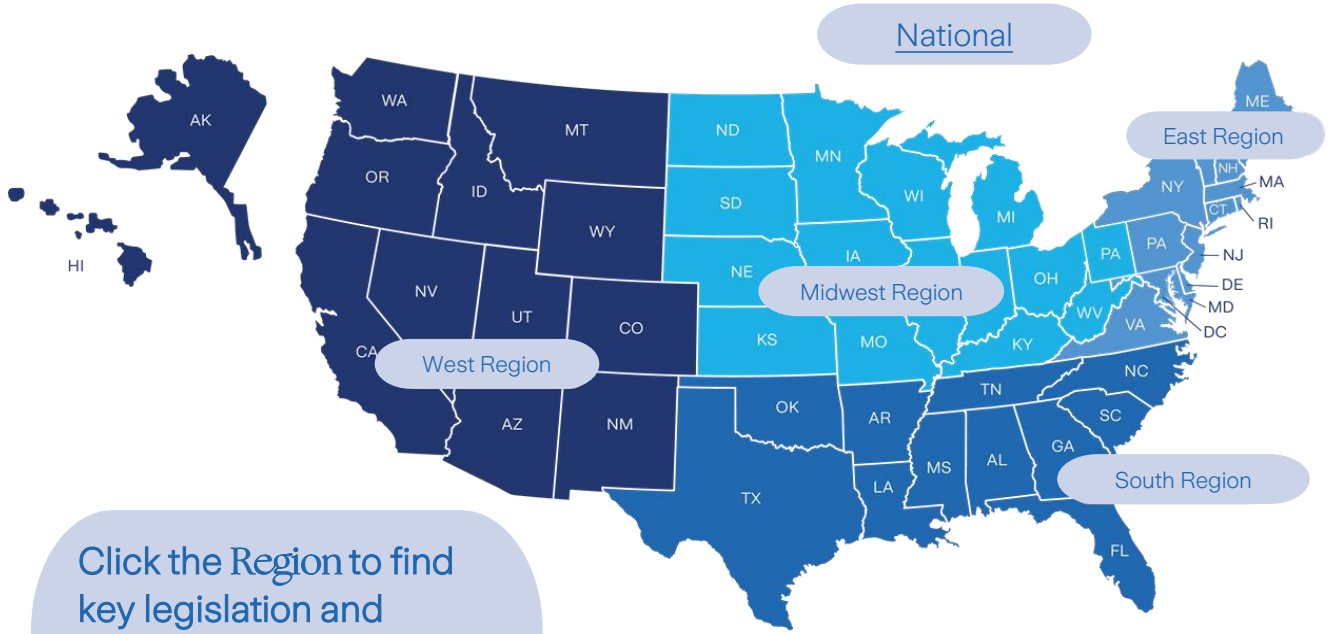
Social inflation is increasingly responsible for rising claims costs that may impact how our customers do business. Combining our experience and commitment to risk management, we aim to deliver sustainable solutions in a rapidly changing environment through advocacy efforts and innovative thinking. Zurich remains dedicated to working collaboratively with our customers, brokers, and industry members to tackle these challenges.

One of Zurich's efforts in that collaboration is to educate on the various social inflation topics that affect all of us. Specifically, the *CJLA Quarterly Digest* reports on issues of the day which touch the industry on a global, national, or state level. Trending topics as well as successful trial tactics are also shared. All of these articles contain direct links for more in-depth information. Similarly, the *CJLA Regional Recap* captures the latest legislative enactments and judicial decisions that have an impact on social inflation and the industry. These are indexed by region and by state with direct links to the exact legislation or citation for ease of use.

Education is only the beginning of the solution. Leveling the playing field for all requires that all be involved. Share your concerns about social inflation with us. Advise us of issues in your state or jurisdiction. Follow your regional or state tort reform group. Promote fairness through your local or state bar association. Share experiences, both positive and negative. And of course, join the industry's coalition to combat social inflation.

For questions, submissions, or topics for discussion, contact lisa.bellino@zurichna.com.





Click the Region to find key legislation and judicial decisions in its states

East

- [Connecticut](#)
- [Delaware](#)
- [District of Columbia](#)
- [Maine](#)
- [Maryland](#)
- [Massachusetts](#)
- [New Hampshire](#)
- [New Jersey](#)
- [New York](#)
- [Pennsylvania](#)
- [Rhode Island](#)
- [Vermont](#)
- [Virginia](#)

Midwest

- [Illinois](#)
- [Indiana](#)
- [Iowa](#)
- [Kansas](#)
- [Kentucky](#)
- [Michigan](#)
- [Minnesota](#)
- [Missouri](#)
- [Nebraska](#)
- [Ohio](#)
- [North Dakota](#)
- [South Dakota](#)
- [West Virginia](#)
- [Wisconsin](#)

South

- [Alabama](#)
- [Arkansas](#)
- [Florida](#)
- [Georgia](#)
- [Louisiana](#)
- [Mississippi](#)
- [North Carolina](#)
- [Oklahoma](#)
- [South Carolina](#)
- [Tennessee](#)
- [Texas](#)

West

- [Alaska](#)
- [Arizona](#)
- [California](#)
- [Colorado](#)
- [Hawaii](#)
- [Idaho](#)
- [Montana](#)
- [Nevada](#)
- [New Mexico](#)
- [Oregon](#)
- [Utah](#)
- [Washington](#)
- [Wyoming](#)

Department of Labor

DOL Reclassifies Terms “Employee” and “Independent Contractor”

Effective March 1, 2024, under the Fair Labor Standards Act, the term “independent contractors” refers to “workers who, as a matter of economic reality, are not dependent on an employer for work at are in business for themselves.” The definition of employee includes “any person acting directly or indirectly in the interest of an employer in relation to an employee.” The purpose of the [reclassification](#) was so that the [Department of Labor](#)’s terms align more closely with the body of law from the federal courts. It uses a “totality-of-the-circumstances” analysis of the “economic reality” of labor.

Environmental Protection Agency

Classification of PFAS Chemicals Grows

The Environmental Protection Agency (EPA) has [designated](#) the PFAS chemicals, perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund. With this designation, alleged polluters are subject to penalty to pay for clean up of contamination they caused. The EPA also has undertaken an effort to minimize human exposure to PFAS through drinking water by establishing a “drinking water standard” which is also known as the [Safe Drinking Water Act](#). Additionally, the EPA has finalized [rules](#) with respect to processing PFAS as well as measuring it in the environment.



Maryland Legislative

Maryland Rejects Modifying Expert Testimony Requirements

Although requested by the Rules Committee, [amendments](#) to Maryland's Rules of Evidence with respect to expert testimony were rejected. The changes would have mirrored that of the Federal Rules of Evidence which were amended last year. Although Maryland state rules follow Daubert, the rules stop short of placing the burden on the party proffering the expert.



New Jersey Legislative

NJ Requires Minimum \$1.5M Policy for Trucks

Required liability coverage for commercial vehicles weighing more than 26,000lbs. has increased dramatically by [statute](#) to \$1.5M from an ambiguous previous minimum which at times was as low as \$15,000. This amount is double the federal minimum of \$750,000. This hike applies to all such trucks “registered or principally garaged” in the Garden State.

Workers’ Compensation Presumption Created for First Responders

Effective immediately, if a volunteer or professional fire fighter, first aid or rescue worker, suffers a cardiovascular or cerebral injury or death while responding to an emergency, this [statute](#) creates a rebuttable presumption that the injury or death was caused by the emergency response and is, therefore, compensable.

New Data Privacy Act Vests Authority Exclusively in State’s Attorney General

Only the Attorney General has the authority to enforce a violation of The Garden State’s newly enacted [Data Privacy Act](#). This statute outlines the collection and dissemination of such data to protect consumers. The statute prohibits a private cause of action for any alleged infractions, thus eliminating the ability of plaintiffs’ lawyers from bringing suit for an individual or for a class.

Mandatory TPLF Disclosure Requirements Rejected

The New Jersey Supreme Court’s Civil Practice Committee [declined](#) to adopt the proposal for disclosure of third-party litigation into the state’s Civil Practice Rules. The proposal would have required TPLF arrangements be disclosed in civil cases through the discovery rules, but the Committee rejected same as such funding “would likely bear no relevance to the issues in the case.”



New Jersey Judicial

COVID Closure Order Caused no Physical Harm as Required under Policy

The Ocean Casino Resort was closed from March 2020 through July 2020 due to the COVID executive order of the Governor. Because of the monetary losses it incurred, the casino owner sought coverage under its multiple policies, asserting that it sustained a “direct physical loss” of or “direct physical...damage” to the property as a result of the closure mandate. The Casino owners also claimed that the “contamination exclusion” did not apply to or thwart its claims for coverage. New Jersey’s Supreme Court concluded that the Casino’s losses were not based upon the physical loss or damage they alleged as the property itself was not damaged in any physical manner. Moreover, the closure due to the COVID mandate did not physically harm the property. The presence of COVID itself was the very contamination that the policy did exclude.

[AC Ocean Walk, LLC v. American Guarantee and Liability Insurance Company](#)

Consumer Fraud Damages Limited by Court

The remedies to consumers under the New Jersey Consumer Fraud Act (“Act”) are limited per the state’s Supreme Court. Although the genesis of this lawsuit was a nursing home’s refund policy, the gravamen of this case was that the Court disagreed with the plaintiffs’ interpretation of damages they were permitted to receive under the Act. This further prohibited their recovery of windfall damages, as not all were related to actual losses, and limited the availability of treble damages.

[DeSimone v. Springpoint Senior Living](#)



Pennsylvania Judicial

High Court Restricts Revisiting Previous Rulings while Litigating a Case

Under the “coordinate jurisdiction rule,” a ruling during a previous procedural point in the case remains the law of the case unless a limited exception arises, such as a change in the facts or the law or a clearly erroneous decision that results in manifest injustice. Only by demonstrating “exceptional circumstances” with respect to a previous ruling in the case may that issue be revisited. The coordinate jurisdiction rule applies regardless of whether an opinion was issued by the court in support of the initial ruling. Here, the Pennsylvania Supreme Court noted that the Commonwealth Court violated the coordinate jurisdiction rule by contradicting its previous overruling of preliminary objections when determining issues as to the defendants in a later proceeding.

[*Ivy Hill Congregation of Jehovah’s Witnesses v. Commonwealth*](#)

Punitive and Treble Damages Available in UTPCPL with Common Law Claims

Under the Commonwealth’s Unfair Trade Practices and Consumer Protection Law (UTPCPL), a plaintiff is entitled to recover treble damages from a defendant, even if that same defendant is also liable for common-law punitive damages as a result of the action. The purpose of the penalty under the UTPCPL is not the same as that underlying a punitive damages’ claim.

[*Dwyer v. Ameriprise Financial, Inc.*](#)



Virginia Legislative

Statute Sets Forth Administrator's Permissible Venue to Bring Suit

Permissible venue for a lawsuit in which a specifically authorized administrator, appointed to bring such claim on behalf of a decedent, is only proper in a county or city in which venue would have been proper had the decedent been alive. This [statute](#) is an effort to preclude forum shopping by finding an administrator who lives in a jurisdiction other than where venue would have originally been appropriate.

Bad Faith in UM/UIM Claims Set to Result in Additional Liability

If an insured is entitled to UM/UIM benefits and the insurance company fails to act in good faith with respect to the offer of settlement, rejects a reasonable settlement demand, or fails to respond timely, the carrier shall also be [liable](#) to the insured in an amount up to double the amount of the judgment obtained against the uninsured/underinsured motorist, immune or unknown party or released defendant not to exceed \$500,000 together with attorneys' fees, costs and expenses. The trial court which heard the underlying tort claim may be asked to determine the lack of good faith.



Indiana Legislative

Disclosure of Advance Payment Contracts Required in Civil Actions

The Indiana legislature has estopped a provider of a civil proceeding advance payment (CPAP) contract from deciding, influencing, or directing how the underlying civil proceeding is conducted. Furthermore, the [statute](#) requires disclosure of the agreement to any other party in a lawsuit as well as to any insurer that has a duty to defend any party to the lawsuit. In particular, plaintiff's counsel must disclose whether the funding agreement is financed by a "foreign person," which includes corporations.



Kentucky Legislative

Data Privacy Act Establishes Guidelines for Consumers and Companies

A new data privacy [statute](#) provides for consumer rights as well as creates standards for compliance pertinent to those qualifying companies. Further, the statute establishes exclusive authority in Attorney General to enforce violations of the statute. Any such enforcement is also met with procedural requirements.

Law Enforcement to Retain Accident Reports to Improve Traffic Safety

Law enforcement agencies are required to maintain a reporting system which collects traffic accident data so as to improve traffic safety programs. This [statute](#) specifically states that such data shall not be considered open record except in certain circumstances. The confidentiality of the records is forefront although some information may be disseminated in specific situations which include the parties to the incident as well as when subject to a proper subpoena or court order.



Michigan Legislative

Michigan Adopts Standard of the Federal Rules for Expert Testimony

Michigan has amended its Rule of Civil Procedure [702](#) to align with the most recent amendment to the Federal Rules of Evidence with respect to expert testimony. Any proponent of the expert must demonstrate by a preponderance of evidence that the opinion reflects the “reliable application” required under the federal rule.



Nebraska Legislative

Workers' Compensation Schedule Changed for Certain Injuries

Under the [amended](#) schedule, employees may qualify for permanent benefits based on their loss of earning capacity only if two or more parts of different extremities are injured in the same accident and the loss of use resulting from the accident is 30% or greater.

Potential Change in Automobile Minimum Limits Halted

Efforts to double the minimum automobile limits for both liability and UM/UIM claims did not pass. The [bill](#) requesting that uninsured and underinsured motorist minimum benefits limits be raised to \$50,000 for one injured person and \$100,000 for multiple injured persons did not pass in this legislative session. Likewise, the [bill](#) introduced to produce the same minimum limits for liability coverage failed.

Attempt to Expand Sovereign Immunity Exceptions Stymied

Governor Pillen vetoed a [bill](#) attempting to allow lawsuits to proceed against political subdivisions in a case of child abuse or sexual assault. The proposed legislation would have carved out an exception to sovereign immunity for certain claims and potentially allowed punitive claims for this cause of action.



West Virginia Legislative

Previous TPLF Act Now Places More Requirements on Litigation Financers

This [statute](#) has updated the terms “litigation financing” and “litigation financing transaction” in the context of consumer protection. Tort claim litigation financing is no longer excluded from the requirements of the WV TPLF act. Consumer litigation financers now face certain prohibitions while only certain non-profit organizations are excluded from the definition of litigation financing. Litigation financing agreements must now be disclosed without the need for a discovery request.



West Virginia Judicial

Delivery Network Companies and Drivers Need Insurance

Insurance requirements are now [imposed](#) for “delivery network companies” which connect the customers’ request to a driver. Such a driver is deemed an independent contractor unless otherwise specified. When the driver is logged into the network, driving a personal vehicle, and in the delivery service period or the availability period, the driver and/or network must maintain general liability insurance for personal injury of no less than \$50,000 per person or \$100,000 in the aggregate. Property damage coverage of no less than \$25,000 is also mandatory. The statute further defines the priority of coverage and the investigation of such claims.



Alabama Legislative

Specific Identification of Claim Basis Required to Maintain Asbestos Cases

Within 45 days of filing an asbestos action, a plaintiff must provide all parties to that action with specific information that specifically gives the basis for each claim against each individual defendant. The [statute](#) lists nine requirements that provide the basis for specificity and conformity therewith. Should the plaintiff fail to meet these requirements and/or specific identification of a defendant's product or premises, that defendant may file a motion to dismiss with the court for that claim.



Florida Legislative

FL Consumer Protections Law Added

Under this [statute](#), any certified public accountant that prepares the mandatory annual audit for an insurer must be licensed in Florida and have completed required continuing education. Further, loss assessment claims must be made within a specific time frame. There are specific requirements for notice of change in policy terms as well as for contracts that a public adjusting firm has with a policyholder for a property and casualty claim.

Statutory Defense to Cybersecurity Incidents Provided

Demonstrating compliance with this [statute](#)'s requirements regarding cybersecurity programs and protocols limits liability for cybersecurity incidents. Moreover, failure to maintain compliance does not constitute a cause of action nor is it basis for liability.



Georgia Legislative

Direct Actions Against Insurance Carriers Now Limited to Certain Instances

If one or more motor carriers related to a cause of action are insolvent or bankrupt, plaintiff may have a [direct](#) cause of action against the insurance carrier. Likewise, if personal service cannot be made upon the motor carrier or driver, direct action may be had. In these instances, the insurance carrier may be joined to the suit without the filing of a motion or obtaining an order of the court. This statute limits the actions in which the carrier may be named directly.

Georgia Civil Practice Act Clarifies Settlement Demand Terms

This [legislation](#) sets guidelines for time limit demands as well as the settlement process therein. Noting that there is a 30-day minimum for setting an acceptance date, the statute also states that there may only be six additional material terms to such settlement. A variance by the recipient to an offer to settle shall not subject the recipient to a claim for failing to accept an immaterial term. Similarly, there is no cause of action for failure to settle a tort claim when the recipient provides information as required by the statute. This code section does not apply to product liability claims, including those based upon duty to warn. This statute came after a Georgia court [concluded](#) that an offer was rejected because of certain language discrepancies or changes, such as the inclusion of a claim number on a settlement check.



Georgia Judicial

Extreme Anchoring Examples Permitted in Closing Arguments

The Georgia Court of Appeals affirmed the use of the extremely high salaries of baseball players, golf professionals, CEOs, and other occupations in closing arguments of a medical malpractice case that did not include a punitive damages element because it permits “wide latitude” to the attorneys. Furthermore, the Court noted that objections, and a subsequent request for a mistrial, were waived as the objections were made at the end of plaintiff’s counsel’s closing argument and not contemporaneously with the allegedly objectionable comments.

[White v. McGourick](#)



Louisiana Legislative

Good Faith Claim Handling Guidelines Established

This [bill](#) sets forth good faith duty guidelines for both the insurer as well as the insured. Furthermore, it establishes timelines for payment of claims and settlement practices with respect to a catastrophic loss. The bill further outlines the types of penalties available for failure to comply with timelines, a breach of good faith or settlement practices.

Legislature Clarifies Three-Year Rule and Nonrenewals

To assist in combating the insurance crisis in the Bayou state, this [bill](#) outlines the three-year rule against cancellation of a homeowner's policy but does permit an insurer to nonrenew up to 5% of its customers' homeowners' policies per calendar year upon submission of a plan and its approval by the commissioner of insurance.



Tennessee Legislative

Correction to Court's Collateral Source Rule in Health Care Cases Enacted

This [statute](#), effective May 1, 2024, specifically abrogates the common law collateral source rule in all health care liability/medical malpractice actions. Additionally, it defines the term “past actual economic loss”. Furthermore, this statute will limit actual economic losses upon appropriate documentation. The enactment of this bill is a legislative modification of the 2023 TN Supreme Court ruling in [Crotty v. Flora, et al.](#) that the act as then written allowed for the recovery of all past and future medical bills without consideration of payments by any collateral source.

Unique Analysis Required for Customers of Insurers and Financial Institutions

Insurers and financial institutions are required to make determinations about the provision or denial of services based upon an “analysis of risk factors” unique to each customer and shall not cancel or deny services based upon discriminatory basis such as political or religious belief, or any factor that is not impartial, quantitative and risk based. Further, social credit score should not be used in rating. A violation of this [act](#) is subject to the penalties of the Tennessee Consumer Protection Act.



Arizona Legislative

Modification to Rules of Civil Procedure Go into Effect

As of January 1, 2024, there are multiple amendments to the Rules of Civil Procedure. Most germane to liability claims are:

- After a default for a sum certain, upon proper motion, [judgment](#) for that amount plus costs may be entered against the Defendant;
- Rule 35 has been [revised](#) with respect to physical and mental examinations;
- Compulsory arbitration procedures have been [changed](#);
- Statements of Fact within motions for summary judgment have been [modified](#);
- Procedures for recording agreements and settlements have been [amended](#).

Arizona Amends Evidentiary Rules Regarding Expert Testimony

Arizona has revised its [statute](#) to mirror the change to Federal Rules of Evidence 702. For an expert's opinion to be admissible, it must reflect the "reliable application" required under the federal rule. Like the federal rule, the proponent of the expert must demonstrate by a preponderance of evidence that it is admissible.

Transportation Network Services Have New Coverage Limits

Transportation network company, taxi, livery and limousine drivers are now [required](#) to carry a primary commercial liability of \$1,000,000 per incident when a passenger occupies the driver's vehicle as specified. The primary commercial uninsured motorist coverage is the greater of \$25,000 per person and \$75,000 per incident or the minimum required under the state's motor vehicle liability policy requirements.



California Legislative

Efforts to Expand Policy Definitions Defeated

Recently, the California legislature sought to expand the definition of “suit” or “lawsuit” as used within an insurance policy to include an “order, directive, mandate, requirement” or any other regulatory enforcement action so that such policies might encompass environmental contamination within the state. This [bill](#) was defeated.



Colorado Legislative

Agreement on Raising Non-Economic Med Mal Damages Cap

By agreement of the state's trial lawyers association and the medical malpractice coalition, as of January 1, 2025, the new [bill](#) allows for higher general liability non-economic damages of \$1.25M for general liability and \$2.125M for wrongful death, each to be adjusted every two years for inflation as of 2028. Medical malpractice non-economic damages caps are raised to \$875,000 over the course of five years while general liability and wrongful death is raised to \$1.575M over that same time.

New Privacy Rights for Biological Data

The Colorado legislature [amended](#) the definition of "sensitive data" in the state's Privacy Act to include an individual's "biological data" which is subject to protection. This type of data includes that which is "generated by the technological processing, measurement, or analysis of an individual's biological, genetic, biochemical, physiological, or neural properties, compositions, or activities or of an individual's body or bodily functions, which data is used or intended to be used, singly or in combination with other personal data, for identification purposes."

Colorado Judicial

Three Year Statute of Limitations for Contracts Starts at “Time of Breach”

The Supreme Court of Colorado held that a breach of contract claim accrues “at the time the breach is, or in the exercise of reasonable diligence should have been, discovered” under [§13-80-108\(6\)](#) and has a statute of limitations of three years from then. This holding put to rest a decades-long dispute between the parties about the system used to monitor noise from a newly-constructed portion of the Denver airport.

[*City & Cnty. Of Denver v. Bd. Of Cnty. Comm’rs of Adams Cnty.*](#)



Hawaii Judicial

Fundamental Right to Stable Climate Basis for High Court's Decision

Recognizing a “human right to a stable climate,” the Hawaii Supreme Court agreed with the state’s Public Utility Commission (PUC) in its rejection of a bid to purchase a bioenergy company. The Court based its decision in part on the “public interest-minded mission” of the PUC in rejecting a bid over its concerns that there would be significant net emission of greenhouse gases, contrary to the zero emissions target for the State.

[*In re Hawaii Electric Light Co., Inc.*](#)

Montana Judicial

Youth Climate Activists Obtain Favorable Ruling

The Court held that an adjustment to the Montana Energy Policy Act, limiting environmental factors that must be considered for when projects are permitted, is a violation of the right to safe environment guaranteed by the state constitution. As a result, declaratory relief was issued for the 16 youth plaintiffs who participated in the trial which focused on oil and gas developments. It is unknown whether the State's attorney general will appeal this ruling.

[Held v. Montana](#)



Nevada Judicial

Hospital Owes No Extra Fiduciary Duty to Patients

The Nevada Supreme Court determined that a hospital does not owe a separate fiduciary duty to a patient as that is outside the parameters of a professional medical duty. Thus, a jury verdict of \$48M, which included \$32.42 in punitive damages, was therefore vacated as was the order granting prejudgment interest. The court did not reverse the findings of negligence on the medical malpractice claim as they were not contested.

[Valley Health System, LLC v. Murray](#)



Oregon Legislative

Public Entity Construction Contracts May No Longer Include Duty to Defend

Construction contracts between a public entity and an architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services may not include a [duty to defend](#) the public entity against a claim for professional negligence provided unless the professional liability is adjudicated or otherwise resolved.



Oregon Judicial

Young Climate Activists' Suit Dismissed

The lawsuit filed by young climate activists, who have claim that the U.S. government's role in climate change violated their constitutional rights, has been dismissed after a circuitous 10-year journey. The plaintiffs, backed by "Our Children's Trust" argued that they have a constitutional right to a sustainable climate. Although unsuccessful in the Beaver State, this group was successful in its Oregon suit.

[U.S. v. Xiuhtezcatl Tonatiuh M.](#)

Punitive Damages More than Nine Times Compensatory Award is Excessive

Affirming both the trial and appellate courts, the Oregon Supreme Court decided that the jury had assessed a "grossly excessive" amount in punitive damages when it imposed \$10M in punitive damages, which was more than nine times the compensatory award of \$295,597.06. The defendants' stipulated that they were negligent in allowing the elevated walkway to deteriorate at his apartment complex and contested the extent of his knee injury. However, the courts all agreed that the amount of the punitive damages violated the defendants' due process rights as it was 33 times the amount of compensatory damages, which contradicts those punitive damages guidelines enunciated by the U.S. Supreme Court.

[Trebelhorn v. Prime Wimbeldon SPE, LLC](#)



Utah Legislative

Arbitration Limitations and Procedures Modified

Effective May 1, 2024, for third party motor vehicle cases, the plaintiff may submit the suit to arbitration, for which the limits rose to \$75,000 or the defendant's per person limits of liability insurance, whichever is less. Further, this [law](#) has provisions for the submission of first party and property damage payments. Should a plaintiff decide to proceed in arbitration, there is no right to a judgment against the personal assets of the defendant. No punitive damages claim may be made in this arbitration context and the arbitration process follows the existing arbitration requirements. However, if plaintiff appeals the award and does not obtain a verdict that is at least \$5,000 and at least 30% greater than the arbitration award, plaintiff is responsible for all costs of the non-appealing party. Similarly, if the defendant appeals and does not obtain a verdict that is at least 30% less than the arbitration award, defendant bears the costs of the other parties. The statute further defines costs and percentages to avoid ambiguity.

Consumer Sales Practices Act Relating to Class Actions Amended

In class action suits where the defense has filed a written offer of settlement that is not accepted by the plaintiff class representative within a reasonable amount of time, the defendant may file an affidavit regarding that rejection. Pursuant to this [amendment](#), the Court may then, upon deciding if the offer was meritorious, present the offer to the members of the class themselves after at least 60 days' notice.



Washington Legislative

Health Crisis Response Liability Protection Extended

Amending the original statute precluding liability for dispatching decisions made by specific response teams, the [law](#) now removes liability for those good faith efforts to provide crisis stabilization services and other mental health emergency services in specific situations. The amendment includes several types of outreach and de-escalation services.



Washington Judicial

Use of Database to Reduce Medical Bills Payment Is Not Unfair Action

The Washington Supreme Court decided that the use of a third-party claim database which assists in assessing the reasonableness of bills in high volume situations as already permitted by the state's Insurance Commissioner, does not violate the state's Consumer Protection Act or personal injury protection requirements for establishing reasonable charging standards. Thus, the insurer's payment of the bills at the 80% percentile was still in good faith.

[*Schiff v. Liberty Mutual Fire Insurance Company*](#)



Disclaimer and Antitrust Compliance Statement:

The information contained herein is meant to create awareness of issues and broaden our discussions. This information does not necessarily reflect the official opinion of Zurich North America, nor should it be relied upon as dispositive of any particular issue. The information contained herein may not constitute all of the legislative or judicial activity within a region or state, nor is it intended to do so. Any and all information contained herein is not legal advice and should not be considered such.

As a part of a coalition to combat social inflation to create a fair civil justice system for its customers, Zurich North America (ZNA) is first and foremost a competitor in the marketplace; however, this publication shall not be used as a forum to obtain unlawful individual company advantages or to achieve anti-competitive objectives for the industry. ZNA may be held responsible for unlawful conduct by its employees and accordingly, ZNA requires its employees to avoid any conduct that might create any question of a violation of the antitrust laws.

Generally, the federal antitrust laws prevent unreasonable restraints of trade, such as conspiracies and agreements between competitors to engage in price-fixing, bid-rigging and customer or market allocation, and group boycotts or concerted refusals to deal with competitors, suppliers or customers. In particular, the discussion of competitively-sensitive information in any forum which shares information regarding the insurance industry (i.e. comments about coverages, current or future rates, “fair” profit levels, or underwriting certain lines of business) may be improperly interpreted as evidence of an unlawful objective, even if the intent of the parties is entirely legitimate. Any conduct that arguably could be construed as a group boycott, including discussions regarding particular vendors, or a particular company’s intended response to a governmental or regulatory agency should always be avoided. Accordingly, all recipients of this publication should take care to avoid inadvertent discussion in any form of competitively-sensitive topics and potentially ambiguous statements.

This publication seeks to serve the legitimate purpose of sharing and analyzing information that is publicly known. The First Amendment constitutional right of free speech, along with the Noerr-Pennington Doctrine protection to petition the government, and allows ZNA, competitor carriers and others to discuss general economic and regulatory developments in insurance, individual and joint plans to support or oppose legislation, regulatory action or judicial proceedings through direct lobbying, campaign contributions, media campaigns, grassroots activities and litigation. Further, providing or gathering specific non-legislative information to or from ZNA and other carriers must also adhere to compliance guidelines.

Antitrust compliance is everyone’s responsibility; however, ZNA’s CJLA will monitor this publication and address any questions or concerns related to same.

For questions, submissions, or topics for discussion, contact lisa.bellino@zurichna.com.

