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Claims Judicial and Legislative Affairs Quarterly Digest

June 2026

"Recognizing that today's economic and litigation environments are top of mind for our customers, Zurich has devoted a team of subject matter professionals to address their concerns. The Claims Judicial and Legislative Affairs (CJLA) group studies social inflation and its drivers, providing insights and information to Zurich's customers and brokers; our claims and risk engineering teams; and others who may influence our industry and the legislative environment. As a founding member and instrumental leader amongst a growing coalition of industry partners, we are proud to share this information in our *Quarterly Digest* and *Regional Recap*."

Keith Daly
ZNA Chief Claims Officer

Social inflation is increasingly responsible for rising claims costs. This may affect how companies do business, interact with their communities, and connect with their customers. Zurich remains dedicated to working collaboratively with our customers, brokers, and risk mitigation industry members to tackle these challenges.

The **CJLA *Quarterly Digest*** highlights issues which touch the industry on a global, national, and state level. Trending topics as well as successful trial tactics are also shared. The articles contain direct links for more in-depth information. The **CJLA *Quarterly Digest*** publishes once a quarter.

The **CJLA *Regional Recap*** captures the latest legislative enactments and judicial decisions that impact social inflation and the insurance industry. For ease of use, these are indexed by region and by state with direct links to the exact legislation or citation. The **CJLA *Regional Recap*** publishes four times a year.

Education is only the beginning of the solution. Leveling the playing field requires that all be involved.

To join Zurich in combatting social inflation – or for questions or submission of topics for future issues – please contact lisa.bellino@zurichna.com

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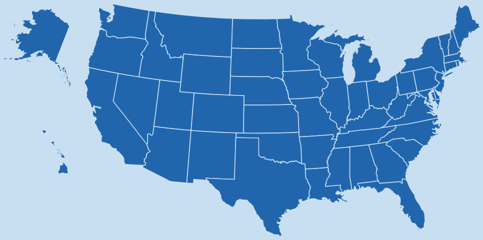


Freight broker protection takes a turn:
Montgomery eliminates the pre-emption defense to negligent hiring

The United States Supreme Court's decision in *Montgomery v. Caribe Transport II, LLC* is a significant ruling that fundamentally changes the legal landscape for freight brokers. Prior to the ruling, the federal district courts were split, with the majority holding that freight brokers could not be held liable under state tort law when a motor carrier they hired was involved in an accident. Specifically, in the 7th and 11th Circuits, these negligent hiring/selection claims were determined to be preempted by the Federal Aviation Administration Authorization Act of 1994 (FAAAA), which bars states from enforcing laws that impact a motor carrier's "price, route, or service." In the 9th Circuit, however, the safety exception was determined to save plaintiffs' negligent hiring/selection claims against brokers.

The *Montgomery* case arises from a 2017 crash in Illinois involving a truck operated by Caribe Transport and brokered by C.H. Robinson. The injured plaintiff, Shawn Montgomery, sued, arguing that C.H. Robinson bore liability for the negligent hiring/selection of Caribe Transport. The District Court held that the FAAAA expressly preempted Montgomery's negligent hiring/selection claim against C.H. Robinson, which the 7th Circuit affirmed. The U.S. Supreme Court granted *certiorari* "to resolve whether the FAAAA's safety exception permits negligent hiring claims against brokers like C.H. Robinson that coordinate shipments in the transportation industry."

On May 14, 2026, in a unanimous 9–0 opinion written by Justice Amy Coney Barrett, the Court held that negligent hiring/selection claims against freight brokers are not preempted by the FAAAA. Instead, such claims fall within the statute's "safety exception," allowing them to proceed under state tort law.

The central question for the Court was whether a negligent hiring claim against a broker – based on its selection of a motor carrier – falls within the FAAAA's safety exception. The FAAAA broadly preempts state laws "related to a price, route, or service" of a motor carrier or broker in connection with the transportation of property. However, the statute preserves state authority over safety regulation "with respect to motor vehicles."

The Court interpreted the statutory phrase "with respect to motor vehicles" to mean "concerns" motor vehicles, adopting an ordinary-meaning approach. Applying that definition, the Court concluded that a broker's duty to exercise reasonable care in selecting a motor carrier "concerns" motor vehicles, namely the trucks used to transport freight. Thus, negligent hiring/selection claims fall within the safety exception and can proceed under state law.

The practical implications of the decision are substantial. Before this ruling, brokers frequently relied on FAAAA preemption as a threshold defense, often securing dismissal of negligent hiring claims at an early stage. That defense is now effectively eliminated for claims tied to motor vehicle safety. As a result, such cases will proceed to discovery and, potentially, trial, where courts and juries will evaluate whether the broker exercised reasonable care in selecting a motor carrier.

Justice Brett Kavanaugh's concurrence, joined by Justice Samuel Alito, noted that the case was closer than the majority opinion suggested and highlighted several key issues that brokers will face in the wake of the decision. For instance, Congress currently requires motor carriers to carry minimum insurance but imposes no comparable requirement on brokers, and the statutory bonding requirement does not cover tort claims.

Judge Kavanaugh put emphasis on the fact that there is little federal regulation governing how brokers choose carriers and that state tort law should be available so that brokers would not be operating in a "black hole" without meaningful safety oversight. As a result, the ruling materially shifts practical expectations for broker conduct and oversight.

Freight broker protection takes a turn: *Montgomery eliminates the pre-emption defense to negligent hiring*

Brokers traditionally showed reasonable care by checking for proper operating authority, verifying insurance coverage, and ensuring the carrier had no "unsatisfactory" safety rating in Federal Motor Carrer Safety Administration (FMCSA) records. *Montgomery* undermines this defense, removing a key layer of protection and raising questions about the adequacy of traditional vetting practices.

This is particularly concerning in light of systemic regulatory gaps that fraudulent "chameleon carriers" are exploiting within the FMCSA registration and enforcement framework. The current FMCSA registration system allows motor carriers to obtain new operating authority without sufficiently linking safety history to the underlying operator, which allows entities with prior safety violations to effectively "reset" their regulatory record. This may allow unsafe motor carriers to evade accountability through identity changes. The inability of regulatory systems to reliably track carrier safety history may increase liability for brokers and other intermediaries that select motor carriers.

Post-*Montgomery*, courts and juries may be evaluating the freight broker's decision-making process, including its review of publicly available safety data, identification of warning indicators such as substandard inspection outcomes or elevated crash rates, and adherence to a consistent, documented vetting protocol. The lack of such procedures may itself serve as evidence of negligence.

As the freight broker's decision-making process becomes relevant, the scope of discovery in these matters may expand considerably. Plaintiffs are likely to request comprehensive information regarding carrier selection practices, including internal policies, communications with carriers, and historical data on carrier utilization and rationale. Much of this material relates to publicly available federal safety records, such as those maintained by the FMCSA. Because these records can be accessed and analyzed retrospectively, plaintiffs are positioned to develop cases centered on alleged deficiencies in addressing known safety risks.

Notably, the ruling does not assign automatic liability to brokers. It neither establishes strict liability nor ensures recovery in all instances. Rather, it reinstates the opportunity for a fact-based negligence assessment. Freight brokers who adhere to established procedures, conduct thorough carrier evaluations, and maintain comprehensive documentation of their decision-making may effectively defend against claims.

The decision may also affect other actors in the supply chain. Although the case directly addresses freight brokers, its reasoning extends to any party involved in selecting motor carriers, including logistics providers and freight platforms. The key principle is that entities making carrier-selection decisions and having access to safety data may be held accountable if they fail to exercise reasonable care.

In summary, *Montgomery* eliminates the protection freight brokers previously enjoyed from negligent hiring/selection claims. By establishing that these claims are covered under the FAAAA's safety exception, the Supreme Court has transitioned such disputes from legal threshold issues to fact-driven examinations of reasonable care. The decision effectively transfers responsibility for safety-based carrier selection from regulatory sufficiency to litigation-defined reasonableness. Until courts clarify the applicable standard, Plaintiffs may have greater access to the courts, and carrier-selection processes in the freight industry may likely face more scrutiny in the future.

By: Katherine Vaughn, Zurich Staff Legal

An effort to restore balance:
The "Show Me" state introduces key legislation

Missouri has remained a hotspot for legal system abuse. In particular, St. Louis, Missouri has consistently been identified by the American Tort Reform Association (ATRA) as a "Judicial Hellhole." This year St. Louis ranked #6 on the list. According to ATRA, a variety of factors such as permitting junk science into courtrooms and allowing out of state attorneys to file asbestos and Americans with Disabilities Act (ADA) claims have contributed to Missouri being a challenging legal environment for defendants. Efforts undertaken by several tort reform groups, including the Missouri Civil Justice Reform Coalition, have been working to restore balance to Missouri's litigation environment. Several key pieces of legislation were at the forefront:

Act Against Abusive Website or Web Content Access Litigation (SB 907) – Passed

Americans with Disabilities Act (ADA) claims using a "sue and settle" tactic were top of mind for some Missouri legislators. The ADA, particularly Title III, mandates that individuals with disabilities are provided the same opportunities as others to obtain employment, participate in government programs and purchase goods and services. Under Title III of the ADA, a successful plaintiff can obtain injunctive relief, attorney's fees and costs and/or declaratory judgment. Title III does not provide for monetary damages. Most states have a state corollary to the ADA. However, many state corollary laws may have less stringent standing requirements and some state corollary laws provide for the recovery of monetary damages. State courts may have more lax procedural rules. Perhaps, this is a reason why many ADA claims are accompanied by a state law claim and are filed in state court rather than federal court.

Missouri's state corollary to Title III of the ADA is the Missouri Human Rights Act, (MHRA). Unlike the ADA, the MHRA allows for recovery of compensatory and punitive damages. In filing an ADA/MHRA claim, plaintiff's attorneys may allege website accessibility violations, employing a "sue and settle" tactic. The claim will often target small businesses with lawsuits filed by numerous plaintiffs for minor violations based on the business' website. The alleged violations may include incompatibility with screen-reader technology, poor color contrast or unnavigable forms for keyboard only users. Small businesses are vulnerable to these types of lawsuits as they may not have the in-house legal teams or dedicated web developers as larger companies that are able to flag technical issues such as potential ADA violations.

Missouri Senator Curtis Trent highlighted the problem at a Small Business Day hosted by the National Federation of Independent Business (NFIB) in stating, "Basically, there are these lawsuit mills, where a lawyer has somebody try to get on a website. They're disabled, and they can't get on there [the website]. And so, they then send a demand letter out and try to shake down the business with the website. It's a very abusive practice, not intended by the ADA, certainly not intended by Missouri statutes." The Act Against Abusive Website or Web Content Access Litigation (SB 907) was recently signed by Governor Kehoe and will become effective August 28, 2026. Key provisions of the Act include:

- **90 Day Safe Harbor:** If a business receives a notice of an alleged website accessibility violation, it has 90 days to take substantial, good faith efforts to correct it. This establishes a rebuttable presumption that any subsequent claim is abusive.
- **Countersuit Ability:** Defendants can countersue if they believe the litigation is "abusive." The court will consider plaintiff's history of filing similar lawsuits and whether reasonable notice was provided.
- **Attorney's Fees:** If a court determines the litigation is abusive, reasonable attorney's fees and costs, punitive damages or sanctions may be awarded to the defendant.
- **Attorney General Intervention:** The Missouri Attorney General may intervene or bring civil actions on behalf of Missouri residents or entities targeted by abusive website litigation.

An effort to restore balance:
The "Show Me" state introduces key legislation

The enactment of the Act Against Abusive Website or Web Content Access Litigation does not eliminate ADA or MHRA enforcement. Rather the provisions shift the focus of website accessibility claims from "sue and settle" toward actual remediation of accessibility issues while deterring abusive filings.

Immunity for State Contractors (SB 916) – Passed both chambers

Missouri Senator Jamie Burger proposed legislation that would provide state contractors doing business with the Missouri Department of Transportation (MoDOT) with the same liability immunity as the department itself. The legislation has passed both chambers and will become law unless Governor Kehoe issues a veto by July 12, 2026.

This is important for private contractors who may be added to a lawsuit simply because the contractor was awarded a MoDOT contract. If the private contractor was awarded a contract but did not complete the project at the time of the incident or were not at fault for the issue alleged in the lawsuit, it would have immunity. Similarly, immunity would be available for private contractors that follow the MoDOT plans and specifications and MoDOT approves and accepts the construction activities. However, the immunity does not extend where:

- The work is so defective it creates an imminent danger;
- A defect was concealed and not discoverable by reasonable inspection;
- The contractor knew of a dangerous condition and failed to disclose it to MoDOT;
- The plans or specifications used were so improper that the contractor should have known the work would result in an unsafe condition.

With the enactment of these provisions, there may be more limitation on contractor liability, a heightened liability standard under the immunity framework, fewer contractors being drawn into expensive litigation for the duration of the claim, and in some cases, liability may shift to the state where the state's liability for damages are subject to statutory caps applicable to public entities.

Third Party Litigation Financing (HB 3205) – Did Not Pass

Representative David Casteel introduced legislation that would prohibit foreign entities and their agents from directly or indirectly investing in or providing litigation funding. The bill would have incorporated several specific provisions into Missouri's already established Consumer Legal Funding Act. In addition to banning foreign principals or agents from financing lawsuits in the state, it would also have required funders to uphold a fiduciary duty to the funded party and would hold a funder jointly liable for any monetary sanctions or costs assessed against the funded party or its attorney. Penalties for violating the litigation funding provisions would be considered a class E felony and any litigation funding agreement in violation of the provisions would be rendered void and unenforceable.

Reduction of Statute of Limitations for Negligence Claims (HB 1664) – Did Not Pass

The statute of limitations for filing a personal injury claim in Missouri is five years, making it one of the longest limitations in the United States. Legislation was proposed to amend the statute of limitations for several different types of claims, including personal injury claims. Under the proposed legislation, a personal injury action occuring on or after August 28, 2026, would have a three-year statute of limitations period. This would have been an important development in Missouri, as a shorter window would mean claims must be filed sooner and may be supported by better evidence – witness memories are fresh, medical records are recent and accident scenes are less altered by time. The legislation did not pass.

By: Rebecca Fozo, Zurich CJLA

Putting the brakes on fraud:
New York enacts auto liability legislation

On May 26, 2026, New York Governor, Kathy Hochul, signed into law a package of auto reform bills aimed at curbing legal system abuse, excessive damage awards, and staged accidents. New York has long been identified by the American Tort Reform Association as a "Judicial Hellhole," ranking No. 2 this year. In announcing the legislation, Governor Hochul stated that "rampant fraud and runaway litigation costs are jacking up prices. We're putting the brakes on fraud and ending a system that rewards illegal behavior." This legislative package may prove significant in reshaping New York auto liability litigation.

Under the Public Protection and General Government (PPGG) budget package, Governor Hochul enacted legislation to address staged accidents. The legislation amends the statutory definition of insurance fraud (SB 9005 – Part F), expanding the definition to include a person who "hires, requests, encourages, orchestrates, or invites another individual to stage a motor vehicle accident." This amendment closes a loophole that allowed the organizers of staged accidents to evade prosecution.

New York also enacted the Transportation, Economic Development and Environmental Conversation (TED) budget bill (AB 10008 C). This bill includes significant legal system abuse reforms. The following changes are effective immediately on all new motor vehicle cases commenced and filed in New York going forward:

- **Serious Injury Threshold:** Section 5102(d) of the Insurance Law is amended to remove the ninth category of serious injury threshold, otherwise known as the 90/180 injury of a non-permanent nature. Previously, individuals were able to file a lawsuit and recover if their daily activities (usual and customary) were severely limited for 90 out of the 180 days following the injury. In removing the 90/180 provision, the amendment requires that plaintiff demonstrate a "serious injury" as that term is defined in one or more of the eight remaining categories of the statute and may reduce lawsuits filed by drivers who suffer minor or temporary injuries.
- No liability for non-economic loss shall be fixed until or unless the trier of fact has determined the existence of a "serious injury" – therefore, if plaintiff moves for summary judgment, 9% interest will not run until both liability and serious injury are established.
- Modified comparative negligence now applies to all damage (economic and non-economic) sustained in a motor vehicle accident. In short, plaintiff must be less than 51% at fault to recover. Damages will be reduced by the assigned percentage of fault attributable to the plaintiff. Under the prior pure comparative negligence standard, an injured party would be entitled to a recovery even if they were mostly at fault for causing the accident. The result of this change will likely influence strategies and tactics employed going forward to defend New York auto lawsuits.
- Other than in an action for damages resulting in death, non-economic damages (pain & suffering) are capped at $100,000 for "bad actors." This would limit recovery for a plaintiff partially at fault under the conditions below:
  - Operating an uninsured motor vehicle
  - Driving while impaired
  - Operating a motor vehicle in the commission of a felony or immediate flight therefrom, at the time of the accident, and having been convicted of such felony.

While the courts may interpret these new changes as they see fit, for now, this protection for consumers also weighs in favor of defendants.

By: John Buratti, Zurich Staff Legal

RICO case gets the green light:
Sham litigation is not protected

Civil Racketeer Influenced and Corrupt Organization RICO cases have been in the headlines lately, demonstrating pushback from those entities which believe that they have essentially been the target of schemes to force large settlements or bring fraudulent claims. One of those cases rests in the Eastern District of Pennsylvania. Uber and now FedEx have brought RICO claims against one Philadelphia attorney and his law firm as well the doctors who are allegedly part of an enterprise to increase the value of lawsuits by performing either unnecessary surgery or inflating medical bills. Alleging a "fabrication of fraudulent personal injury claims" which increases insurance rates and transportation costs for the public at large, this lawsuit has now been given the green light to continue.

Some of the RICO suits previously filed in other jurisdictions have been dismissed for failure to demonstrate the required elements of a RICO case. In this case of the Philadelphia attorney and the doctors who are alleged to be part of the scheme, a similar motion to dismiss by the defendants was filed. In that motion, however, not only did the RICO defendants allege that the complaint failed to establish the required RICO elements, but they also asserted that: causation was not properly alleged; defendants' actions were barred under the *Noerr-Pennington* and *Rooker Feldman* doctrines; and, that claims were barred by releases and *res judicata*. If this motion succeeded, this case would be dismissed much like the others.

In his 54-page opinion, Judge Kearney dealt with each argument in turn, making it clear that his position was to allow the case to proceed. With respect to *res judicata*, the judge noted succinctly that this "action does not arise from the same cause of action as the underlying personal injury cases" and that the doctrine would not bar this action. Similarly, with respect to prior settlements of claims being an acknowledgement that those cases could not have been fraudulent, Judge Kearney mentioned that those settlements may have occurred because of the pressure on Uber and FedEx to settle "due to litigation costs or reliance on allegedly fabricated evidence" rather than the merits of any case. Thus, this argument to dismiss the case was unsuccessful.

The judge also summarily distinguished the *Rooker-Feldman* defense, by explaining that the doctrine negates federal jurisdiction over suits that are basically an attempt to appeal a state-court judgment. Here, the federal court case is not a request to overturn a state court action, but rather a federal claim that those state court claims taken together were part of a racketeering scheme.

The longest portion of the opinion is centered on how the *Noerr-Pennington* doctrine did not apply. This premise generally considers the filing of lawsuits a petition for redress which is subject to immunity. Because the claim was "whether the lawyers and doctors contrived the extent of the injuries" necessitating the hiring of lawyers and then the payment of settlements, "in some cases based on medical records it now believes are fraudulent across a repeated pattern of claims," the judge essentially equated the filing of the personal injury cases as "merely a 'sham' designed solely as a form of harassment." Thus, the *Noerr-Pennington* immunity did not apply to bar Uber's claims as the "sham" activity, and was not a protected petition for redress under the First Amendment. He pointed out that "the alleged pre-filing conduct – the lawyers' direction to the doctors to create false medical records and reports and, in required return, the doctors' alleged unnecessary treatment creating records furthering the fraud" was not entitled to immunity.

As to the RICO defendants' position that the complaint did not establish "causation" of their alleged injuries, Judge Kearney stated that the injuries were incurring "defense costs," and inducing "inflated settlements" which "flow directly from the alleged scheme." It was clear that Uber and FedEx were contending they were the "target of the scheme" and caused to pay litigation costs and higher settlement amounts that would not have happened "absent the lawyers' and doctors' alleged fraud."

Finally, with respect to pleading the pre-requisite elements to a RICO action, once again, the judge was clear in his assessment. He simply explained that the allegations were that the "lawyers operated a 'conveyor belt'" which then referred claimants to the RICO defendant doctors and directed those RICO defendant doctors to generate fraudulent medical records reflecting serious and permanent injuries. The RICO complaint further contends that those same lawyers directed a physician to use those fraudulent records to prepare expert reports, connecting the injuries in the records to the underlying incidents and then concluding future treatment was necessary. Allegations that these directions to generate false records and make arrangements for them to be transmitted through interstate mail and wires were a basis for appropriate RICO pleading as was the allegation of subsequent use of these records in demand letters and litigation.

Based upon Judge Kearney's order denying their motion to dismiss, the RICO attorney defendants filed an answer to the complaint with a counterclaim against Uber and FedEx calling their RICO action a "frivolous sham lawsuit." Not only do the answering parties deny all the RICO allegations but also contend that because they continue to successfully try as well as settle cases for significant sums, those cases cannot be fraud. The RICO attorney defendants purport to have suffered damages because of "misconduct and abuse of the litigation system" as well.

By: Lisa M. Bellino, Zurich CJLA

Social media trials:
New liability trends emerge

The creation of Facebook in 2004 launched the beginning of the modern social media era. What started as a college experiment is now a multibillion-dollar industry with an entirely new way of interacting socially and generating revenue.

For many decades, section 230 of the Communications Decency Act and First Amendment defenses protected social media companies from being held liable for user content on their platforms. Section 230 states, in part, that service providers and users cannot be treated as the publisher or speaker of any information provided by another information content provider. Further, they may not be held liable for good faith removal of obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable material.

In *Zeran v. American Online Inc.*, the 4th Circuit Court of Appeals barred "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions – such as deciding whether to publish, withdraw, postpone or alter content" pursuant to Section 230. This statute has also prevented lawsuits against social media companies. In 2024, the Supreme Court of the United States held that state statutes with respect to social media cannot violate the First Amendment and further gave guidance to those states whose laws might have constitutional concerns when attempting to restrict content or exercising editorial discretion and content-moderation.

This area of liability, however, is changing as courts are now allowing some of these lawsuits to proceed against social media companies under different theories.

Products Liability Theory

In *KGM v. Meta Platforms Inc. et al.*, the now 20-year-old California plaintiff alleged she first began using Instagram at the age of 9 and YouTube at the age of 6 with usage escalating into her teen years. At points, she used Instagram for 16 hours per day, which allegedly led to cyberbullying. Plaintiff felt compelled to remain online and feared telling her therapist about the hours she spent online for fear of her phone being taken away. Plaintiff alleges she suffered from depression, anxiety, suicidal ideation, self-harm, and body dysmorphia from social media.

The legal theory, classified as addiction, is that applications use personalized algorithms that are designed to "maximize compulsive use" with features such as infinite scrolling, like buttons, and notifications. Thus, the plaintiff placed fault on the design of the platform and not the content alone. Plaintiff alleged that social media defendants knew of the adverse impact on adolescent brains and further sought to recruit "vulnerable" users for escalating engagement. The suit also alleged social media failed to warn users and their parents of potential harm. To prevail, plaintiff needed to convince 9 out of 12 jurors that negligence was a substantial factor in the harm alleged, much as is used in other addiction-based claims.

SnapChat and TikTok both settled the plaintiff's claims against them in January for an undisclosed sum, while Instagram, owned by Meta, and YouTube, owned by Google, proceeded to trial.

Defendants presented several arguments. First, as outlined above, the First Amendment arguments have protected social media companies when exercising editorial discretion. The companies in this case also provide safety features such as account restrictions and parental controls. Third, they argued that none of the plaintiff's doctors provided clinical diagnosis for "social media" addiction and plaintiff's case lacked causation without scientific evidence of a recognized mental health condition. The medical records had scant reference to social media usage contributing to her complaints in plaintiff's medical records. Lastly, defendants presented other factors that contributed to plaintiff's mental health condition including a fraught life at home. YouTube distinguished itself from other social media platforms since it offers less social interactive features, which presumably make it less addictive.

In March of 2026, 10 jurors of the 12 found both companies liable for negligent design, awarding $3 million in compensatory damages with Meta to pay $2.1 million or 70% and YouTube to pay $900,000 or 30%. The jury also awarded $3 million punitive damages to be split proportionally between the defendants. The defendants are likely to appeal this verdict.

Consumer Protection and Public Nuisance Theory

In *State of New Mexico v. Meta Platforms, Inc.*, the New Mexico Department of Justice sued Meta for violating its Unfair Trade Practices Act based on allegations of "misleading consumers about the safety of its platforms and endangering children."

The Attorney General of New Mexico stated that it conducted an undercover investigation in 2023, consisting of decoy profiles for users under the age of 14 on Facebook and Instagram. The undercover users were purportedly contacted by adults seeking sexually explicit content and received explicit content as well. Individual wrongdoers faced criminal charges as a result of the operation.

Similar to the California case, the State identified infinite scroll and auto-play videos as features that encouraged engagement online. The State further contended that Meta's claims of being safe for teens and children were contradicted by internal documents that acknowledged potential for sexual exploitation and negative mental health consequences from using the platforms. After a six-week trial, the jury found Meta liable for 75,000 violations at $5,000 per violation equaling a $375 million award.

In addition, a second phase of the trial began on May 4th to determine liability under public nuisance theory. This portion of case is a bench trial to determine if social media has harmed residents' health and safety. The State has asked for effective age verification, removing predators, and preventing encrypted messages for minors as remedial measures.

Implications of Social Media Verdicts

These cases represent a shift in the long-established dismissal of internet providers and social media companies under the First Amendment and Section 230 arguments. The distinction between whether third-party content and design features such as infinite scrolling, autoplay and curated feeds, led to harm were issues for the jury to decide in the *KGM* matter. Likewise, the New Mexico case focused on features rather than content.

Currently, there is pending multi-district litigation in the Northern District of California which contends that social media targeted children and designed apps that would addict youth. The complaint alleges defective product features as part of the theory of liability. It further asserts that the defendants failed to warn of the harm of their platforms, violated unfair trade practices and made misrepresentations. Trial is scheduled for September 2026.

It remains to be seen what the courts will decide in the pending litigation and what affect this may have on social media platforms as a whole.

By: Mahima Raghav, Zurich CJLA

Trending topics

Class action litigation:
Navigating the new norm

Class action litigation allows for one or more members to sue or be sued as representative parties on behalf of all members. In federal courts, this type of litigation must fall within the parameters set forth in Federal Rule of Civil Procedure 23. Under the federal rules, for a class action to proceed, it requires that a judge certifies a large group of plaintiffs with similar legal claims that can be efficiently represented by a named or representative plaintiff. Typically, any settlement or dismissal requires the court's approval to ensure it is fair and reasonable. Core prerequisites for class certification usually include:

- **Numerosity:** the class is too large for individual lawsuits to be practical
- **Commonality:** Common questions of fact or law predominate over individual issues
- **Typicality:** The class representative's claims or defenses are typical of the entire class
- **Adequacy:** The representative and counsel can fairly and adequately protect the interests of the class

Class action litigation has become a tool of the plaintiff's bar and has changed the litigation landscape. According to the Carlton Fields Class Action Survey 2026, when the initial survey was released 15 years ago, about 50% of companies faced class action litigation. Now, 74.7% of major companies are managing class action litigation on a regular basis. This has led to an increase in defense spending, accounting for 11.8% of corporate litigation budgets. The survey cites to causative factors such as larger claims requiring more resources, increased claim complexity and a higher volume of new claims.

Class action claims vary; however, according to that same survey, labor and employment claims represent the bulk of class action matters (29.6%) followed by consumer fraud (22.4%). Further, it is expected that generative AI class action claims will continue to increase. There are also numerous class action product liability claims pending against drug/supplement manufacturers, medical device companies and in the data privacy realm. A potential plaintiff can easily search Classaction.org to find whether their claim can be added to a class action lawsuit.

One undeniable aspect of any class action is the potential for damage. Two recent decisions in class action litigation involve this issue. In April 2026, the U.S. Court of Appeals for the Seventh Circuit took another look at Illinois' Biometric Information Privacy Act ("BIPA") in *Clay v Union Pacific Railroad Co*. This class included employees alleging their employers, collection of their biometric data failed to comply with BIPA requirements. Plaintiffs alleged that a separate BIPA violation accrued each time their data was collected, raising the possibility of billions in liability for the defendants. In 2024, BIPA was amended to clarify that repeated collection of the same person's biometric data using the same method counted as only a single violation, rather than multiple violations each time a fingerprint was collected. However, the 2024 amendments did not specify whether this limitation applied retroactively. On April 1, 2026, the Seventh Circuit held that the 2024 amendments applied retroactively to pending cases thereby significantly reducing the potential for damages.

Judicial scrutiny of class action settlements appears to be increasing with courts seemingly less willing to rubber-stamp class action settlements and at times, state court approval of settlements can conflict with federal ideas as to settlement. Recently, a St. Louis, Missouri state court judge granted preliminary approval to resolve current and future Roundup claims (*King v. Monsanto*). However, the preliminary approval of the Missouri settlement has drawn scrutiny in the California federal multi-district litigation.

Many states model their own class action laws after Federal Rule of Civil Procedure 23. Nearly every state (except Virginia and Mississippi) allows for class action litigation. Legislation was proposed in Virginia (HB449/SB229) that would outline a procedure for class action lawsuits in Virginia state courts; however, it was vetoed by the Governor. Previously, Virginians were able to file class action lawsuits in federal court if they met certain standards in the federal Class Action Fairness Act, such as an amount in controversy, at least $5 million and jurisdiction existing because a federal claim was involved or there was diversity jurisdiction. This legislative session, the Virginia legislature passed identical legislation creating a civil class action procedure based in large part on Federal Rule of Civil Procedure 23. Governor Spanberger amended the proposed bill to include several changes such as limiting recovery to actual damages and eliminating the "per violation" damages permissible under the Virginia Consumer Protection Act. The Governor also struck a provision indicating that plaintiffs need not show reliance on an alleged practice or representation in consumer protection class action lawsuits. The legislature rejected the Governor's amendments, leaving the Governor with the option to veto the bill or accept it without her proposed amendments. The Governor decided to veto the class action bill, noting in a press release that the proposed amendments would have allow Virginia to adopt its first-ever class action procedure in a "tailored and judicious way – building on longstanding, federal precedent while providing regional circuit courts an opportunity to develop expertise." Without the amendments, the Governor vetoed the legislation.

By: Rebecca Fozo, Zurich CJLA

Trials & tribulations

Raising a red flag:
Following the evidence exposes the scheme

The March 11, 2024 incident began as a minor collision involving a rental truck, but quickly developed into a multi-claimant case with significant medical billing and lots of unanswered questions. Those questions led to the belief that the claim had been manipulated, reframing the entire defense to establish that the event was not an “accident” under the policy, meaning that instead of directly defending against the claim in a third-party suit, a declaratory judgment (DJ) would be sought with respect to the rental policy requesting that the court find, as a matter of law, that there was no actual accident. A coverage dispute like this one often turns on whether the defense can build a clear, fact-driven record showing intentional conduct or policy violations.

The first red flag came in the form of a large property damage invoice. Because rental vehicles usually have a self-insured retention for about $10,000 in damage, any excess would mean there was a significant amount of damage. A bill to Zurich, more than the self-insured retention, was cause for deeper scrutiny.

The early claim indicators demonstrated that the police documented a low-impact event with little to no visible damage, no ambulance, and no complaints of injury at the scene. Despite that, the claim later expanded into substantial injury allegations. That gap between what was documented and what was later claimed raised another red flag and shaped the defense approach. Instead of treating the case as a credibility dispute, the defense treated it as a question of whether the loss was legitimate.

So, the goal was to develop the clear, fact-driven record that was needed to support the DJ action. This tactic also took across the board agreement and concerted efforts. Of utmost importance is the permission of the client and the claims professional, which were obtained. ZCIS played a large part in investigating the red flags and putting together the many pieces of this claim. Furthermore, another attorney needed to be brought onboard to file the DJ action.

Police body-worn camera footage confirmed the absence of meaningful damage and any injury complaints at the scene. Photos taken by police supported the same conclusion. Vehicle data downloads did not show a crash event consistent with the injuries later claimed. This allowed the defense to rely on objective evidence rather than testimony, and demonstrated that the physical evidence did not support the claimed impact. A key development in the investigation was the discrepancy in property damage. The police reported only minor damage, while later repair estimates exceeded $13,000 and reflected damage not seen at the scene. Capturing images of the truck shortly after the incident through the license plate reader tool, provided additional objective information that there was no apparent damage. The differences supported the conclusion that the additional damage was either unrelated or occurred after the incident, reinforcing the position that the claim had been manipulated.

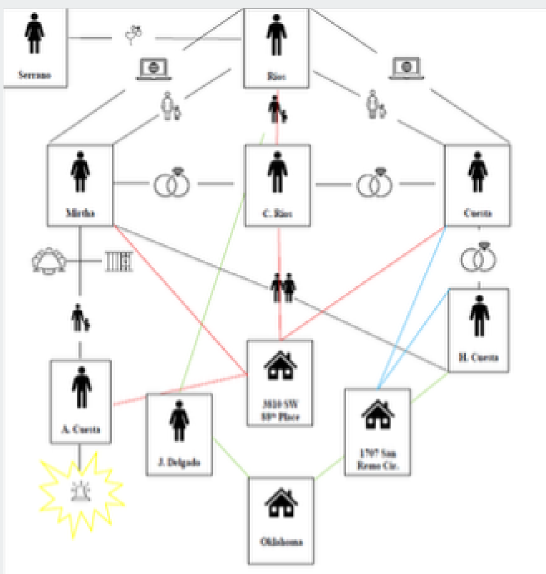
The examination under oath (EUO) of the renter then became central to the defense. Rather than clarifying the facts, his testimony highlighted a lack of basic knowledge. He could not explain where the vehicle was rented, how it was paid for, or whether he was driving at the time. He was unable to describe the accident, identify the other vehicle, or respond to photographic and video evidence. These failures were treated as a breach of the duty to cooperate and demonstrated prejudice to the insurer’s investigation.

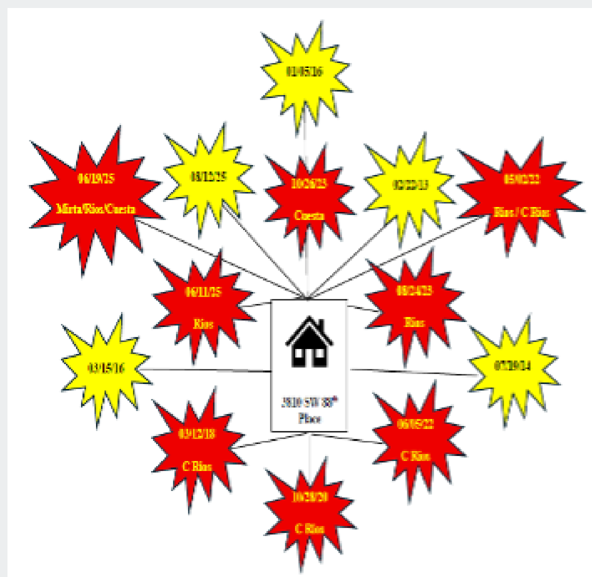
Raising a red flag: *Following the evidence exposes the scheme*

The investigation also revealed connections among the parties, including shared relationships and overlapping addresses. These connections supported the position that the event was not an independent accident but instead involved coordinated conduct. Furthermore, all claimants followed similar treatment patterns, including injections and surgical recommendations, despite the lack of objective evidence of injury at the scene. This uniformity, combined with the low-impact nature of the incident, raised significant questions about causation.

Putting all of this together, the defense focused on coverage rather than liability and pursued the DJ action. The position was that the incident was not an accident, the driver was not insured, the rental agreement was violated, misrepresentations voided coverage, and the insured failed to cooperate. Each argument was tied directly to the investigative record, allowing the case to be resolved as a matter of law.

The below images were developed and imbedded into the actual DJ petition to show the court the connections between the parties and the multiple lawsuits of the persons living in the allegedly injured plaintiffs' home.





All this objective evidence was presented to the court to expose the scheme and argue that this was not an "accident" under the policy. The other objective evidence such as the lack of vehicle damage and EUO responses supported the petition. After the petition was filed and the action proceeded, the carrier filed a motion for judgment on the pleadings, arguing all of this clear evidence demonstrated as a matter of law that there was no coverage and that this was not an accident.

When presented with all of this, the court granted judgment on the pleadings and found the incident was not an accident under the policy. Coverage was barred on multiple independent grounds, including policy violations and failure to cooperate. The court also found that the insurer was prejudiced and awarded entitlement to attorneys' fees and costs, retaining jurisdiction as to the amount.

This case demonstrates how attention to detail and in-depth investigation can change the trajectory of the litigation. It further shows how a focused investigation can change the outcome of a claim. By relying on EUO testimony, police evidence, and damage analysis, the defense established that the event was not a covered accident. Building a clear record and framing the case around coverage led to a complete disposition and supported a fee recovery.

By: Stephanie Valentine, Zurich Staff Legal

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