

October 09, 2019



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Cybersecurity, Privacy & Data Governance

Key Takeaways | Global Privacy Update and the Challenges of Developing a Global Compliance Program

October 1, 2019

By [Amanda Witt](#)

On September 17, 2019, Amanda Witt, co-leader of Kilpatrick Townsend's Cybersecurity, Privacy and Data Governance practice, moderated a panel for the International Section of the Georgia Bar that consisted of seasoned in-house privacy professionals...[read more](#)

CCPA Update: How to Adjust Your Compliance Strategy to The Final 2019 Legislative Changes

September 16, 2019

By [John Brigagliano](#) and [Jon Neiditz](#)

On Friday, September 13th, the California legislature passed several amendments to the California Consumer Privacy Act ("CCPA"), and created a new "data broker" registration law that deserves its own blog post and heightened level of irony...[read more](#)

Poor Richard Stares Down California's New Wall of Shame, The "Data Broker" Registry

September 16, 2019

By [Jon Neiditz](#)

When the smoke cleared from California's privacy legislative battles that ended on September 13th, many were surprised to see another large alien life form snorting alongside the CCPA...[read more](#)

Poor Richard Brings His Cybersecurity Kill Chain to New York's SHIELD Act

July 26, 2019

By [Jon Neiditz](#)

Poor Richard does get his hoped-for trip to New York today, but not, as many others hoped a few months ago, to examine a new comprehensive privacy law that outdoes the CCPA with the first enactment of the concept of data fiduciary responsibility for businesses and other innovations...[read more](#)

Employee Benefits

HSA Contributions are not Earnings for Purposes of Wage Garnishment

September 18, 2019

By [Mark Stember](#)

The Department of Labor's Wage and Hour Division (WHD) released Letter CCPA2019-I on September 10, 2019 (the letter). The letter determined that for purposes of the Consumer Credit Protection Act (CCPA), Health Savings Account (HSA) employer contributions do not constitute earnings...[read more](#)

Departments Delay Implementation of Controversial HHS Prescription Drug Rule

August 27, 2019

By [Mark Stember](#)

In ACA FAQ Part 40, HHS, IRS and DOL delayed the implementation of the controversial rule in HHS 2020 Notice of Benefit and Payment Parameters requiring health plans to credit to the out-of-pocket maximum the amount of certain financial assistance received from drug manufacturers...[read more](#)

6th Circuit Case Emphasizes Potential Employer Liability to Participants for 409A Violations

July 26, 2019

By [Mark Stember](#) and [Carl Toppin](#)

Although employees face additional taxes and decreased benefits resulting from employer failures involving nonqualified deferred compensation (NQDC) plans, they may sue employers to recover their losses...[read more](#)

Proposed Regulation Would Provide Compliance Relief to Administrators of Multiple Employer Defined Contribution Plans

July 23, 2019

By [Todd Castleton](#)

Administrators of Multiple Employer Plans ("MEPs")—in which employers from different controlled groups participate—face a compliance challenge when one participating employer is out of compliance...[read more](#)

Impact of New Department of Labor HRA Regulations on Retiree-Only HRAs

July 18, 2019

By [Martha Sewell](#) and [Mark Stember](#)

On June 13, 2019, the Department of Labor, along with the Departments of Treasury and Health and Human Services, released final regulations expanding the use of health reimbursement arrangements (HRAs)...[read more](#)

Energy

An Answer to "Hard to Find" Equity – Opportunity Zone Funds

Biofuels Digest | July 30, 2019

By [Mark Riedy](#) and [Dongyu Eddie Wang](#)

The recently-established Opportunity Zone Program offers developers, including start-up technology companies attempting to develop and commercialize new technologies in the energy, chemical, and infrastructure industries, an exciting, new opportunity to attract private placement investment funds into company-level business operations and project company-level equity, including working capital, for the construction of projects located in such Opportunity Zones...[read more](#)

Financial Services

Blockchain and Smart Contracts Could Solve Unsolvable Construction Problem

September 9, 2019

By [Thomas Franklin](#) and [Brian Gaudet](#)

Every construction project, from contract negotiation through the payment of the final pay application, suffers from the same conundrum born out of every parties' desire for certainty and finality...[read more](#)

Emerging Issues & Trends: Blockchain for In-House Counsel

August 23, 2019

By [Michael Breslin](#) and [Joshua Benson](#)

Kilpatrick Townsend's Michael Breslin recently led a panel presentation, alongside Kilpatrick attorney Joshua Benson and AT&T in-house attorney Jason Thelen, covering key concepts and trends that in-house counsel should be aware of regarding blockchain and cryptocurrency...[read more](#)

Machine Learning: New Technology Implicates Old Problems

July 17, 2019

By [Michael Breslin](#)

Given the potential created by rapid advancements in AI sophistication and functionality, more and more financial services firms are leveraging the technology to deploy new use cases for improved decision-making processes – particularly in the areas of anti-money laundering, fraud prevention, risk management, and lending...[read more](#)

Franchising

Trademark Enforcement in Distinct Geographic Territories: Is the Infringement Case "Ripe"?

Franchise Lawyer | October 7, 2019

By [Christopher Bussert](#)

The following scenario is a common one when it comes to trademark enforcement. Butter Udder Franchising is an emerging ice cream franchise concept...[read more](#)

Rupert Barkoff, Through the Eyes of a Colleague

Franchise Lawyer | [October 7, 2019](#)

By [Christopher Bussert](#)

In the spring of 1985, I had made the decision to practice exclusively in the intellectual property area. I was aware of Kilpatrick & Cody's lofty reputation in the area and soon focused my efforts in securing employment there...[read more](#)

Is the Franchise Model Under Attack?

New York Law Journal | [September 5, 2019](#)

By [Mark Lieberstein](#)

Sadly, I submit this column on franchising for the late Rupert Barkoff, my mentor in franchising, and the author of this column for the New York Law Journal for many years...[read more](#)

Trademark Law and the Cannabis Industry: Six Things That Will Separate Brand Winners from Brand Losers

Franchise Lawyer | [August 22, 2019](#)

By [William Bryner](#), [Christopher Bussert](#), [Marc Lieberstein](#), and [Brian O'Donnell](#)

On January 1, 2014, in an electoral and commercial first, the recreational marijuana market opened for business in the State of Colorado...[read more](#)

Conditional Renewals: Are They Useful in Preserving Franchise Relationships?

Franchise Lawyer | [August 22, 2019](#)

By [Lauren Sullins Ralls](#) and [Bethany Karsten \(Two Men and a Truck\)](#)

Every franchisor faces difficulties at one time or another when it comes to deciding whether or not to renew a franchise agreement with a franchisee...[read more](#)

Investment Management

SEC Issues Statement on Summary Prospectus Risk Disclosures for Mutual Funds

[September 18, 2019](#)

By [Katherine McCurry](#), [John Sanders](#), and [Tom Steed](#)

The staff of the SEC Division of Investment Management recently issued an Accounting and Disclosure Information statement summarizing its views regarding certain matters related to the way that mutual funds disclose the principal risks of investing in a fund within their summary prospectuses...[read more](#)

States Sue SEC in Ongoing Fight over Reg BI

[September 11, 2019](#)

By [Lauren Jackson](#), [Jeffrey Skinner](#), [Ali Fenno](#), and [John Sanders](#)

The political melee surrounding Regulation Best Interest ("Reg BI") escalated yesterday with the filing of a lawsuit against the SEC by several state attorneys general...[read more](#)

SEC Guidance on Proxy Voting Concerns Smaller Mutual Funds

[August 29, 2019](#)

By [Lauren Jackson](#), [Jeffrey Skinner](#), [Ali Fenno](#), and [John Sanders](#)

Last week, the SEC issued guidance with respect to the proxy voting responsibilities of investment advisers (the "Proxy Guidance")...[read more](#)

ICI Joins in Fight Between the SEC and National Exchanges

[August 8, 2019](#)

By [Lauren Jackson](#), [Jeffrey Skinner](#), and [John Sanders](#)

Last December, the SEC unanimously approved a two-year pilot program (the "Transaction Fee Pilot") intended to assess alternatives to the predominant pricing model used by national securities exchanges (the "Maker-Taker System")...[read more](#)

SEC Issues Interpretation of the Standard of Conduct for Investment Advisers

[July 31, 2019](#)

By [Andrew Sachs](#) and [John Sanders](#)

On the day that the SEC issued Regulation Best Interest, the long-awaited rule proscribing the standard of care that broker-dealers owe their clients, the SEC also issued an interpretation of the standard of care that investment advisers owe their clients...[read more](#)

OCIE Supervision Initiative Finds Holes in RIA Supervision & Disclosure Policies

[July 24, 2019](#)

By [Ali Fenno](#) and [Lauren Jackson](#)

The SEC's Office of Compliance Inspections and Examinations ("OCIE") released a risk alert today (the "Alert") identifying various compliance problems that were uncovered among SEC-registered investment advisers ("RIAs") in OCIE's Supervision Initiative...[read more](#)

Morningstar Announces Changes to Key Mutual Funds Rating Systems

July 11, 2019

By [John Sanders](#) and [Jeffrey Skinner](#)

On July 8th, Morningstar announced changes to two forward-looking ratings systems that it uses to rate managed investments (e.g., mutual funds). One of the affected ratings systems is the Morningstar Analyst Rating, which denotes Morningstar's conviction in a fund's ability to outperform relevant benchmarks and peer groups...[read more](#)

Mergers & Acquisitions

One Size Does Not Fit All: Tailoring IP Due Diligence to the Transaction

Contra Costa Lawyer Magazine | October 1, 2019

By [Siegmar Pohl](#)

Investing in, acquiring, or partnering with companies in the San Francisco Bay Area requires a due diligence investigation, where intellectual property (IP) will likely play a major role...[read more](#)

Securities

Want to Test the Waters? Now All Issuers Can

September 26, 2019

By [Isabelle Dinerman](#)

Earlier this year, we discussed how all issuers may soon get their chance to test the waters. This morning it became official, when the Securities and Exchange Commission (SEC) adopted a final rule permitting all issuers to take advantage of the "test-the-waters" accommodation...[read more](#)

SEC Charges PwC LLP with Violating Auditor Independence Rules

September 26, 2019

By [Sabrina Rodrigues](#)

On September 23, 2019, PricewaterhouseCoopers LLP (PwC), along with one of its partners, Brandon Sprinkle, was charged by the Securities and Exchange Commission (SEC) with violating the auditor independence provisions of the federal securities laws...[read more](#)

When You're Paid to Promote, the SEC Requires Transparency

August 28, 2019

By [Isabelle Dinerman](#)

On August 20, 2019, the SEC announced an enforcement action against ICO Rating for violating the anti-touting provisions of Section 17(b) of the Securities Act of 1933...[read more](#)

The SEC Announces Another Fee Rate Increase, Effective October 1, 2019

August 27, 2019

By [Isabelle Dinerman](#)

On August 23, 2019, the Securities and Exchange Commission (SEC) announced that, effective October 1, 2019, the fees that public companies pay to register their securities with the SEC will be raised from the current rate of \$121.20 per million to the new fee rate of \$129.80 per million...[read more](#)

How The SEC Could Expand Access To Private Offerings

Law360 | July 16, 2019

By [David Stockton](#)

The U.S. Securities and Exchange Commission issued a concept release on June 18, 2019, seeking public comment on a broad range of issues relating to private offerings of securities...[read more](#)

Tax

Life After Tax Reform

September 12, 2019

By [Lynn Fowler](#)

I am often reminded of my summer after law school as I prepared for my LL.M. program at NYU. Congress passed a sweeping "tax reform," the much heralded Tax Reform Act of 1986...[read more](#)

Hyatt Decision Will Limit State Tax Appeal Options

JD Supra | August 12, 2019

By [Jeffrey Reed](#)

The United States Supreme Court's opinion in *Hyatt v Franchise Tax Board*[1], issued earlier this week, puts to rest twenty years of litigation with a decision concluding that the litigation was unconstitutionally filed in the first place...[read more](#)

Technology Transactions

Important Considerations in Licensing Know-How with Patents

Contra Costa Lawyer Magazine | **October 1, 2019**

By [Michelle Tyde](#) and [Joseph Snyder](#)

Companies own many forms of intellectual property (IP) — patents, trademarks, copyrights, and know-how (e.g., unpatented inventions, technical information, specifications, and trade secrets) — and depending on the industry, a given company may own more of a particular type of IP over others...[read more](#)

10 Key Takeaways | Identifying IP Issues and Mitigating Risks in Joint Development Agreements

August 29, 2019

By [Michelle Tyde](#) and [Farah Cook](#)

In today's technology driven world, collaboration between companies is commonplace and virtually inevitable...[read more](#)

Firm News

[Big Law Firms Draft Model Climate Laws in Pro Bono Project](#)

[John Sanders Selected as one of Winston-Salem Chamber of Commerce's Winston Under 40 Leadership Award Honorees](#)

[Kilpatrick Townsend Adds Michael Grace Jr. to Winston-Salem Office](#)

[Kilpatrick Townsend Grows its Real Estate Investment and Development Team in Dallas](#)

[Record-Breaking Recognition for Kilpatrick Townsend in The Best Lawyers in America© 2020](#)

[Best Lawyers in America® 2020 Names Kilpatrick Townsend Attorneys "Lawyers of the Year"](#)

[Kilpatrick Joins Firms Letting Lawyers State Pronoun Preference](#)

[Kilpatrick Townsend Adds Prominent Four-Lawyer M&A Team to Raleigh Office](#)

[Henry Walker Named One of Atlanta's Most Admired CEOs](#)

[Peter Daines Joins Kilpatrick Townsend in Washington, DC](#)

[Kilpatrick Townsend Receives Top Rankings from 2019 Legal 500 US](#)

[Anthony Glosson Joins Kilpatrick Townsend in Atlanta](#)

Recent Transactions

MB Bancorp to be Acquired by BV Financial

Q1 2020

Representing MB Bancorp, Inc., the parent company of Madison Bank of Maryland, in connection with its pending \$31.0 million merger with BV Financial, Inc. The transaction is expected to close in Q1 2020.

Sandy Spring Acquiring Revere Bank

Q1 2020

Representing Sandy Spring Bancorp, Inc., the parent company of Sandy Spring Bank, in its pending \$460.7 million dollar acquisition of Revere Bank. The transaction is expected to close in Q1 2020.

Public Debt Offering of Allegiance Bancshares

September 27, 2019

Served as underwriter's counsel to Keefe, Bruyette & Woods, Inc. in connection with Allegiance Bancshares, Inc.'s \$60.0 million underwritten public debt offering.

\$200 Million Series A Venture Capital Financing for OneTrust

July 3, 2019

Represented OneTrust, a privacy management software company, in a private placement of convertible preferred securities, which raised \$200 million for the startup.

Building Systems Design, Inc. Sells Majority Ownership Interest to RIB USA Inc.

June 5, 2019

Represented Building Systems Design, Inc., the leading provider of master guide specification writing software for the architecture, engineering, construction, and owner sectors, in its sale of a majority ownership interest to RIB USA, Inc., a Germany-based, multinational provider of construction design software that develops cutting-edge digital technologies for the construction industry.

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To view our latest Quarterly IP Digest, please click [here](#).