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Federal Court Update

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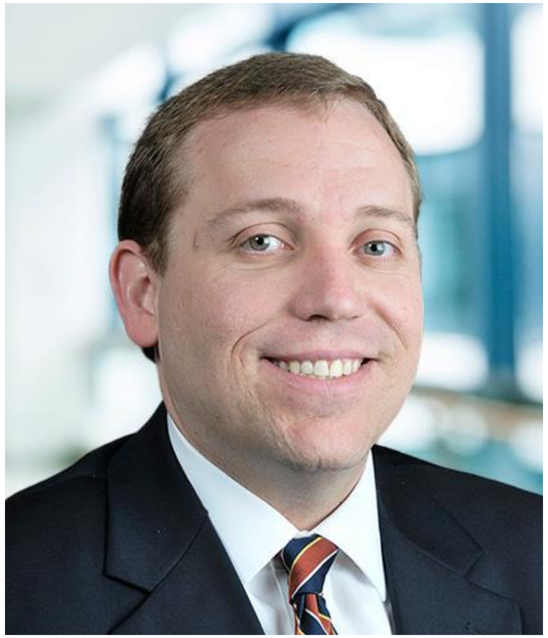

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FEDERAL RULES AMENDMENTS

Federal Rules Amendments

Amendments “shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.”

Federal Rules Amendments

- Amendment to Federal Rule of Civil Procedure 16.1 (Effective Dec. 1, 2025)
- Amendment to Federal Rule of Civil Procedure 26(f) and 16(b) (Effective Dec. 1, 2025)
- Proposed for Comment: Federal Rule of Civil Procedure 26
- New Federal Rule of Evidence 707 (Effective Dec. 1 2027)

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Federal Rules Amendments

FRCP 16.1 Advisory Committee Note

Rule 16.1(b)(1). The court ordinarily should order the parties to meet to submit a report to the court about the matters designated in Rule 16.1(b)(2)-(3) prior to the initial management conference. This should be a single report, but it may reflect the parties' divergent views on these matters.

Rule 16.1(b)(2). Unless the court orders otherwise, the report must address all of the matters identified in Rule 16.1(b)(2) (as well as all those in 16.1(b)(3)). The court also may direct the parties to address any other matter, whether or not listed in Rule 16.1(b) or in Rule 16. Rules 16.1(b) and 16 provide a series of prompts for the court and do not constitute a mandatory checklist for the transferee judge to follow.

Rule 16.1(b)(2)(A). Appointment of leadership counsel is not universally needed in MDL proceedings, and the timing of appointments may vary. But, to manage the MDL proceedings, the court may decide to appoint leadership counsel and many times this will be one of the early orders the transferee judge enters. Rule 16.1(b)(2)(A) calls attention to several topics the court should consider if appointment of leadership counsel seems warranted.

The first topic is the timing of appointment of leadership. Ordinarily, transferee judges enter orders appointing leadership counsel separately from orders addressing the matters in Rule 16.1(b)(2)(B)-(E) and 16.1(b)(3).

In some MDL proceedings it may be important that leadership counsel be organized into committees with specific duties and responsibilities. Rule 16.1(b)(2)(A)(ii) therefore prompts counsel to provide the court with specific suggestions on the leadership structure that should be employed.

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Federal Rules Amendments

FRCP 26(f) Advisory Committee Note

Under Rule 43, the court may permit remote testimony at trial. Because Rule 26 requires disclosure of witnesses a party "expects to present," it should be understood to include witnesses who will testify remotely upon court approval. This amendment clarifies that the disclosure requirement applies whether or not the witness is testifying in person or remotely and alerts the parties and the court that a party proposes to present one or more witnesses remotely.

Federal Rules Amendments

New Language FRCP 16(b)(3)(B)(iv)

(iv) include the timing and method for complying with Rule 26(b)(5)(A) and any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced, including agreements reached under Federal Rule of Evidence 502;

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Federal Rules Amendments

Proposed for Comment: Rule 26

(D) any issues about claims of privilege or of protection as trial-preparation materials, including <u>*the timing and method for complying with Rule 26(b)(5)(A) and*</u>—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502;

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Federal Rules Amendments

FRE 707 Advisory Committee Note

The rule applies when machine-generated evidence is entered directly, but also when it is accompanied by lay testimony. For example, the technician who enters a question and prints out the answer might have no expertise on the validity of the output. Rule 707 would require the proponent to make the same kind of showing of reliability as would be required when an expert testifies on the basis of machine-generated information.

If the machine output is the equivalent of expert testimony, it is not enough that it is self-authenticated under Rule 902(13). That rule covers authenticity, but does not assure reliability under the preponderance of the evidence standard applicable to expert testimony.

Because Rule 707 applies the requirements of admitting expert testimony under Rule 702 to machine-generated output, the notice principles that would be applicable to expert opinions and reports of examinations and tests should be applied to output offered under this rule.

U.S. SUPREME COURT

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Dewberry Grp., Inc. v. Dewberry Eng'rs Inc.

- Context: Two unrelated real estate companies with the word "Dewberry" in their names.

- Dewberry Engineers owns a registered trademark in the word Dewberry and sought to defend its trademark right.

- The Lanham Act provides for a prevailing plaintiff to recover the defendant's profits deriving from a violation.

- The current issue is whether Plaintiff (Engineers) can recover profits where Defendant (Group) reports no profits, but its affiliates demonstrate the profits.

Dewberry Grp., Inc. v. Dewberry Eng'rs Inc.

- Only the named defendant's profits can be disgorged under the Lanham Act.

- The statute allows recovery of *"the defendant's profits"*—meaning the profits of the entity actually sued. Dewberry Engineers sued *only* Dewberry Group, not its affiliated property-holding companies. Because of that, the affiliates' profits are not recoverable.

Dewberry Grp., Inc. v. Dewberry Eng'rs Inc.

- Corporate separateness matters.

- Federal statutes are generally read with traditional corporate-law principles in mind. Separate incorporated entities are distinct legal actors, even if they have the same owner or operate together. Courts can ignore separateness only in specific situations—like veil-piercing based on fraud—but Dewberry Engineers never sought veil-piercing here.

Dewberry Grp., Inc. v. Dewberry Eng’rs Inc.

- The lower courts improperly treated multiple corporations as a single entity.

- Both the district court and the Fourth Circuit combined the profits of Dewberry Group with those of non-party affiliates on the theory that the companies operated as one business. The Supreme Court held that this approach violated both the Lanham Act’s text and basic corporate-law principles.

Dewberry Grp., Inc. v. Dewberry Eng'rs Inc.

- The "just-sum" provision in §1117(a) didn't justify the award.

- Dewberry Engineers argued that the lower courts used the "just sum" clause (which allows courts to adjust profits awards if the result is inadequate or excessive) to consider affiliate profits as evidence of Dewberry Group's "true gain."
  The Supreme Court rejected that explanation—there was no two-step process, no discretionary adjustment, and no attempt to attribute only the *defendant's* actual benefit. The lower court simply lumped all companies together.

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Ames v. Ohio Dep't of Youth Servs.

- *Context:* A longtime administrator at the Ohio Department of Youth Services claims she was passed over for a promotion and then demoted—both times in favor of LGBTQ candidates—and sued under Title VII alleging discrimination based on her sexual orientation.

- District Court granted summary judgment to the agency, relying on McDonnell Douglas Corp. v. Green.

- District Court found that Plaintiff did not present background circumstances suggesting the agency discriminates against members of a major group. Sixth Circuit affirmed.

Ames v. Ohio Dep't of Youth Servs.

- The text of Title VII protects "any individual," and the statute focuses on individual treatment, not group status.
- Courts may not impose a heightened prima facie burden on majority-group plaintiffs under *McDonnell Douglas*.
- The Sixth Circuit's "background circumstances" rule—requiring majority-group plaintiffs to prove extra facts suggesting the employer is "that unusual employer who discriminates against the majority"—is invalid.
- The proper prima facie showing remains the same for everyone: the plaintiff applied, was qualified, was rejected, and the circumstances support an inference of discrimination.

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Trump v. CASA, Inc.

- Context: The U.S. filed three emergency applications challenging the scope of a federal court's authority to enjoin a Government officials from enforcing an executive order.
- Plaintiff filed suit alleging that the Executive Order violates the Fourteenth Amendment's Citizenship Clause and § 201 of the Nationality Act.
- The lower courts found that the Order was invalid and entered a universal preliminary injunction.

Trump v. CASA, Inc.

- No universal injunction power: The Judiciary Act's grant of "suits in equity" authorizes only remedies historically available in equity; universal injunctions were not among them.

- Relief must be party-specific: Courts may award complete relief to the plaintiffs, not universal relief to all similarly situated nonparties.

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Trump v. CASA, Inc.

- Stays granted in part: Universal aspects of the injunctions are stayed; injunctions must be narrowed to protect only plaintiffs with standing. Agencies may issue public implementation guidance; §2 of the Order was delayed 30 days.

- The Court did not reach the constitutionality of the underlying executive policy.

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Royal Canin U.S.A., Inc. v. Wullschleger

- Context: Plaintiff contended that Royal Canin's dog food is "ordinary dog food" and the company only sells the food under a prescription to increase the price.

- Plaintiff's claims were brought under Missouri Merchandising Practices Act, state antitrust law, and the FDCA.

- Plaintiff amended her complaint following her suit's removal.

Royal Canin U.S.A., Inc. v. Wullschleger

- When a case is removed to federal court and the plaintiff later files an amended complaint, jurisdiction is determined based on the amended complaint, not the original one.

- If the amended complaint drops the federal claims that supported removal and leaves only state-law claims, the federal court no longer has federal-question jurisdiction.

Royal Canin U.S.A., Inc. v. Wullschleger

- Without federal question jurisdiction, the court also loses supplemental jurisdiction over the remaining state-law claims under 28.U.S.C. § 1367(a).

- § 1367 requires courts to revaluate jurisdiction whenever a complaint is amended and if no claim in the amended complaint falls within the court's original jurisdiction, the case must be remanded to state court.

Medical Marijuana, Inc. v. Horn

- Context :Horn filed a federal lawsuit asserting a civil RICO claim, alleging that Medical Marijuana functioned as a RICO enterprise engaged in marketing and selling the product “Dixie X.”
- He claimed the company’s advertising was false or misleading and amounted to mail and wire fraud, which he argued constituted a pattern of racketeering activity for purposes of RICO.

Medical Marijuana, Inc. v. Horn

- Although RICO bars recovery for personal injuries themselves (e.g., pain and suffering), it *does* allow recovery for business or property losses that result from a personal injury.

- The focus is on the type of harm being compensated (business or property loss), not the underlying cause.

- If the harm affects business or property, it is recoverable under RICO even if the triggering event was a personal injury.

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EMD Sales, Inc. v. Carrera

- Context: A group of sales representatives sued their food-distribution employer for unpaid overtime under the Fair Labor Standards Act, and the company defended by claiming the workers were exempt as outside salespeople.

- Following a bench trial, the District Court concluded that EMD failed to prove "by clear and convincing evidence" that the employees qualified as outside salesmen.

- On appeal, EMD contended that the District Court should have applied the less stringent preponderance-of-the-evidence standard rather than the clear-and-convincing-evidence standard. The U. S. Court of Appeals for the Fourth Circuit disagreed and affirmed the judgment of the District Court.

EMD Sales, Inc. v. Carrera

- The default standard of proof in civil cases is preponderance of the evidence, and that default applies unless a statute, the Constitution, or an exceptional category of cases requires a higher standard.

- The Fair Labor Standards Act (FLSA) does not specify a heightened standard of proof for exemptions, nor does the Constitution or any “unusual coercive action” principle apply, so employers must prove FLSA exemptions by a preponderance of the evidence.

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EMD Sales, Inc. v. Carrera

- Policy arguments favoring a heightened standard—such as employee protection, public interest, or employers controlling most of the relevant evidence—do not justify departing from the default standard.

- The Court reversed and remanded.

Stanley v. City of Stanford

- A long-time firefighter retired early due to disability and received only 24 months of health-insurance coverage under a revised city policy, whereas employees who retired after 25 years received coverage until age 65.

- She sued under the Americans with Disabilities Act (Title I, 42 U.S.C. §12112) alleging disability discrimination in post-retirement benefits.

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Stanley v. City of Stanford

- To prevail under ADA Title I (§12112(a)), a plaintiff must plead and prove that at the time of the alleged discrimination she held or sought a job and could perform its essential functions with or without reasonable accommodation (§12111(8)).

- Title I protects people, not benefits; its present-tense text and examples (§12112(b), §12111(9)) target current employees or applicants—not retirees who neither hold nor desire a position; Congress's use of "qualified individual" (vs. §12203(a)'s "any individual") confirms this employment focus.

Stanley v. City of Stanford

- A retiree who is not working or seeking work when the adverse action occurs is not a "qualified individual," so post-retirement reductions to benefits fall outside §12112(a).
- Applying that rule, the Court affirmed dismissal because the benefit reduction happened after Stanley retired.
- The Court noted other potential avenues: a claim might proceed if the plaintiff was a qualified employee when the employer adopted the discriminatory policy or was affected by it while still employed.

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Stanley v. City of Stanford

- Justice Jackson (joined in parts by Justice Sotomayor) dissented and argues Title I does cover discrimination in post-employment benefits that were earned while the worker was a qualified employee; the “qualified individual” definition guards hiring/retention decisions, not a temporal cutoff that ends protection at retirement.

- Retirement benefits are deferred compensation and part of “employee compensation,” “fringe benefits,” and “terms, conditions, and privileges of employment”; cutting them because of disability after retirement retroactively discriminates against the person in her capacity as a previously qualified employee.

SIXTH CIRCUIT COURT OF APPEALS

Speerly v. GM, LLC

- Context: Plaintiffs alleged that GM's 8L45 and 8L90 transmissions used in certain GM vehicles from 2015-2019 suffered from two defects that caused shudder and harsh shift problems and that GM was aware but did not disclose.

- Plaintiffs brought claims for breach of express and implied warranty, violation of state consumer protection laws, and fraudulent concealment.

- The district court certified 26 statewide classes comprising around 800,000 vehicle owners.

Speerly v. GM, LLC

- The appeals court held that the district court abused its discretion when it certified 26 statewide classes.

- The district court treated all 59 claims as turning on a single, abstract question: whether there was a transmission “defect.”

- By doing that, the court ignored key differences among the legal elements for each claim and each state’s law, e.g., UCC merchantability vs. express-warranty breach vs. consumer-statute “materiality”)

Speerly v. GM, LLC

- The class certification order was vacated and the case remanded to the district court to:
    - Conduct element-by-element commonality analysis for each claim and state;
    - Perform a claim specific predominance assessment
    - Align damage models

Picket v. City of Cleveland

- Context: The City of Cleveland placed water liens disproportionately on properties in majority Black neighborhoods compared to majority White neighborhoods.

- Plaintiffs, who are Black residents of Cuyahoga County, Ohio, had water liens placed on their properties by the City, resulting in additional fees and, in some cases, water shutoffs or foreclosure.

- Plaintiffs filed a class action lawsuit alleging that the City's water lien policy violated the Fair Housing Act and Ohio Civil Rights Act by disproportionately harming Black homeowners.

Picket v. City of Cleveland

- Rule 23(b)(3): Because each class member's alleged injury is the same type of disparate impact (obligated within the last two years to pay debt secured by a lien stemming from amounts owed to Cleveland Water,) the liability question is common and predominates; individual damages can vary later.

- Rule 23(b)(2): The policy's alleged disparate placement of liens on Black residents is uniform; it can be enjoined or declared unlawful for all class members at once, satisfying indivisible relief.

- Standing: Congress, through the FHA, recognizes harms from private housing discrimination as analogous to constitutional racial discrimination, so intangible discriminatory impact suffices for injury-in-fact here; proof of economic loss isn't needed at certification.

Int'l Union of Painters & Allied Trades Dist. Council No. 6 v. Smith

- Context: The Southern Ohio Painters Health & Welfare Fund's board is evenly split between union-appointed and employer-appointed trustees; two union-appointed trustees sided with employer trustees to adopt procedural amendments.

- The union tried to remove those two trustees (Smith and Clark), alleging the amendments breached fiduciary duties — including changes to trustee removal rules and permitting trustees to serve without union membership.

- Smith and Clark refused to step down and, with employer-appointed support, used Fund assets to pay their personal legal expenses, which the union contends was improper.

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Int'l Union of Painters & Allied Trades Dist. Council No. 6 v. Smith

- The court affirmed denial of a preliminary injunction because plaintiffs failed to show irreparable harm—their allegations involved past conduct and monetary injury, which can be compensated later.

- Plaintiffs could not point to any concrete upcoming vote or trustee action that would create "certain and immediate" harm during the lawsuit, making their fears of future misconduct speculative.

- The court rejected the theory that trustee "entrenchment" is irreparable harm by itself, noting no binding authority supports that concept and plaintiffs still had to show a real, imminent injury—not just a governance dispute.

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Int'l Union of Painters & Allied Trades Dist. Council No. 6 v. Smith

- The Sixth Circuit affirmed the district court's denial of the preliminary injunction, holding that plaintiffs did not show irreparable harm.

- The case continues in the district court only against Smith and Clark (the two union-appointed trustees who allegedly entrenched themselves).

Kloosterman v. Metro Hosp.

- Context: Valerie Kloosterman, a physician assistant, was terminated after requesting religious accommodations to avoid using gender-identity pronouns and referring patients for gender-transition procedures; she sued the hospital and administrators under § 1983, Title VII, and Michigan law.

- The hospital litigated the merits for over a year, filing two motions to dismiss before ever mentioning arbitration.

- Only after the district court partially denied those dismissal motions did the hospital, for the first time, assert an arbitration defense and seek to compel arbitration.

Kloosterman v. Metro Hosp.

- The Sixth Circuit held the Hospital was in default of arbitration under 9 U.S.C. § 3 because its actions were inconsistent with arbitration—it twice moved to dismiss all claims with prejudice, seeking a merits victory instead of requesting arbitration. The hospital litigated the merits for over a year, filing two motions to dismiss before ever mentioning arbitration.

- The Hospital waited to assert arbitration only after the district court partially denied its dismissal motions, which the court described as getting a “sneak peek” at how the case would fare in litigation.

- The Hospital could not excuse the delay by claiming mistake—the Hospital drafted the agreement and knew the arbitration clause existed, and the FAA’s procedural rules control in federal court regardless of any state-law language in the contract.

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Kloosterman v. Metro Hosp.

- The concurrence observes that courts say a party “waives” arbitration by litigating in a manner inconsistent with arbitration, but notes that the court has never explained why the doctrine is labeled *waiver* (an intentional relinquishment of a known right) rather than *forfeiture* (losing a right by failing to assert it in time).

- The concurrence further notes that courts have treated the issue as governed by federal law, not state contract law, even though arbitration agreements are contracts.

Chapman v. Brentlinger Enters.

- Context: Celestia Chapman requested FMLA leave from her employer, Brentlinger Enterprises (MAG), to care for her terminally ill sister Sharon.

- MAG denied Chapman's request, stating that the FMLA does not cover leave to care for siblings and later fired Chapman after she failed to show up for work to care for her siblings.

- After terminating Chapman, MAG retroactively disenrolled her from employee health insurance without providing COBRA notice, opposed her application for unemployment benefits by falsely stating she had quit, and threatened her with Rule 11 sanctions if she filed an FMLA lawsuit.

Chapman v. Brentlinger Enters.

- The Family and Medical Leave Act (FMLA) permits employees to take leave to care for an "in loco parentis" parent or child, which includes adults who have assumed a parental role over another adult who is incapable of self-care.
- Providing false statements to an unemployment authority opposing a former employee's application for unemployment benefits can constitute an adverse action for purposes of an FMLA retaliation claim.
- The Ohio statute prohibiting employment discrimination (Ohio Rev. Code § 4112.02(A)) encompasses claims for associational disability discrimination.

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Chapman v. Brentlinger Enters.

- The court provided guidance on factors to consider in determining if an in loco parentis relationship existed, such as:
  - Intention;
  - Physical proximity;
  - Financial support;
  - Exercise of control; and
  - Emotional bond.

Chapman v. Brentlinger Enters.

- The court held a sibling can stand *in loco parentis* to another adult sibling—even if the disability arose in adulthood and the parental-style relationship began after onset.
- The key is whether Chapman intended to (and actually did) assume a parental role toward her sister
- Rather than decide the facts itself, the court remanded for the district court to apply these factors to Chapman's evidence

Owens v. Firstenergy Corp.

- Context: FirstEnergy allegedly funneled $60 million in bribes to Ohio officials to secure passage of House Bill 6, which delivered roughly $2 billion in subsidies and favorable rate provisions to the company.
- Throughout the scheme, FirstEnergy made public statements portraying legitimate lobbying efforts and strong corporate ethics, while allegedly concealing the bribery and corrupt payments.
- When the criminal charges became public in July 2020, FirstEnergy's stock fell nearly 35%, wiping out over $7.6 billion in market value; investors sued under the federal securities laws.

Owens v. Firstenergy Corp.

- Affiliated Ute vs. Basic: The court held Affiliated Ute's presumption of reliance is reserved for cases purely or primarily about omissions; mixed cases default to Basic if they are primarily about misrepresentations. Half-truths and generic, aspirational corporate statements are treated as misrepresentations, not omissions.

- Two Step Test: (1) Classify each claim as omission or misrepresentation (treat half-truths/puffery as misreps). (2) Apply four indicators—if any is met (omissions are just the inverse of the statements; reliance can be shown via a statement; the thrust is statements; omissions have no standalone impact), the case is primarily misrepresentation and analyzed under Basic, not Affiliated Ute.

Owens v. Firstenergy Corp.

- Applied to FirstEnergy: After sorting thirteen allegation groupings, the court found all were misrepresentations (affirmative misstatements or half-truths) and that all four indicators pointed to a misrepresentation-based case.

- Thus Affiliated Ute didn't apply in this class certification appeal.

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Bivens v. Zep, Inc.

- Context: Dorothy Bivens reported that a motel client locked his office door behind her and made unwanted advances; her supervisor reassigned the account but did not report the incident further within Zep.

- Bivens later filed claims alleging retaliation, race discrimination, and sexual harassment based on the incident and her subsequent termination.

- Her position was eliminated as part of a 23-person reduction.

Bivens v. Zep, Inc.

- Direct employer liability requires intent: the plaintiff must show the employer either desired the harassment to occur or was substantially certain it would happen and tolerated it anyway (a higher bar than negligence and contrary to most circuits and EEOC guidance).

- This "intent" standard draws from Title VII's focus on intentional discrimination and agency law limits.

- The court found no liability for Zep: the one-off incident occurred in the client's office without Zep's involvement; after Bivens reported it, her supervisor removed her from the account—nothing showed Zep intended or was substantially certain harassment would continue.

Questions?

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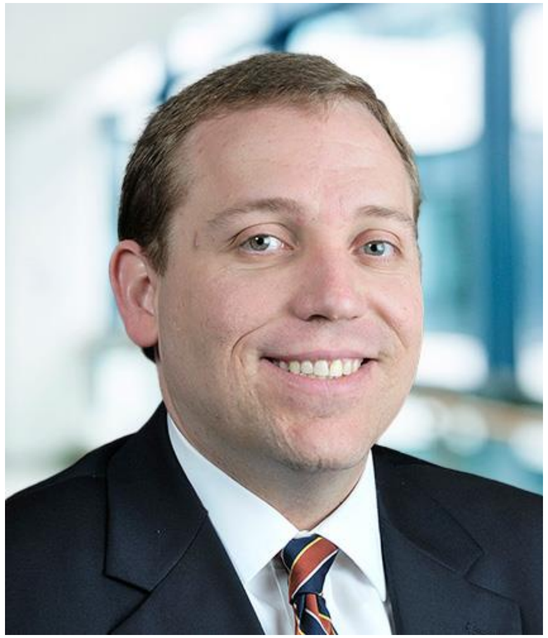

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