LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

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Each issue of *Case Law Monitor* highlights cases from around the United States in the areas of public health and safety, substance use disorders, and the criminal justice system. Every other month, LAPPA will update you on cases that you may have missed but are important to the field. We hope you find the *Case Law Monitor* helpful, and please feel free to provide feedback at info@thelappa.org.

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NINTH CIRCUIT RULES NUCLEAR SITE OPERATOR'S FITNESS-FOR-DUTY TERMINATION JUSTICIABLE

***Roman T. Gonzales v. Battelle Energy Alliance LLC*, U.S. Court of Appeals for the Ninth Circuit, Case No. 25-1037 (opinion filed April 16, 2026).** The Ninth Circuit has ruled that the termination of a security officer at a nuclear waste site over his use of prescription opioids is subject to judicial review. In 2018, Battelle Energy Alliance (Battelle) revoked the fitness-for-duty certification of security officer Roman T. Gonzales in response to his supervisor's concerns about his long-term use of opioids to manage a back injury. Gonzales sued Battelle in federal district court for retaliation and discrimination, including a claim under the Americans with Disabilities Act (42 U.S.C. § 12131), and won a partial jury verdict. The jury found in favor of Gonzales on his retaliation and "regarded as" discrimination claims but rejected his claims of race discrimination, unlawful disclosure of medical information, and denial of reasonable accommodation. Battelle moved for judgment as a matter of law or, in the alternative, a new trial, but the district court denied Battelle's motion and entered final judgment. Battelle appealed the judgment, arguing that the 1988 U.S. Supreme Court decision in *Department of Navy v. Egan* (484 U.S. 518) makes certain federal safety and security clearance decisions entirely nonjusticiable. In *Egan*, the U.S. Supreme Court ruled that when federal "agencies make security clearance determinations and other similarly predictive national security judgments that Congress vested in those agencies, the resulting decisions are non-justiciable." On April 16, 2026, the Ninth Circuit affirmed the lower court's ruling, holding that Battelle's revocation of Gonzales's fitness-for-duty certification is legally distinct from the national security programs shielded by *Egan*. The regulations governing Gonzales's fitness-for-duty certification are subject to a separate regulatory framework focused strictly on baseline physical and mental fitness rather than national security clearance evaluations. The court held that standard employment discrimination protections apply and affirmed the jury's award. (Return to In This Issue)

TIRE MANUFACTURER SETTLES DISABILITY SUIT OVER PRESCRIPTION OPIOID RESTRICTIONS

***U.S. Equal Employment Opportunity Commission v. The Carlstar Group, LLC*, U.S. District Court for the Middle District of Tennessee, Case No. 3:25-cv-00575-EJR (settlement reached April 15, 2026).** A specialty tire manufacturer has agreed to a $300,000 settlement with the federal government to resolve claims

of unlawfully terminating and restricting employees who used prescribed pain medications. Since at least January 2020, tire manufacturer The Carlstar Group, LLC (Carlstar), denied employment and promotion opportunities at its plants in Tennessee and South Carolina to workers who were found to be using legally prescribed narcotics and opioids for disabilities. The U.S. Equal Employment Opportunity Commission (EEOC) filed a lawsuit in federal district court alleging that the company had summarily disqualified these individuals under its blanket drug testing and substance abuse policies, failing to provide or consider reasonable accommodations, even after the workers received formal medical clearance that they could safely execute their job duties. The EEOC argued that this strict, one-size-fits-all exclusion policy violated the Americans with Disabilities Act (42 U.S.C. § 12131). On April 15, 2026, Carlstar agreed to a settlement - Carlstar will pay a total of $300,000 in monetary relief to five affected employees, overhaul its substance abuse accommodations framework, implement mandatory supervisor training, and submit periodic compliance reports to federal regulators for a five-year period. (Return to In This Issue)

THIRD CIRCUIT RULES PRISONER'S REMOVAL FROM MAT PROGRAM DID NOT VIOLATE THE EIGHTH AMENDMENT OR THE ADA

***Jonathan DiFraia v. Keven Ransom, et al.*, U.S. Court of Appeals for the Third Circuit, Case No. 24-2673 (opinion filed March 31, 2026).** The Third Circuit dismissed a Pennsylvania state prisoner's lawsuit ruling that his removal from the prison's medication for addiction treatment (MAT) program was lawful. Jonathan DiFraia is an inmate in a Pennsylvania prison and has a history of opioid use disorder (OUD). Because of his OUD, DiFraia received buprenorphine as part of the prison's MAT program. One day, while in the medication line to receive his MAT, guards strip-searched DiFraia and discovered an e-cigarette with a cap on it in his possession. The guards accused DiFraia of using the cap to divert his MAT to other prisoners, which DiFraia denied. A week later, the guards again alleged that DiFraia was diverting his MAT, which he continued to deny. Three days later, DiFraia met with the prison physician, who informed him that he was being removed from the program for diversion. The physician tapered DiFraia off of his buprenorphine over the next week, and he soon began suffering from withdrawal symptoms. DiFraia wrote to the superintendent and other prison officials asking to be put back on his MAT, but they refused. In response, DiFraia filed a pro se lawsuit against multiple prison officials asserting that they violated the Eighth Amendment of the U.S. Constitution and Title II of the Americans with Disabilities Act (ADA; 42 U.S.C. § 12132) by removing him from the MAT program. The district court dismissed DiFraia's claims, and he appealed. For the Eighth Amendment claim, DiFraia argued that prisons can only deny medical care based on an individualized medical judgment and that denying necessary medical treatment based on a non-medical reason qualifies as deliberate indifference. The court noted that not all non-medical considerations for denying medical treatment to a prisoner are per se banned under the Eighth Amendment and determined that DiFraia's removal from the MAT program did not amount to deliberate indifference. The court determined that there was no evidence that his removal from the program was due to retaliation or intentional infliction of harm, and that DiFraia simply disagreed with the decision to be taken off MAT. Additionally, the court noted that DiFraia never alleged that his buprenorphine was medically necessary to manage his OUD and that even if he had, "diverting medication suggests that one no longer needs it." The court reasoned that "prison officials cannot be deliberately indifferent to a medical need that no longer exists." For the ADA claim, the court agreed with the district court's dismissal of the claim, finding that DiFraia was not removed from the MAT program because of his disability, but rather "despite it." The court concluded by stating that: "Prisoners do not get all the medical care that they want. Even if they suffer because prison officials deny them care, that alone is not enough to violate the Eighth Amendment or the [ADA]." (Return to In This Issue)

FOURTH CIRCUIT FINDS DETENTION OFFICERS HAVE QUALIFIED IMMUNITY IN OVERDOSE DEATH

***Crystal Rice v. Scott Adams*, U.S. Court of Appeals for the Fourth Circuit, Case No. 24-02026 (opinion filed April 14, 2026).** The Fourth Circuit has ruled that a group of detention officers cannot be held liable for the death of a woman who suffered a fatal opioid withdrawal while in custody. In August 2020, police booked Cynthia Rice into the Cecil County Detention Center in Elkton, Maryland, where she informed unidentified officers of her heroin addiction and that she was suffering from opioid withdrawal symptoms. About four hours later, medical staff conducted an intake screening of Rice and identified her as a "high priority detox check." According to the complaint, the next morning, medical staff took Rice's vital signs multiple times and prescribed her blood pressure medication. At unspecified times during that same morning, Rice was allegedly screaming in pain and "custody staff" told her to "shut up" rather than offer her aid. Around 12:30pm, an unidentified officer approached Rice's cell and asked if she was okay, to which she responded that she was not. Later that afternoon, when staff entered Rice's cell, they found her unresponsive. Emergency medical services responded and pronounced Rice dead. Her estate filed a lawsuit against the detention officers in federal district court, asserting that they had violated the Fourteenth Amendment of the U.S. Constitution by displaying deliberate indifference to Rice's acute medical needs. The complaint never identified what any officer did or did not know but rather alleged that each defendant was "made aware of" Rice's condition in three ways: (1) by observing it themselves; (2) by being informed of her condition by other detainees in the facility; and (3) by being informed by other staff. The defendants moved to dismiss on qualified immunity grounds, but the district court denied the motion, finding that Rice's estate had plausibly alleged a constitutional violation. The defendants appealed to the Fourth Circuit. On April 14, 2026, the circuit court reversed the district court's decision, holding that the complaint was fundamentally flawed because it grouped the officers together as an "undifferentiated collective" rather than making defendant-specific allegations. The complaint failed to identify whether any specific officer had actually interacted with Rice or had knowledge of her distress. The court further held that because the defendants were nonmedical staff, they were legally justified in relying on the detention center's medical personnel, who had monitored and examined Rice on multiple occasions during her brief time in custody. The case was remanded to the district court for further proceedings. (Return to In This Issue)

WRONGFUL DEATH LAWSUIT ASSERTS CHATGPT CAUSED OVERDOSE DEATH

***Leila Turner-Scott, et al. v. OpenAI Foundation, et al.*, California Superior Court (San Francisco County), Case No. CGC26636801 (suit filed May 12, 2026).** The family of a 19-year-old college student who died from an overdose has filed a wrongful death lawsuit against OpenAI Foundation and its chief executive officer, Sam Altman, over allegations that the artificial intelligence (AI) chatbot, ChatGPT, caused their son's overdose by providing him with medical advice about mixing substances. According to the complaint, Samuel Nelson began using ChatGPT in 2023 as a productivity tool to help him troubleshoot computer problems and get help with homework. Eventually, Nelson began asking ChatGPT questions about substance use. Initially, ChatGPT refused to answer Nelson's questions, stating that it could not advise him on how to engage in illegal or dangerous behaviors. In 2024, the defendants released an updated ChatGPT chatbot model, which began to engage and advise Nelson on drug use, including providing him with specific dosage information and how to acquire illicit substances. On the day of Nelson's death, ChatGPT allegedly advised him to take Xanax (alprazolam) to help combat nausea caused by him taking kratom but failed to advise him that the combination could be lethal. The plaintiffs argue that the defendants deployed a defective AI product without reasonable safety guardrails, robust safety testing, or transparency to the public, despite knowing that individuals may use it as a medical triage system. The suit brings forth claims of strict product liability for defective design and failure to warn, negligence, and wrongful death. Additionally, the suit asserts

violations of: (1) CAL. BUS. & PROF. CODE § 2052 (West 2025), which prohibits any person from practicing medicine without a valid license; (2) CAL. BUS. & PROF. CODE § 4999.9 (West 2025), which makes it illegal to use AI in a way that uses terms, letters, or phrases to indicate or imply that it possesses a valid healthcare license; and (3) CAL. BUS. & PROF. CODE § 17200, *et seq*. (West 2026), California's unfair competition law. The plaintiffs are requesting all wrongful death and survival damages recoverable under CAL. CIV. PROC. CODE §§ 337.61 and 377.34, respectively, including non-economic and punitive damages. (Return to In This Issue)

INDIVIDUAL FILES CLASS ACTION AGAINST KRATOM MANUFACTURER FOR FAILING TO WARN CONSUMERS ABOUT ADDICTIVE PRODUCTS

***Evan Eichhorn v. MNG 2005, Inc.*, U.S. District Court for the Eastern District of Pennsylvania, Case No. 2:26-cv-01395 (suit filed March 4, 2026).** A New Jersey man has filed a class action lawsuit against a kratom beverage company over claims that the company failed to warn consumers about the addictive nature of the product. MNG 2005, Inc. d/b/a CBD Kratom (CBD Kratom) maintains retail stores and online marketplaces nationally and sells kratom-containing sodas, teas, and seltzers manufactured under its "Korthal's Collection" brand (hereinafter "beverages"). In April 2024, Evan Eichhorn was working in Philadelphia as a building engineer when he noticed a sign advertising the beverages of CBD Kratom as an "energy boosting pre-workout" supplement outside of a CBD Kratom retail location. The label on the front of the beverages read that the effects of consumption were "increased focus, mood elevation, and energy boost." Eichhorn decided to purchase two of the beverages. According to the complaint, Eichhorn later developed a tolerance to the beverages and began purchasing and consuming them daily and in large quantities. By Summer 2024, Eichhorn claimed that he was drinking up to 16 beverage cans a day and spending approximately $200 a day at various CBD Kratom stores. Eichhorn believed that he had developed a kratom addiction and attempted to stop drinking the beverages on multiple occasions but would experience withdrawal symptoms. In March 2025, Eichhorn entered a substance use disorder treatment program to treat his kratom addiction. In March 2026, Eichhorn filed a class action lawsuit against CBD Kratom arguing that they failed to warn consumers that kratom is a mood-altering agent that can cause numerous health issues, including addiction. Eichhorn further argued that CBD Kratom had a duty to state on its product labels that the beverages contained potent 7-hydroxymitragynine (7-OH), were not for routine consumption, and that repeat or excess consumption and sudden cessation could cause withdrawal symptoms. The complaint brings forth claims of negligent failure to warn, breach of express warranty, and unjust enrichment, along with assertions that CBD Kratom violated Pennsylvania's breach of implied warranty of merchantability law (13 PA. STAT. AND CONS. STAT. ANN. § 2314 (West 2026)), and New Jersey's breach of implied warranty for fitness for a particular purpose law (N.J. STAT. ANN. § 12A:2-314 (West 2026)). The suit is requesting declaratory and injunctive relief as well as compensatory and treble damages. On May 29, 2026, CBD Kratom filed a motion to dismiss for failure to state a claim. (Return to In This Issue)

BOTANIC TONICS SUES UTAH OFFICIALS OVER NEW KRATOM LAW, FEDERAL COUT DENIES INJUNCTION

***Botanic Tonics, LLC, et al. v. Kelly Pherson, et al.*, U.S. District Court for the District of Utah, Case No. 2:26-cv-00267-HCN-DBP (suit filed March 31, 2026; preliminary injunction denied May 4, 2026).** Botanic Tonics, the manufacturer of "Feel Free" tonics, has sued multiple Utah officials over the state's newly enacted Kratom Regulation Act (KRA; UTAH CODE ANN. § 4-45-101, *et seq*. (West 2026)). Botanic Tonics is an Oklahoma-based manufacturer, distributor, and retailer of a "combination kratom leaf and noble kava root dietary supplement" marketed under the name, Feel Free. On March 26, 2026, Utah Governor Spencer Cox signed the KRA into law, which was set to take effect on May 6, 2026 absent any injunction. On March 31,

2026, Botanic Tonics along with the kratom advocacy organization, Global Kratom Coalition, filed a lawsuit against multiple Utah officials claiming that the KRA will outlaw the distribution and sale of Feel Free because the law prohibits any "kratom product" that is "mixed or packed with a nonkratom substance unless the nonkratom substance is an inert encapsulating agent." (UTAH CODE ANN. § 4-45-102(5) (West 2026)). The plaintiffs claimed that Botanic Tonics will be irreparably injured absent an injunction because it will suffer financial losses from the cessation of Feel Free sales in Utah and face "continuing brand dilution." The plaintiffs argued that the provisions of the KRA that will ban the sale of Feel Free in Utah are preempted by federal laws addressing dietary supplements and accordingly, sought a preliminary injunction to prevent the state from enforcing the KRA against them.

The plaintiffs first argued that portions of the KRA that would ban Feel Free are expressly preempted by 21 U.S.C. § 343-1(a), which, they maintain, "forbids any deviation from federal dietary supplement labeling requirements, including those germane to the labeling of combination dietary supplements." They contend that the "KRA not only forbids combined kratom and nonkratom substance dietary supplements," but also "forbids their labeling, thus violating the express command in 21 U.S.C. § 343-1(a)(5) that state dietary supplement labeling laws be 'identical' to federal law." Section 343-1(a)(5) provides that "no State . . . may directly or indirectly establish . . . as to any food in interstate commerce . . . any requirement respecting any claim of the type described in section 343(r)(1) of this title . . . ." Section 343(r)(1), in turn, addresses express or implicit claims made regarding either "the level of any nutrient" in the food or "the relationship of any nutrient" in the food "to a disease or a health-related condition" that do not comport with other statutory provisions. The court noted that the text of 21 U.S.C. § 343-1(a)(5) makes clear that Congress intended to preempt only state requirements respecting any claim made on a label that differ from federally established requirements, and determined that there is nothing in the plain language of § 343-1 that purports to preempt state-level bans on substances. Thus, the court concluded that the plaintiffs failed to demonstrate that they are likely to prevail on the claim that the KRA is expressly preempted by § 343-1. Next, the plaintiffs argued that the KRA is preempted because compliance with both the KRA and 21 U.S.C. §§ 321(ff) and 342(f) is impossible. 21 U.S.C. § 321(ff) defines the term "dietary supplement," as used in the Federal Food, Drug, and Cosmetic Act, and § 342(f) specifies the circumstances in which a dietary supplement is considered to be adulterated. The court noted that even if Feel Free falls within the federal definition of a dietary supplement and does not meet the statutory criteria for being deemed to be adulterated, these federal statutes do not require that Feel Free be sold. Concluding that banning the sale of Feel Free is not prohibited by federal law, the court ruled that it is possible to comply with both the KRA and §§ 321(ff) and 342(f) and that this claim failed to demonstrate a likelihood of success, as well. Based on these rulings, on May 4, 2026, the court denied the plaintiffs' request for a preliminary injunction. On May 6, 2026, the plaintiffs filed an appeal with the Tenth Circuit. Additionally, on May 15, 2026, the plaintiffs filed an amended complaint in the district court and on May 19 filed a second motion for preliminary injunction. (Return to In This Issue)

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH FILES LAWSUIT AGAINST KRATOM MANUFACTURER

***People of the State of California ex rel. Californiad Department of Public Health v. Ashlynn Marketing Group, Inc.*, California Superior Court (San Diego County), Case No. 26CU024443C (suit filed April 30, 2026).** The California Department of Public Health (CDPH) and California Attorney General Rob Bonta have filed a lawsuit against Ashlynn Marketing Group, Inc. d/b/a Krave Kratom (Ashlynn) over claims that the company repeatedly manufactured and distributed adulterated and illegal kratom-derived food products in the state. Under the federal Food, Drug, and Cosmetics Act, kratom is considered an unsafe food additive pursuant to 21 U.S.C. § 348, and food containing such an additive is considered adulterated under 21 U.S.C. § 342(a)(2)(C). California's Sherman Food, Drug, and Cosmetics Law (Sherman Law; CAL. HEALTH & SAFETY CODE § 109875, *et seq*.) incorporates and parallels the federal food safety standards. Under CAL. HEALTH & SAFETY CODE § 110555 (West 2026), a food is adulterated if it contains any food additive that is unsafe within the meaning of state or federal law. It is unlawful to manufacture, sell, deliver, hold, or offer for sale any

adulterated food in California under CAL. HEALTH & SAFETY CODE § 110620 (West 2026). On May 15, 2025, during an investigation of Ashlynn's facility, CDPH investigators observed Ashlynn manufacturing and holding for sale food products containing kratom, including powders, capsules, liquids, and chewable tablets. Because CDPH had probable cause to believe that the products were adulterated and misbranded, it issued an embargo under CAL. HEALTH & SAFETY CODE § 111860 (West 2026) covering bulk kratom powder, retail powders, capsules, liquids, tablets, and any and all other materials containing kratom or kratom derivatives. On October 7, 2025, CDPH investigators conducted a follow-up inspection of Ashlynn's facility to verify that the embargo remained in place. During that inspection, investigators observed that products previously placed under embargo had been moved throughout the warehouse and production areas. The investigators also observed kratom capsules being processed, unlabeled bags of raw kratom powder, and kratom powder within processing equipment used for sifting and manufacturing operations. Based on these observations, CDPH determined that Ashlynn had continued manufacturing food products containing kratom and had moved embargoed materials without authorization in violation of § 111860 of the Sherman Law and the embargo order. On April 9, 2026, CDPH investigations conducted another embargo integrity check at Ashlynn's facility and again observed that the embargoed materials had been moved and tampered with. The lawsuit asserts that Ashlynn violated and continues to violate the Sherman Law and requests the court to issue a temporary restraining order and a preliminary and permanent injunction prohibiting Ashlynn from manufacturing, processing, holding for sale, distributing, moving, or disposing of kratom containing food products. The suit also asks the court to impose civil penalties of up to $1,000 per day for each violation of the Sherman Law in accordance with CAL. HEALTH & SAFETY CODE § 111915 (West 2026). (Return to In This Issue)

MISSOURI JUDGE DECLINES TO GRANT TEMPORARY RESTRAINING ORDER IN AMERICAN SHAMAN 7-OH CASE

***State of Missouri ex rel., Attorney General Catherine L. Hanaway, et al. v. Shaman Botanicals, LLC, et al.*, Missouri Circuit Court (Jackson County), Case No. 2616-CV11773 (motion for temporary restraining order denied May 8, 2026).** For previous updates on this case, please refer to the April 2026 issue of the LAPPA *Case Law Monitor*, available here. A Missouri Circuit Court judge has denied Missouri Attorney General Catherine Hanaway's motion for a temporary restraining order to immediately prohibit Shaman Botanicals and its related subsidiaries from selling 7-hydroxymitragynine (7-OH) products in the state. 7-OH is an alkaloid found naturally in the kratom plant *Mitragyna speciosa* in small quantities, but it can also be synthetically produced and sold in a concentrated form.[1] 7-OH binds to mu-opioid receptors in the body and can cause dependance, addiction, withdrawal, respiratory depression, and overdose. The judge noted that there were "competing affidavits" submitted by individuals who appear to have expertise with "the product and attendant issues relating to that product which are the subject of this lawsuit." The judge stated that, based on the respective competing affidavits and the pleadings, he could not determine whether the plaintiff was likely to succeed on the merits at this point in the proceeding and thus denied the request for a temporary restraining order. On May 26, 2026, the defendants filed their answer to the complaint. On May 7, 2026, Attorney General Hanaway filed a similar lawsuit against Relax Relief Rejuvenate Trading LLC. d/b/a EDP Kratom in the Missouri Circuit Court for Cole County (Case No. 26AC-CC00227). On June 4, 2026, Attorney General Hanaway announced via press release that Shaman Botanical has agreed to suspend all in-state sales of kratom and kratom-derived alkaloids. This action ended the litigation between the attorney general's office and American Shaman. (Return to In This Issue)

[1] For more information about kratom and 7-OH, please refer to LAPPA's Kratom: Summary of State Laws research document and its factsheet entitled, Regulation of Kratom in America.

FEDERAL COURT DISMISSES CLASS ACTION RICO SUIT INVOLVING HIGH DELTA-9 THC VAPES

***Hannah Ledbetter v. Cloud 9 Online Smoke & Vape, LLC, et al.*, U.S. District Court for the Northern District of Georgia, Case No. 1:24-cv-00538-SDG (opinion filed March 31, 2026).** A federal district court has dismissed a class action Racketeer Influenced and Corrupt Organizations (RICO; 18 U.S.C. § 1962) suit against THC vape manufacturers, testing laboratories, and retailers. In November 2023, Hannah Ledbetter purchased a variety of vape products from an assortment of retailers that were advertised as "Farm Bill-compliant vape distillates" that contained less than 0.3 percent of dry weight delta-9 THC. The Agriculture Improvement Act of 2018 (Pub. L. No. 115-334), which is known as the 2018 Farm Bill, legalized cannabis-derived products with a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis (7 U.S.C. § 1639o).[2] Seeking to reassure herself that the vapes were legal, Ledbetter had the vapes tested. The test results revealed that the vapes contained excessive delta-9 THC levels ranging from 230 to 703 percent above the legal delta-9 THC limit. In January 2024, Ledbetter filed a putative class action against multiple companies and individuals allegedly involved in the manufacture, testing, distribution, and sale of the illegal vapes, asserting the following claims: (1) negligence, negligent misrepresentation, intentional misrepresentation, and unjust enrichment, all under Georgia common law; (2) strict products liability under GA. CODE ANN. § 51-1-11 (West 2026); (3) violations of the RICO Act under both federal and Georgia Law (18 U.S.C. § 1962(c) and GA. CODE ANN. § 16-14-4 (West 2026), respectively); and (4) RICO conspiracy under federal law (18 U.S.C. § 1962(d)). According to Ledbetter, the defendants operated the criminal enterprise when the manufacturing defendants purchased and used distillate with intentionally high levels of delta-9 THC in their products and then had their products tested by the laboratory defendants who produced fraudulent certificates of analysis (COAs) that allowed the non-compliant products to be distributed to the retail defendants.

A private plaintiff suing under the civil provisions of the federal RICO Act must plausibly allege that the defendants: (1) operated or managed; (2) an enterprise; (3) through a pattern; (4) of racketeering activity that included at least two predicate acts of racketeering activity, which (5) caused; (6) injury to the business or property of the plaintiff. A plaintiff must adequately plead any one of the six elements, and if not, he or she is considered to have failed to state a claim upon which relief can be granted. A RICO enterprise is "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." (18 U.S.C. § 1961(4)). To plead an association-in-fact enterprise, the U.S. Supreme Court has held that a plaintiff must allege that a group of individuals share three structural features: (1) a purpose; (2) relationships among those associated with the enterprise; and (3) longevity sufficient to permit these associates to pursue the enterprise's purpose.[3] A shared abstract interest, such as a generally shared interest in making money, does not satisfy the purpose prong. Additionally, a RICO plaintiff must allege facts showing that the defendants participated in the operation or management of the enterprise itself and conducted or participated in the conduct of the enterprise's affairs, not just their own affairs.

The court concluded that Ledbetter failed to plausibly allege the existence of a RICO enterprise, finding that she failed to identify facts to suggest that the defendants were operating with a common purpose to make money in the fraudulent or illegal sale of vape pens, rather than the "obvious explanation" that they were each trying to make money, independently, in their respective role in the supply chain. Without any plausible factual allegations that the defendants had agreements to produce vape pens with illegal amounts of delta-9 THC, the court ruled that Ledbetter's assertions merely showed routine transactions between participants in a

[2] Note that the Continuing Appropriations and Extensions Act of 2026 (Pub. L. No. 119-37) modified the definition of hemp, and the new definition is set to go into effect on November 12, 2026. For more information, please refer to LAPPA's Closing the Hemp Loophole: The New Federal Definition of Hemp and its Impact" factsheet.

[3] *Boyle v. United States*, 556 U.S. 938 (2009).

supply chain. Moreover, although Ledbetter alleged that the laboratory defendants issued fraudulent COAs, the court found that her allegations failed to assert that the laboratory defendants were doing so because of some identification agreement with the manufacturing defendants, noting that independent conduct, even if illegal, cannot satisfy RICO's shared purpose requirement. Because Ledbetter failed to adequately plead a federal RICO claim, the court ruled that her RICO conspiracy claim must also fail and dismissed the claims with prejudice. Having dismissed the federal claims, the court determined that it lacked an independent basis for subject matter jurisdiction over Ledbetter's state law claims. The court declined to exercise supplemental jurisdiction over the state law claims and dismissed them without prejudice. (Return to In This Issue)

ENFORCEMENT OF NEW TEXAS HEMP RULES TEMPORARILY BLOCKED BY STATE COURT

***Texas Hemp Business Council, et al. v. Texas Department of State Health Services, et al.*, Texas District Court (Travis County), Case No. D-1-GN-26-002511 (temporary injunction granted May 1, 2026).** A Texas district court judge has granted a temporary injunction to allow hemp retail stores in the state to continue to sell certain consumable hemp products (CHPs), including smokable THCa products. In 2019, the Texas Legislature enacted H.B. 1325, which established a comprehensive regulatory framework governing hemp cultivation and the manufacture and sale of CHPs. This bill established the definition of "hemp" as the "plant *Cannabis sativa L*. and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." (TEX. AGRIC. CODE ANN. § 121.001 (West 2026)). Under this definition, CHPs are considered lawful hemp unless their delta-9 THC concentration exceeds the 0.3 percent threshold. In December 2025, the Texas Department of State Health Services (DSHS) and the Texas Health and Human Services Commission (HHSC) issued a proposed rule modifying the definition of hemp to replace the 0.3 percent delta-9 THC limit with a "total delta-9 THC" limit. In March 2026, the agencies issued a final rule, and based on public comment, restored the definition of hemp to the original statutory definition. However, as part of the final rule, the agencies embedded the total delta-9 THC limit throughout the regulatory scheme governing testing, manufacturing, transporting, distributing, and selling CHPs. Under the new regulatory framework, compliance no longer turns on the statutory delta-9 THC definition, but instead on a converted total delta-9 THC value calculated using a post-decarboxylation formula.[4] The new rule prohibits the transport and processing of hemp plants and plant materials used in manufacturing based on the new total delta-9 THC limit. Furthermore, the rule increases licensing and registration fees for hemp manufacturers and retailers and adds additional fees and penalties. The new rule went into effect on March 31, 2026, and on April 7, 2026, the Texas Hemp Business Council and several other state hemp manufacturers and retailers filed suit against DSHS and HHSC arguing that (1) the agencies exceeded their statutory rulemaking authority; (2) the new rule is in conflict with governing statutes; and (3) the rules were adopted in violation of the Texas Administrative Procedure Act (TEX. GOV'T CODE ANN. § 2001.001, *et seq*. (West 2026)) and the Texas Constitution. The plaintiffs assert that under the new regulatory framework, products that satisfy the statutory definition of hemp would be treated as unlawful under the non-statutory compliance metric. The plaintiffs asked the court for a declaratory judgment declaring that the challenged rule is invalid and for a temporary restraining order and temporary and permanent injunction prohibiting the defendants from implementing and enforcing the new rule.

On April 10, 2026, a judge granted the plaintiffs' request for a temporary restraining order without issuing an opinion, halting the rule reinterpreting the delta-9 THC limit. The judge, however, denied the restraining order as it applied to the new manufacturing and retail fees. Then on May 1, 2026, a different judge granted the plaintiffs' request for a temporary injunction just hours before the temporary restraining order was scheduled to expire. In granting the temporary injunction, the judge determined that the plaintiffs showed a substantial

[4] The formula is [total delta-9 THC] = [(0.877 x THCa) + delta-9 THC].

likelihood that the agencies lacked the authority to impose the new THC calculation. The order also blocked the increased fees on retail and manufacturing licenses, as well as the heightened penalties. The temporary injunction will remain in place pending a final trial on July 27, 2026, unless it is overturned on appeal. (Return to In This Issue)

TEXAS SUPREME COURT ALLOWS STATE DELTA-8 THC BAN TO BE ENFORCED

***Texas Department of State Health Services, et al. v. Sky Marketing Corp., et al.*, Supreme Court of Texas, Case No. 23-0887 (opinion filed May 1, 2026).** The Texas Supreme Court has removed a lower court's temporary injunction, allowing the state's ban on products containing synthetic delta-8 THC to go into effect.[5] In the 2019 Texas Farm Bill, the legislature removed hemp and the THC in hemp from the list of controlled substances under the Texas Controlled Substances Act (TEX. HEALTH & SAFETY CODE ANN. § 481.002 (West 2026)). The 2019 Texas Farm Bill defined hemp as the "plant *Cannabis sativa L.* and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." (TEX. AGRIC. CODE ANN. § 121.001 (West 2026)). In August 2020, the federal Drug Enforcement Administration (DEA) issued an interim final rule that amended the scope of substances falling within the federal definition of Schedule I "marihuana extract" and clarified that "hemp-derived extracts containing less than 0.3 percent THC content are also decontrolled along with the hemp plant itself."[6] The commissioner of the Texas Department of State Health Services (DSHS) objected to the DEA's August 2020 modifications "to the extent that the definitions allow for the presence or addition of THC aside from the presence of delta-9 THC." Accordingly, in January 2021, the DSHS commissioner issued a final decision declining to adopt the DEA's August 2020 modifications. The commissioner then updated Texas's Schedule I's THC and "marihuana extract" definitions to comport with the objection and to clarify Texas law in light of the change in federal law. In October 2021, DSHS announced on its website that "Texas Health and Safety Code Chapter 443, established by House Bill 1325, allows Consumable Hemp Products in Texas that do not exceed 0.3% Delta-9 THC. *All other forms of THC, including Delta-8 in any concentration and Delta-9 exceeding 0.3%, are considered Schedule I controlled substances.*" (Emphasis added). A group of licensed hemp manufacturers, retailers, and consumers (collectively "hemp stakeholders") sued DSHS and the commissioner, arguing that: (1) the commissioner lacked the discretion to modify the 2021 Schedules pursuant to TEX. HEALTH & SAFETY CODE ANN. § 481.034(g) (West 2026); and (2) the 2021 amendments and the October 2021 statement on the DSHS website were invalid rules under the Texas Administrative Procedures Act (APA; TEX. GOV'T CODE ANN. § 2001.001, *et seq*. (West 2026)). The plaintiffs sought a temporary injunction to stop the enforcement of the amendments to the definitions for the terms THC and "marihuana extract" in the 2021 Schedules. The trial court granted the temporary injunction, and the court of appeals affirmed. DSHS petitioned the Texas Supreme Court for review, which the court granted.

The DSHS commissioner has broad authority to establish and modify the Schedules of controlled substances under the Texas Controlled Substances Act (TEX. HEALTH & SAFETY CODE ANN. § 481.032(a) (West 2026)). Under § 481.034(g), "if a substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice of that fact is given to the commissioner," than the commissioner "similarly shall designate, reschedule, or delete the substance, unless [he or she] objects." If the commissioner objects, he or she shall publish the reasons for the objection, give all interested parties an opportunity to be heard, and publish a decision, which is final unless altered by statute. The hemp stakeholders argued that the commissioner lacked discretion to modify the 2021 Schedules pursuant to § 481.034(g) because the DEA's interim final rule was not a scheduling event. The Texas Supreme Court disagreed, finding that the commissioner acted within her discretion in determining that the federal rule effected a substantive alteration

[5] For more information on delta-8 THC, please refer to LAPPA's Explaining Cannabinoids factsheet.
[6] Implementation of the Agriculture Improvement Act of 2018, 85 Fed. Reg. 51639 (Aug. 21, 2020).

to a controlled substance under federal law, thereby triggering § 481.034(g). The court determined that it was expressly within the commissioner's unreviewable, discretionary authority to object rather than allow the federal changes to automatically become part of Texas Law. Additionally, the court concluded that § 481.034(g) authorized the commissioner to update Schedule I's THC and "marihuana extract" definitions to comport with her objection that the modified federal definitions allowed for the presence or addition of THC aside from the presence of delta-9 THC and to clarify Texas law in light of the change in federal law that had prompted the objection. Thus, the court held that the commissioner complied with the procedural requirements enumerated in § 481.034(g).

The hemp stakeholders also argued that the 2019 Texas Farm Bill decontrolled all non-delta-9 THC, including delta-8 THC at any concentration, which made the commissioner's 2021 modifications in direct opposition to the 2019 Texas Farm Bill. The court noted that because manufactured delta-8 THC products are converted from cannabidiol (CBD), a substance below the 0.3 percent delta-9 THC limit, the 2019 Texas Farm Bill could be read to authorize manufactured delta-8 THC products. However, because the legislature's definition and exemption of hemp from "marihuana" ambiguously included the naturally occurring hemp plant and final consumable products containing levels of THC that substantially exceed those naturally existing in any actual hemp plant, the court concluded that it must reject the argument that the 2019 Texas Farm Bill decontrolled anything more than the exceedingly trace amounts of delta-8 THC that naturally occurs in hemp. Holding otherwise, the court reasoned, would require it to accept that the legislature decontrols "potent substances casually or by implication." Finally, the court reviewed the hemp stakeholders' APA claim against DSHS which arose out of the agency's October 2021 website announcement. The hemp stakeholders argued that the website statement constituted an APA rule that was published without the required public notice, opportunity for comment, or reasoned justification. The court ruled that it is not the APA but the Texas Controlled Substances Act that governs the agency's publication of modifications to the Texas schedules, noting that when a well-established regulatory scheme and the legislation governing it sets forth the procedures that an agency must follow in taking specific actions, APA procedures do not apply. Based on the court's rulings, it reversed the temporary injunction issued by the lower courts. With the temporary injunction removed, the state can enforce the ban on delta-8 THC products. The hemp stakeholders have until June 17, 2026 to file a motion for rehearing. (Return to In This Issue)

CANNABIS RETAILERS SEEK TO INVALIDATE MASSACHUSETTS BALLOT QUESTION TO REPEAL LEGALIZATION OF RECREATIONAL CANNABIS

***Caroline Pineau, et al. v. Andrea Joy Campbell and William F. Galvin*, Massachusetts Supreme Judicial Court, Case No. SJC-13927 (suit filed April 1, 2026).** Four Massachusetts cannabis retailers have filed suit against the commonwealth attorney general and the secretary of the commonwealth (Secretary) in attempt to stop a certified ballot question regarding adult-use cannabis from being placed on the November 2026 general election ballot. This suit concerns Initiative Petition 25-10 (Petition), which proponents have entitled "An Act to Restore a Sensible Marijuana Policy." The Petition proposes the repeal of Chapters 94G and 64N of the Massachusetts General Laws which govern the possession, use, distribution, cultivation, and taxation of cannabis not medically prescribed (*i.e.*, recreational adult-use). The petition's main objective is to eliminate adult-use cannabis in the commonwealth, but the proposed full repeal of Chapter 94G also eliminates other aspects of the commonwealth's medical cannabis program. The Petition, in repealing Chapter 94G, also eliminates the commonwealth's Cannabis Social Equity Program and its corresponding trust fund (MASS. GEN. LAWS ch. 94G, § 22 (West 2026)). The purpose of the Social Equity Program and trust fund is to encourage participation in the cannabis industry by, and to positively impact, "people from communities that have been disproportionately harmed by marijuana prohibition and enforcement." Likewise, the repeal of Chapter 94G would eliminate local control provisions that permit municipalities to adopt ordinances and bylaws that impose reasonable safeguards on the operation of cannabis establishments (MASS. GEN. LAWS ch.

94G, § 3 (West 2026)). The repeal of Chapter 94G also would eliminate: (1) cannabis establishment licensing provisions and authority, including those applicable to the remaining medical cannabis program; (2) protections from arrest and prosecution relating to cannabis accessories, even if used by a medical cannabis patient; (3) the enforceability of contracts, including medical cannabis-related contracts; (4) protections from professional discipline for licensed professionals, other than healthcare professionals, who provide services to cannabis clients, including medical cannabis licensees; (5) statutory security and other public-protection requirements applicable to cannabis establishments; (6) limits on the number of licenses any one entity may hold; (7) the commonwealth's mandated research priorities concerning public health impacts of cannabis and impacts on historically disadvantaged communities; (8) the commonwealth's mandate that the Cannabis Control Commission conducts criminal background checks before granting any license or approving employment in a testing laboratory; (9) the prohibition on public consumption of cannabis and the associated civil penalty; and (10) the prohibition on open containers of cannabis in motor vehicles and the associated civil penalty. On September 3, 2025, the commonwealth attorney general certified the Petition and issued a written summary of the Petition pursuant to Article 48 of the Amendments to the Massachusetts Constitution. Article 48 requires the attorney general to prepare and issue a "fair, concise summary" of each certified petition, which appears on the signature forms and, if the measure advances, on the ballot itself. The summary for the Petition states that "the proposed law would change the type and amount of marijuana that may legally be possessed in Massachusetts by repealing the laws that legalize, regulate, and tax the retail sale of adult recreational use marijuana in Massachusetts." On January 5, 2026, the Secretary certified the Petition for submission to the legislature after reviewing the signatures submitted by the Petition's proponents.

On April 1, 2026, the four cannabis retailers filed suit against the commonwealth attorney general and the Secretary, arguing that the Petition violates Article 48 due to: (1) its inclusion of impermissibly unrelated subjects and failure to present a united statement of public policy to the voters; (2) its misleading and deficient summary issued by the attorney general; and (3) the fact that it works as an unconstitutional regulatory taking. The plaintiffs assert that the Petition inappropriately combines several unrelated and independent subjects that could each stand independently as the subject of a separate initiative petition, which is referred to as "logrolling." Because the Petition combines unrelated subjects, the plaintiffs claim that a reasonable voter cannot cast a "yes" or "no" vote on the petition as a single, unified statement of public policy. The plaintiffs provide the example of a voter who wishes to repeal adult-use cannabis but retain the Social Equity Program or preserve access to legal services for the medical cannabis industry; the voter would not be able to cast a vote that reflects those preferences because he or she must vote "yes" or "no" to the entire petition. The plaintiffs further assert the attorney general failed to meet Article 48's "fair, concise summary" standard because the summary omits material information necessary for voters to make an informed decision. Finally, pursuant to Article 48, "no proposition inconsistent with the right to receive compensation for private property appropriated to public use, as declared in the Declaration of Rights, shall be subject to an initiative petition." The plaintiffs claim that because the Petition would appropriate private property rights for public use without providing compensation, it is inconsistent with the Declaration of Rights. The suit requests the court to declare that the petition is invalid and to enjoin the Secretary from placing the Petition on the November 2026 ballot. The court held oral arguments for the case on May 4, 2026. (Return to In This Issue)

LICENSED MISSOURI CANNABIS COMPANIES SUE UNLICENSED SMOKE SHOPS FOR UNFAIR COMPETITION

***5150 Processing LLC, et al. v. 420 Holdings Inc., et al.*, Missouri Circuit Court (St. Charles), Case No. 2611-CC00527 (suit filed April 14, 2026).** A group of Missouri cannabis cultivators, manufacturers, and retailers licensed by the Missouri Department of Health and Senior Services Division of Cannabis Regulation (DCR) have filed a lawsuit against almost 40 smoke shops and online retailers over claims that they are selling high THC cannabis without a state cannabis license. In Missouri, cannabis cultivators, manufacturers, and retailers are required to be licensed by DCR. Obtaining and sustaining a cannabis license requires a licensee to comply with certain requirements, including paying licensing fees and taxes and implementing product testing

and security protocols (MO. CODE REGS. ANN. tit. 19, §100-1.010, *et seq*. (West 2026)). Per the complaint, the defendants openly advertise high THCa hemp flower and other high THCa products for sale to the public in their stores and on their websites. The defendants are not licensed by the state to sell cannabis but claim that they can sell high THCa flower in the state without a license because THCa flower falls under the term industrial "hemp" as defined by the federal 2018 Farm Bill (Pub. L. No. 115-334). THCa is the acidic precursor of THC and is naturally occurring in the cannabis plant. THCa is non-psychoactive in its natural state, but when the compound is heated, it chemically converts into psychoactive THC through a process called decarboxylation.[7] The 2018 Farm Bill established the federal definition of hemp as the "plant *Cannabis sativa L*. and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 [THC] concentration of not more than 0.3 percent on a dry weight basis." (7 U.S.C. § 1639o).[8] The 2018 Farm Bill also excluded hemp from the definition of "marijuana" under the federal Controlled Substances Act (21 U.S.C. § 812). Missouri has an identical state-level statutory exemption for hemp (MO. ANN. STAT. § 195.010 (West 2026)).

The plaintiffs argue that THCa flower is "marijuana" and does not fall under the federal or state definition of "hemp." The plaintiffs mention that 7 U.S.C. § 1639q directs the U.S. Department of Agriculture to establish "a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 [THC] concentration levels of hemp." In other words, this means testing the delta-9 THC level of hemp after it has been heated and the THCa has been converted into delta-9 THC. Using the THCa to delta-9 THC decarboxylation conversion rate of one to 0.877, the plaintiffs explain that a 45 percent THCa flower advertised by one of the defendants contains over 39 percent delta-9 THC after decarboxylation, which is 100 times the limit on delta-9 THC for hemp under state and federal law. As such, the plaintiffs assert that the defendants are actively, knowingly, and purposefully engaging in the large-scale trafficking of a controlled substance without a license. The plaintiffs bring forth a claim of unfair competition arguing that the defendants have wrongfully avoided all the costs of participation in Missouri's regulated cannabis market. The plaintiffs are asking the court for damages, including punitive damages, in excess of $75,000 along with a permanent injunction barring the defendants from marketing, distributing, or selling any "marijuana or marijuana product" in the state. (Return to In This Issue)

TWO OHIO HEMP BUSINESSES SEEK TO PROHIBIT ENFORCEMENT OF NEW STATE HEMP LAWS

***Doug Strahm, et al. v. David A. Yost, et al.*, Ohio Court of Common Pleas (Franklin County), Case No. 26 CV 002963 (suit filed March 30, 2026).** Two Ohio hemp retailers have sued multiple Ohio officials[9] claiming that the new state hemp regulations enacted through S.B. 56 are unconstitutional. Doug Strahm is the owner of the Happy Harvest retail chain and Jacob Wright is the owner of Get Wright Lounge. Both businesses sell hemp products that comply with the 2018 Farm Bill (Pub. L. No. 115-334). Prior to the March 20, 2026 effective date of S.B. 56, Ohio's definition of "hemp" mirrored the federal definition of hemp under the 2018 Farm Bill: the "plant *Cannabis sativa L.* and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 [THC] concentration of not more than 0.3 percent on a dry weight basis." (7 U.S.C. § 1639o).[10] S.B. 56 originated as a regulatory bill in the senate addressing adult-use cannabis and passed in the senate. The

[7] For more information on THCa, please refer to LAPPA's Explaining Cannabinoids factsheet.
[8] Note that the Continuing Appropriations and Extensions Act of 2026 (Pub. L. No. 119-37) modified the definition of hemp and the new definition is set to go into effect on November 12, 2026. For more information, please referred to LAPPA's Closing the Hemp Loophole: The New Federal Definition of Hemp and its Impact factsheet.
[9] The plaintiffs sued the Ohio attorney general, the superintendent of the Ohio Division of Cannabis Control, the director of the Ohio Legislative Services Commission, the superintendent of the Ohio State Highway Patrol, and the Franklin County prosecutor.
[10] Note that the Continuing Appropriations and Extensions Act of 2026 (Pub. L. No. 119-37) modified the definition of hemp and the new definition is set to go into effect on November 12, 2026. For more information, please referred to LAPPA's Closing the Hemp Loophole: The New Federal Definition of Hemp and its Impact factsheet.

house substantially amended the senate's bill, adding in: (1) a hemp dispensary licensing framework; (2) an intoxicating hemp product definition; (3) grandfathering and transition protections for existing hemp retailers; (4) a dispensary cap; and (5) a 10 percent hemp sales tax. The house passed this amended version of the bill, but the senate rejected the amended version; this sent the bill to a conference committee. Per the complaint, the conference committee did not reconcile the two versions of the bill but instead inserted provisions that were not present in either prior chamber's version. The final enacted bill contained: (1) an overhaul of the adult-use cannabis regulatory framework; (2) a new intoxicating hemp regulatory framework; (3) a new regulatory framework for cannabis beverages; (4) a new expungement mechanism for past cannabis possession convictions; (5) a $96.5 million appropriation in cannabis excise tax revenues to municipalities; (6) regulations related to commercial driver's licenses; and (7) repealed certain anti-discrimination provisions for cannabis consumers. Of particular concern to the plaintiffs was S.B. 56's narrow definition of hemp, which changed the threshold from a delta-9 THC concentration to a total THC concentration, including THCa. (OHIO REV. CODE § 928.01(C) (West 2026)). The plaintiffs claim that the change in the definition of hemp implemented by S.B. 56 makes the federal legal hemp products that they sell illegal in Ohio, not allowing a lawful pathway for them to sell, transfer, or recover the value of their existing product stock.

The plaintiffs filed suit against multiple Ohio officials arguing that S.B. 56 violates the Ohio Constitution. First, the plaintiffs claimed that S.B. 56 violates the one-subject rule of Article II, Section 15(D) of the constitution by combining at least seven unrelated subjects under a misleading title. Article II, Section 15(D) of the Ohio Constitution provides that bills can only contain a single subject, and that subject must be clearly expressed in the bill's title. Next, the plaintiffs asserted that S.B. 56 violates the three-readings requirement of Article II, Section 15(C) because the conference committee inserted new statutory provisions that neither chamber read three times in the form enacted. Finally, the plaintiffs argued that the $96.5 million appropriation inserted by the conference committee violates Article II, Section 1 of the Ohio Constitution because it was a "deliberate tactic to inoculate the bill against referendum," which stripped Ohioans of their right to vote on the substantive hemp restrictions. Ohio Constitution Article II, Section 1 provides state citizens with the power of referendum over acts of the general assembly, subject to the exception for acts making appropriations. In addition to the state constitutional challenges, the plaintiffs also claimed that S.B. 56 violates the Dormant Commerce Clause[11] of the U.S. Constitution because it facially discriminates against interstate hemp commerce and is preempted by the 2018 Farm Bill, which expressly prohibits any state from restricting the interstate transportation or shipment of federally compliant hemp (7 U.S.C. § 1639o note). The plaintiffs requested a declaratory judgment, temporary restraining order, and a preliminary and permanent injunction prohibiting the defendants from enforcing any provisions of S.B. 56 against them. On April 22, 2026, the court granted the plaintiffs' motion for a temporary restraining order. The order only applied to the plaintiffs and allowed them to continue to conduct business operations with the inventory that already exists. The order prohibited the plaintiffs from executing new contracts for the purchase of new inventory. On April 24th, the defendants filed an appeal and asked the appellate court to stay the trial court's temporary restraining order pending appeal, which the court granted on April 29th. On May 26, 2026, the defendants filed with the appellate court a motion to dismiss and a motion to vacate the temporary restraining order. (Return to In This Issue)

FEDERAL COURT DISMISSES SUIT THAT SOUGHT TO BLOCK NEW MEDICARE HEMP PROGRAM

***Smart Approaches to Marijuana, et al. v. Robert F. Kennedy, Jr., et al.*, U.S. District Court for the District of Columbia, Case No. 1:26cv-01081-TNM (motion to dismiss granted May 22, 2026).** For previous updates on this case, please refer to the April 2026 issue of the LAPPA *Case Law Monitor*, available here. A

[11] The Dormant Commerce Clause is a constitutional principle that the Commerce Clause of the U.S. Constitution prevents state regulation of interstate commercial activity even when Congress has not acted under its Commerce Clause power to regulate that activity. *Dormant Commerce Clause*, BLACK'S LAW DICTIONARY (12th ed. 2024).

federal court has dismissed a challenge to a new Medicare benefit covering hemp products. In April 2026, the Center for Medicare and Medicaid Innovation implemented a new, optional pathway for qualifying Medicare providers to furnish qualifying beneficiaries with hemp. This program, called the Substance Access Beneficiary Engagement Incentive (BEI), allows providers to opt in to consult with eligible patients about the possible use of certain hemp products to address their health needs. If appropriate, those healthcare providers may furnish beneficiaries with up to $500 of hemp products annually. A few days before the BEI was set to go into effect, the plaintiffs sued the U.S. Department of Health and Human Services, Robert F. Kennedy Jr., Mehmet Oz, MD, and the Centers for Medicare and Medicaid Services (CMS) attempting to stop the implementation of the program. The plaintiffs include one patient, one physician, 11 organizations, and a pharmaceutical company, MMJ International Holdings, Inc. (MMJ), which develops cannabinoid therapeutics, including cannabinoid-based treatments targeting Huntington's disease and multiple sclerosis. None of MMJ's products have been approved by the U.S. Food and Drug Administration, and they are not available for public use. The plaintiffs claimed that, in implementing the BEI, the defendants: (1) violated the Administrative Procedure Act's notice and comment requirements (APA; 5 U.S.C. §§ 552, 553, and 706); (2) acted arbitrarily and capriciously by failing to consider relevant evidence; (3) exceeded CMS's statutory authority; (4) conflicted with the 2026 Agriculture Appropriations Act (Pub. L. No. 119-37); (5) denied MMJ its equal protection guarantees under the Fifth Amendment of the U.S. Constitution; and (6) denied all of the plaintiffs' procedural and substantive due process in violation of the Fifth Amendment. Upon filing the complaint, the plaintiffs moved for a temporary restraining order, which the court denied. The plaintiffs then amended their initial complaint and sought a preliminary injunction. The defendants filed a motion to dismiss.

The court determined that none of the plaintiffs established standing to bring their claims and ruled to dismiss the entire suit. The court held that all of the plaintiffs' alleged harms failed to identify a "concrete" injury caused by the implementation of the BEI program and that all of the harms claimed were too speculative to establish standing. The court noted that there is no evidence to suggest that the patient or physician plaintiffs would be required to participate in this optional program. For the organizational plaintiffs, the court noted that there is not any evidence to suggest that the BEI program will interfere with their core activities or prevent them from pursuing their mission. As for MMJ, the company argued that because the BEI creates new ways for healthcare providers to get their patients hemp products, it increases the competition against the company. To prevail on a competitor standing theory, the plaintiff must be a "direct and current competitor whose bottom line may be adversely affected by the challenged government action." The court determined that MMJ is not a direct and current competitor with anyone selling hemp to Medicare beneficiaries because it does not have a product on the Medicare beneficiary market and does not have a sense of when it may. Thus, MMJ also did not have standing. Finally, all of the plaintiffs argued that they had procedural standing because CMS failed to adhere to the APA's notice and comment rulemaking requirement. The court noted that 5 U.S.C. § 553(a)(2) provides an exemption from APA rulemaking procedures for any matter relating to "benefits." Because the APA exempts the BEI from notice and comment rulemaking, the court determined that the APA cannot provide the grounds for the plaintiffs to challenge CMS's failure to engage in that process. Without a right to notice and comment rulemaking, the court ruled that the plaintiffs lacked procedural standing. Because the plaintiffs failed to establish standing in all the theories presented, the court granted the defendants' motion to dismiss. (Return to In This Issue)

NEW JERSEY APPELLATE COURT RULES THAT NEW JERSEY COMPANIES CAN BE SUED FOR REJECTING CANNABIS-USING APPLICANTS

***Darlene Sanders v. The Levari Group, LLC*, Superior Court of New Jersey, Appellate Division, Case No. A-2715-23 (opinion filed May 26, 2026).** In a case of first impression, a New Jersey Appellate Court has determined that the Cannabis Regulatory, Enforcement Assistance, and Market Modernization Act (CREAMMA; N.J. STAT. ANN. § 24:6I-31, *et seq*. (West 2026)) provides individuals with a right of private

action against employers who violate the law. CREAMMA provides that "the presence of cannabinoid metabolites in the bodily fluids of a person engaged in conduct permitted under [CREAMMA] . . . shall not form the basis for refusal to enroll or employ." (N.J. STAT. ANN. § 24:6I-51(b)(1) (West 2026)). Additionally, CREAMMA states that "no employer shall refuse to hire or employ any person or shall discharge from employment or take any adverse action against any employee . . . because that person does or does not . . . use cannabis." (N.J. STAT. ANN. § 24:6I-52(a)(1). In April 2023, Darlene Sanders filed a complaint against the Levari Group, LLC (Levari) alleging that the company refused to hire her based on her recreational use of cannabis. The complaint alleged that on December 6 and 13, 2022, Sanders interviewed for a customer service representative position with Levari, which the company offered her and she accepted. As part of its standard hiring process, Levari required Sanders to take a drug test. The results indicated that she had used cannabis, and she informed the company that she used cannabis for recreational purposes within the past 30 days but that she did not use cannabis on the day of the drug test and was not under the influence at the time that she applied for the position. In January 2023, Sanders contacted Lavari's human resources department inquiring about her start date. The company's representative offered her the opportunity to submit a repeat drug test at her expense, but Sanders declined the offer because she did not have the funds. At that point, Levari rescinded Sanders's job offer. Count one of the complaint alleged that Levari violated the plaintiff's rights under CREAMMA by refusing to hire her on the basis of her recreational cannabis use. Count two alleged that Levari's refusal to hire her based on her cannabis use "contravened" clearly mandated public policy embodied by CREAMMA," and therefore violated New Jersey common law under *Pierce v. Ortho Pharmaceutical Corp.* (417 A.2d 505). Sanders later filed an amended complaint to add counts alleging breach of contract, negligence, and violation of privacy. The trial court determined that there was no evidence that the legislature meant to imply a private right of action to enforce CREAMMA's anti-discrimination provision. Thus, the trial court dismissed the CREAMMA and *Pierce* claims and denied the amendment of the complaint to add the negligence and invasion of privacy claims because they would be futile. However, the court permitted the addition of the breach of contract claim. The defendant subsequently moved to dismiss the amended complaint, arguing that it had given Sanders a contingent offer and that because she refused to comply with the repeat drug test, she did not satisfy the conditions of the offer, and the contract never became effective. The trial court agreed with the defendant and granted the motion to dismiss.

Sanders appealed, first arguing that the trial court erred in finding that CREAMMA does not provide a private right of action. Sanders asserts that the right is implied by the text and framework of CREAMMA, as well as the legislative history. Sections 24:6I-51 and 24:6I-52 do not expressly provide a private right of action for individuals seeking to redress an adverse employment decision based on their lawful use of cannabis, however, courts have held that a statute that does not expressly create a private cause of action may implicitly create one. The appellate court ruled that the legislature intended for CREAMMA to provide a private right of action to enforce its anti-discrimination provisions. The court cited several factors favoring the creation of the implied right, including other related provisions that provide rights to sue and that having the ability to sue would further the legislative purpose of CREAMMA. Therefore, the court reversed the trial court's order dismissing count one of the complaint. Next, Sanders argued that the trial court erred by dismissing her common law claim under *Pierce*. Sanders asserted that her case is one of wrongful termination because Levari offered her a job, which was later rescinded in violation of public policy. *Pierce* permits an employee to bring a cause of action for wrongful discharge when the discharge is contrary to a clear mandate of public policy. However, the court noted that the scope of *Pierce* is limited to wrongful discharge actions brought by employees. Because the plaintiff's complaint alleged a failure to hire, the court ruled that the trial court correctly dismissed Sanders's claim under *Pierce*. Subsequently, Sanders argued that the trial court erred by denying her motion to amend the complaint to add claims for negligence and invasion of privacy. She asserted that even if CREAMMA did not create a private right of action, it created a duty for employers toward job applicants in how it conducts pre-employment drug testing and claimed Levari violated that duty by failing to follow those standards. Additionally, Sanders asserted that Levari's conduct resulted in a violation of her privacy because she submitted to a drug test under false pretenses, reasonably assuming that the defendant would comply with CREAMMA if she took the drug test and tested positive for cannabis. The trial court denied the motion to amend because it found that the plaintiff's negligence and invasion of privacy claims

were "just a renaming of" her CREAMMA claim. Because the appellate court reversed the trial court's dismissal of the CREAMMA claim, it determined that it was also obligated to reverse the portion of the order denying the amendment. Finally, Sanders claimed that the trial court erred by finding that a contract had not been entered into between the parties and dismissing her breach of contract claim. She asserted that Levari made her a job offer, which she accepted, forming a contract with the condition that she would provide consideration by taking a drug test. By requiring the second drug test as additional consideration, Sanders argued that Levari violated CREAMMA and formed a proper basis for a breach of contract claim. The appellate court determined that the dismissal of the breach of contract claim was premature at this stage and reversed the order. The case has been remanded for further proceedings. (Return to In This Issue)

NEW JERSEY HEMP RETAILER SUES STATE OFFICIALS OVER IMPLEMENTATION OF NEW HEMP DEFINITION

***KB Wildwood, LLC v. Jennifer Davenport, et al.*, U.S. District Court for the District of New Jersey, Case No. 3:26-cv-06023-ZNQ-JBD (suit filed May 27, 2026).** KB Wildwood, LLC (KB), a Wildwood, New Jersey hemp retailer, is suing the New Jersey attorney general, the chair of the New Jersey Cannabis Regulatory Committee, and the secretary of the New Jersey Department of Agriculture over claims that the state's newly implemented definition of hemp is unconstitutional. The 2018 Farm Bill (Pub. L. No. 115-334) established a federal definition for "hemp" and distinguished hemp from marijuana by establishing a 0.3 delta-9 THC content measurement threshold (7 U.S.C. § 1639o). In 2019, New Jersey followed suit by enacting the New Jersey Hemp Farming Act (N.J. Pub. L. 2019, c.238), which adopted the federal definition of hemp and the 0.3 percent delta-9 THC threshold to distinguish it from illicit marijuana and later, legal cannabis, which is regulated by the state Cannabis Regulatory Commission. On November 12, 2025, President Trump signed the Continuing Appropriations and Extensions Act of 2026 (Extensions Act; Pub. L. No. 119-37), which modified the federal definition of hemp from the existing 0.3 percent delta-9 THC threshold to a 0.3 percent total THC threshold. Additionally, the Extensions Act established a federal standard of no more than 0.4mg per container of total THC. The hemp provisions in the Extensions Act are set to go into effect on November 13, 2026. Once again, following the actions of Congress, the New Jersey Legislature passed S. 3945, which mirrored the hemp provisions of the Extensions Act. Former Governor Phil Murphy signed S. 3945 into law on January 12, 2026, and it became effective on April 13, 2026, seven months prior to the scheduled federal definition change. KB asserts that the state's implementation of the total THC threshold seven months in advance of the scheduled federal change has caused an "immediate and irreconcilable" conflict between state and federal law. KB claims that the three-month window between when the governor signed S. 3945 into law and when it went into effect was not enough time for hemp retailers to obtain alternative products that could meet the new total THC threshold. Because of the new state hemp provisions, KB claims that it is now unable to handle or sell any of its current inventory under its existing hemp retail license despite the fact that the products remain legal under federal law until November 2026 and that it cannot mitigate its damages by obtaining a state cannabis license because the town of Wildwood prohibits the sale or manufacture of cannabis. KB brings forth claims that the defendants violated its due process rights under the Fifth and Fourteenth Amendments of the U.S. Constitution by failing to provide any safe harbor or sell off period under the new law for hemp retailers to bring their inventory into compliance and for a regulatory taking without just compensation. KB is seeking a declaratory judgment, injunctive relief, and compensatory damages. (Return to In This Issue)

OUT-OF-STATE CANNABIS SELLERS SECURE INJUNCTION AGAINST RHODE ISLAND RESIDENCY MANDATES

***Justyna Jensen v. Rhode Island Cannabis Control Commission, et al.*, U.S. District Court for the District of Rhode Island, Case No. 24-cv-00191-MRD-AEM (injunction granted April 8, 2026).** A federal court has blocked Rhode Island from enforcing local residency requirements that bar out-of-state applicants from

competing for commercial recreational cannabis licenses. The 2022 Rhode Island Cannabis Act (21 R.I. GEN. LAWS ANN. § 21-28.11-1, *et seq*. (West 2026)) requires applicant businesses seeking recreational cannabis licenses to be at least 51 percent owned by Rhode Island citizens, while strictly limiting the total market expansion to 24 new retail stores. A group of out-of-state would-be applicants sued the Rhode Island Cannabis Control Commission (Commission) in federal district court, asserting that these barriers unconstitutionally prevent non-residents from entering the state's emerging cannabis market. At first, the court held that the plaintiffs lacked standing, but the First Circuit reversed. On April 8, 2026, the district court granted the plaintiffs' motion for a preliminary injunction, holding that the restrictions are facially discriminatory and likely violate the U.S. Constitution's Dormant Commerce Clause[12] by creating an impermissible barrier to interstate commerce. The court rejected the state's arguments that the rules protect local public health and safety, finding instead that the Commission can use more narrowly tailored, non-discriminatory regulatory mechanisms to oversee licensees regardless of their state of residency. Finding that the plaintiffs would suffer irreparable economic harm if excluded from the competitive licensing lottery, the court halted the current application window until the constitutional claims are decided on the merits. On April 14, 2026, the defendants filed an appeal with the First Circuit. (Return to In This Issue)

NEW JERSEY COURT RULES FEDERAL GUN LAW DOES NOT PREEMPT OFF-DUTY POLICE CANNABIS PROTECTIONS

***In the Matter of Norhan Mansour and Omar Polanco*, Superior Court of New Jersey, Appellate Division, Case Nos. A-3876-23 and A-3886-23 (opinions filed May 1, 2026).** A New Jersey appeals court has ruled that municipal police departments cannot terminate officers for legally using recreational cannabis while off duty. In April 2022, the Jersey City Police Department (Department) issued an internal order completely prohibiting its officers from using cannabis on or off duty, asserting that the federal Gun Control Act of 1968 (18 U.S.C. §§ 921–934) makes it illegal for any cannabis user to possess or carry firearms. Following random drug screenings in September 2022, officers Norhan Mansour and Omar Polanco tested positive for cannabis. They both admitted to off-duty cannabis use and were subsequently terminated by the Department. The officers appealed their removals to the New Jersey Civil Service Commission (Commission), which reversed the terminations and ordered their reinstatement with back pay under the state's Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (N.J. STAT. ANN. § 24:6I-31 (West 2026)). Jersey City appealed, and on May 1, 2026, a state appellate court affirmed the Commission's decisions, holding that the federal statute does not conflict with or preempt state employment protections. The federal Gun Control Act contains an explicit governmental exemption for firearms issued by a political subdivision for official law enforcement use. The court concluded that because the department never alleged that the officers were impaired while on duty or that they consumed unregulated cannabis, their off-duty use of a legal substance could not form the sole basis for disciplinary removal. However, the court ruled that officers must comply with state cannabis rules and are not eligible for employment protections if they purchase cannabis from an unregulated source. (Return to In This Issue)

CLASS ACTION ACCUSES MULTISTATE CANNABIS OPERATOR OF DECEPTIVE HEALTH CLAIMS

***Brent Duke, et al. v. Curaleaf Holdings Inc.*, U.S. District Court for the District of Connecticut, Case No. 3:26-cv-00684 (complaint filed May 4, 2026).** A proposed multistate class action lawsuit has accused one of the nation's largest cannabis companies of falsely advertising its products as medically backed treatments for mental and physical health conditions. Curaleaf Holdings Inc. (Curaleaf) operates retail cannabis dispensaries

[12] The Dormant Commerce Clause is a constitutional principle that the Commerce Clause of the U.S. Constitution prevents state regulation of interstate commercial activity even when Congress has not acted under its Commerce Clause power to regulate that activity. *Dormant Commerce Clause*, BLACK'S LAW DICTIONARY (12th ed. 2024).

and digital platforms across multiple states and promotes its products by touting medical cannabis research. On May 4, 2026, a coalition of consumers from nine states filed a complaint in federal district court, asserting that Curaleaf intentionally mimics the language and authority of legitimate medical science to mask known adverse health risks associated with cannabis use. The lawsuit brings claims for fraud, unjust enrichment, state consumer protection violations, and civil racketeering under the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1961–1968). Curaleaf denies the allegations. The plaintiffs seek class certification, a permanent injunction against the targeted marketing practices, and unspecified monetary damages. On the same day that this suit was filed, a similar lawsuit was filed against the cannabis companies Cresco Labs Inc., Green Thumb Industries Inc., and Verano Holdings Corp. in the U.S. District Court for the Northern District of Illinois (case no. 3:26-cv-50184). (Return to In This Issue)

FEDERAL COURT DISMISSES WALGREENS SHAREHOLDERS' SECURITIES FRAUD LAWSUIT AGAINST THE COMPANY

***Steve Klein v. Walgreens Boots Alliance, Inc., et al.*, U.S. District Court for the Northern District of Illinois, Case No. 1:25-cv-01058 (motion to dismiss granted May 12, 2026).** For previous updates on this case, please refer to the February 2025 issue of the LAPPA *Case Law Monitor*, available here. A federal court has dismissed a shareholder lawsuit against Walgreens Boots Alliance (Walgreens) and several of its former and current executives that had alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (Exchange Act; 15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5). The plaintiffs, which were a class of all individuals and entities who purchased Walgreens securities between October 15, 2020 and February 27 2025, asserted that Walgreens committed fraud by making misleading promises to the public about how the company was confronting the opioid epidemic and complying with applicable laws. On January 5, 2023, Walgreens filed its financial and operations quarterly report on form 10-Q with the Securities and Exchange Commission (SEC)for the fiscal quarter that ended on November 30, 2022. The 10-Q disclosed a $3.7 billion loss caused by a $5.2 billion after-tax charge for opioid-related litigation. On the day that the 10-Q was filed, Walgreens' stock price fell by $2.30 per share or 6.13 percent. The plaintiffs filed their initial complaint on January 30, 2025 and filed an amended complaint on July 21, 2025.

Section 10(b) of the Exchange Act forbids "any manipulative or deceptive" conduct "in connection with the purchase or sale of any security." (15 U.S.C. §78j(b)). Rule 10b-5 prohibits making "any untrue statement of a material fact and prohibits omitting a material fact necessary to make the statement made not misleading." (17 C.F.R. § 240.10b-5(b)). The defendants argued that the plaintiffs' claims are time-barred based on the plaintiffs' own allegations. Claims under Section 10(b) may be brought until "the earlier of: (1) two years after the discovery of the facts constituting the violation; or (2) five years after such violation." (28 U.S.C. § 1658(b)). The U.S. Supreme Court has held that, under § 1658(b), "the cause of action accrues (1) when the plaintiff did in fact discover, or (2) when a reasonably diligent plaintiff would have discovered, the facts constituting the violation—whichever comes first."[13] In determining if an action is time-barred, the court looks to "when the alleged misrepresentation occurred and when the plaintiff discovered (or a reasonably diligent plaintiff would have discovered) the misrepresentation, not when the injury resulting from the misrepresentation occurred." The plaintiffs' initial complaint was filed on January 30, 2025, so if a reasonably diligent plaintiff would have discovered the fraud prior to January 30, 2023, the complaint is time-barred. In their complaint, the plaintiffs stated that "the truth that Walgreens had again been misleading the public about its responses to the opioid crisis was partly revealed, and the risk Walgreens concealed with its misleading statements materialized, over a series of disclosures, beginning with the January 5, 2023, 10-Q." The defendants argued that the plaintiffs' own allegations showed that the information necessary to bring the plaintiffs' claims was available to a reasonable investor before January 30, 2023. In response, the plaintiffs

[13] *Merck & Co. v. Reynolds*, 559 U.S. 633 (2010).

argued that the alleged disclosures on January 5, 2023 did not cause their losses and thus, cannot serve as the viable loss causation date for the purposes of their Section 10(b) claim. Instead, the plaintiffs asserted that their first viable loss causation date was January 17, 2025, when the U.S. Department of Justice announced that it had filed an opioid-related civil complaint against Walgreens. The court disagreed with the plaintiffs, noting that the clock for fraud claims does not start when the loss or injury occurred but instead starts when a reasonably diligent investor should have known that the company was making material misrepresentations. The court determined that the plaintiffs needed to have filed their complaint by January 5, 2025 because January 5, 2023 was the day a reasonably diligent investor, via the 10-Q filing, would have discovered that the defendants were engaged in deceptive conduct. Because the claims were time-barred, the court granted the defendants motion to dismiss with prejudice. (Return to In This Issue)

FLORIDA COURT ISSUES DIRECTED VERDICT IN FAVOR OF PHARMACY CHAINS IN STATE RICO SUIT

***Florida Health Sciences Center, et al. v. CVS Pharmacy, Inc., et al.*, Circuit Court for the Seventeenth Judicial District of Florida, Case No. CACE19018882 (directed verdict granted May 26, 2026).** For previous updates on this case, please refer to the February 2026 issue of the LAPPA *Case Law Monitor*, available here. A Florida state court granted a directed verdict and final judgment in favor of Walgreens, CVS, and Walmart, ending a Florida Racketeer Influenced and Corrupt Organizations Act (RICO; FLA. STAT. ANN. § 895.03 (West 2026)) suit against the pharmacy chains. Sixteen Florida hospitals filed a lawsuit against CVS, Walmart, and Walgreens over allegations that the pharmacy chains violated the state's RICO law by working with drugmakers and distributors to increase opioid sales. As part of the suit, the hospitals claimed that they accrued $528.3 million in unpaid medical bills for treating opioid-related injuries and another $1.5 billion when patients with opioid-related conditions sought care for other issues. The plaintiffs sought damages for underpayment of opioid-related visits. The case proceeded to trial in September 2025 and ultimately ended in a mistrial on December 8, 2025. On December 22, 2025, the pharmacy chains filed a motion for judgment in accordance with a motion for a directed verdict. A directed verdict is appropriate when a court determines that no reasonable jury could render a verdict for the non-moving party. A directed verdict motion allows the court to assess the sufficiency of the evidence based on the complete trial record. The defendants argued that the plaintiffs' trial evidence failed to establish a direct injury necessary to prove proximate cause under Florida's RICO law. The defendant asserted that the trial evidence showed that the plaintiffs' alleged injuries were merely a derivative of harm to third parties, namely, patients with opioid use disorder (OUD). Florida courts require a direct correlation between the alleged RICO violation and the plaintiff's injuries. When a plaintiff's injury is contingent upon harm to others, the injury is not direct in the sense required by Florida's RICO proximate cause requirement. The court determined that the plaintiffs' alleged injuries were indirect because they did not flow as an immediate consequence of the alleged acts. Instead, the court found that the plaintiffs' injuries arose only after OUD patients were harmed and admitted for treatment, at which point the plaintiffs may have incurred additional medical care expenses. The court reasoned that the defendants' alleged improper dispensing and distribution of opioids may have been a "but-for" cause of the plaintiffs' injuries, but absent harm to OUD patients, the plaintiffs would not have suffered any injury. Consequently, the court ruled that the plaintiffs failed to satisfy the Florida RICO law's direct relationship requirement, and granted the defendants' motion for directed verdict, entering final judgment in their favor. (Return to In This Issue)

MARYLAND SUPREME COURT VACATES $152 MILLION AWARD IN BALTIMORE OPIOID LAWSUIT

***Mayor & City Council of Baltimore v. Purdue Pharma L.P., et al.*, Supreme Court of Maryland, Case No. 354, September Term, 2025 (judgment vacated April 24, 2026).** For previous updates on this case, please refer to the December 2025 issue of the LAPPA *Case Law Monitor*, available here. The Supreme Court of Maryland has vacated Baltimore's $152 million judgment in the city's opioid lawsuit. In August 2025, a jury

awarded Baltimore $266 million in its lawsuit against pharmaceutical distributors McKesson Corp. and Cencora (formerly AmerisourceBergen). The court later reduced the award to $152 million after deciding that the jury's award was too high. In October 2025, McKesson appealed the judgment, and in November 2025, Baltimore filed a petition to have the appeal heard directly by the Maryland Supreme Court. On April 24, 2026, the Maryland Supreme Court issued a per curiam opinion vacating the judgment and remanded the case to the circuit court. The Maryland Supreme Court did not share the detailed reasoning behind its decision but stated that it was acting pursuant to its March 2026 decision in *Anne Arundel County v. Express Scripts, Inc., et al.*, which limited how public nuisance claims can be used in opioid litigation. (For more information on the *Anne Arundel County* case, please refer to the April 2026 issue of the LAPPA *Case Law Monitor*, available here.) On May 8, 2026, Baltimore filed a motion to dismiss the remainder of the lawsuit. (Return to In This Issue)

DELAWARE COURT RULES ALBERTSONS CANNOT USE INSURANCE POLICIES TO COVER OPIOID LAWSUITS

***In re Albertsons Opioid Insurance Litigation*, Delaware Superior Court, Case No. N22C-10-301 (opinion filed April 27, 2026).** A Delaware state court has ruled that the grocery and pharmacy chain Albertsons did not qualify for coverage under insurance policies issued by units of American International Group Inc., Chubb Ltd., and other insurers for more than 100 opioid-related lawsuits against the company. The ruling followed similar decisions made by the Delaware Supreme Court in *ACE American Insurance Co. v. Rite Aid Corp.* (270 A.3d 239) and *In re CVS Opioid Insurance Litigation* (346 A.3d 81), which denied coverage in nearly identical circumstances. Albertsons had argued that Delaware law should not apply in this case and instead asked the court to apply the law of California or Idaho, which it claimed conflicted with Delaware. The court, however, determined that neither California nor Idaho had addressed the dispositive issue addressed in *Rite Aid* and *CVS*, and that the three states apply the same insurance law principles. Thus, the court determined that there is no conflict of law, and that Delaware law applies. Because Albertsons did not qualify for insurance coverage under settled Delaware law, the court granted the insurers' motion for summary judgment. (Return to In This Issue)

ALBERTSONS REACHES OPIOID SETTLEMENT

(Settlement announced April 14, 2026) The grocery and pharmacy chain Albertsons has agreed to a $774 million settlement to resolve most of the opioid-related claims brought against the company by state, local, and tribal governments. The settlement funds are to be paid out over a nine-year period. The company did not make any admission of wrongdoing or liability as part of the settlement. While the total settlement amount has been agreed upon between the company and a coalition of state attorneys general, negotiations regarding injunctive relief, such as future pharmacy operational changes, are still ongoing. (Return to In This Issue)

PURDUE PHARMA RECEIVES CRIMINAL SENTENCING ALLOWING BANKRUPTCY PLAN TO TAKE EFFECT

***In re Purdue Pharma L.P.*, U.S. Bankruptcy Court for the Southern District of New York, Case No. 1923649 (criminal sentencing issued April 28, 2026).**

- On April 30, 2026, a federal bankruptcy court approved a $125 million settlement between the consulting firm McKinsey & Co. and Purdue Pharma (Purdue) to resolve claims related to McKinsey's advisory role in marketing OxyContin. McKinsey will contribute the funds to a trust established under Purdue's bankruptcy plan to compensate creditors. According to the settlement, McKinsey will contribute $65 million to the trust seven calendar days after the bankruptcy plan's effective date and pay the remaining $60 million one year later.

The settlement ends potential litigation by Purdue's estate against McKinsey, but it does not stop individual creditors from pursuing action against the consulting firm. McKinsey did not make any admission of wrongdoing as part of the settlement. The only objection to the settlement came from a pro se claimant who said that the settlement failed to fully account for the firm's role in the crisis and that its contribution to the trust "should be in the billions."

- On April 28, 2026, the U.S. District Court for the District of New Jersey issued a criminal sentence to Purdue to resolve a U.S. Department of Justice probe against the company. In November 2020, Purdue pleaded guilty to three felony conspiracy counts (18 U.S.C. § 371), specifically one count of a dual-object conspiracy to defraud the United States and to violate the federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301, *et seq.*), and two counts of conspiracy to violate the Federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b). As part of its plea, Purdue acknowledged that it marketed products to healthcare providers that it believed were diverting opioids, provided misleading information to federal authorities to boost its manufacturing quotas, and paid kickbacks to medical professionals. The federal government only criminally charged the company, not any of Purdue's individual employees or owners. The sentencing hearing was put on hold for several years amid the prolonged bankruptcy case. Prior to the sentencing hearing, the court provided opioid victims and their families with the opportunity to speak and deliver impact statements. The court ordered Purdue to pay a criminal fine of $3.544 billion, which will be assessed in connection with the bankruptcy proceedings, and an additional $2 billion in criminal forfeiture. This was the largest penalty ever levied against a pharmaceutical manufacturer. The federal government agreed to receive a partial payment of $225 million for the criminal forfeiture and credit the remainder to pay other claims in the bankruptcy case. The criminal sentencing was the last hurdle to be completed before the official implementation of the bankruptcy plan on May 1, 2026. (Return to In This Issue)

ABOUT THE LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

The Legislative Analysis and Public Policy Association (LAPPA) is a 501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

LAPPA produces up-to-the-minute comparative analyses, publications, educational brochures, and other tools ranging from podcasts to model laws and policies that can be used by national, state, and local criminal justice and substance use disorder practitioners who want the latest comprehensive information on law and policy. Examples of topics on which LAPPA has assisted stakeholders include naloxone laws, law enforcement/community engagement, alternatives to incarceration for those with substance use disorders, medication for addiction treatment in correctional settings, and the involuntary commitment and guardianship of individuals with alcohol or substance use disorders.

For more information about LAPPA, please visit: https://legislativeanalysis.org/.