

From: Public Policy Law360 <news-q@law360.com>  
To: Adams, ChaneyChaneyAdams@gov.sc.gov  
Date: 8/16/2016 4:48:59 AM  
Subject: Aggressive Agencies To Push Bounds On Civil Penalties Boost

---

## PUBLIC POLICY

---

Tuesday, August 16, 2016

---

### TOP NEWS

---

#### Aggressive Agencies To Push Bounds On Civil Penalties Boost

While a host of federal regulators have moved to raise their civil money penalties in line with inflation, a few financial regulators have aggressively moved to retroactively apply those enhanced penalty amounts to actions that occurred prior to the passage of a law mandating that increase late last year.

#### Calif., Other States Back EPA's New Ozone Standards

States and state agencies including New York and the California Air Resources Board on Friday backed the U.S. Environmental Protection Agency's tighter national ozone limits, telling the D.C. Circuit in an amicus brief Friday that the new standards are both necessary and achievable.

#### Calif. Justices Pen Eminent Domain Rule In Access-Road Case

California's high court on Monday ruled on a much-appealed eminent domain case over how much the city of Perris should pay a property owner for a strip of land used to build an access road, creating a new rule that courts must look at whether a government's claim on property predates the conception of the public project it's been claimed for.

#### Microsoft, Facebook May Face EU Telecom Rules

The European Union is reportedly looking at extending restrictions on security and other confidentiality measures to over-the-internet services like Facebook's WhatsApp and Microsoft's Skype, as part of overhauls to the bloc's privacy rules due out next month.

#### Activists Slam Veto Of Ill. Automatic Voter Registration Bill

Good government groups are firing back at Illinois Gov. Bruce Rauner after his veto of a bill that would have immediately registered people to vote when they interacted with a state agency, such as the Department of Motor Vehicles or four of state human services agencies.

#### Pa. AG Convicted On Perjury Charges Over Grand Jury Leak

Pennsylvania's embattled attorney general was found guilty on a pair of perjury charges late Monday for lying to a grand jury about her role in leaking confidential investigative information to a reporter.

### BANKING & SECURITIES

---

#### Scottsdale Tells 4th Circ. FINRA Can't Dispute Overreach

Microcap broker-dealer Scottsdale Capital Advisors Corp. urged the Fourth

### LAW FIRMS

Allen Matkins  
Altshuler Berzon  
Arent Fox  
BakerHostetler  
Ballard Spahr  
Brashear LLP  
Brownstein Hyatt  
Buchanan Ingersoll  
BuckleySandler  
Covington & Burling  
Crowell & Moring  
Debevoise & Plimpton  
Earthjustice  
Emery Celli  
Eversheds LLP  
Franczek Radelet  
Gray & Associates  
Harrang Long  
Hogan Lovells  
Hughes Hubbard  
Hunton & Williams  
Jenner & Block  
Jones Day  
Kilpatrick Townsend  
Kirkland & Ellis  
Labaton Sucharow  
Mayer Brown  
McGlinchey Stafford  
McGuireWoods  
Milbank Tweed  
Millberg Gordon  
Miller Starr  
Munger Tolles  
Norton Rose Fulbright

Circuit on Friday to revive its challenge to the Financial Industry Regulatory Authority's power, saying the agency is clearly limited from bringing charges under the Securities Act.

## FINRA Relaxes Arbitration Chair Requirements

The Financial Industry Regulatory Authority on Friday filed a proposed rule that would allow qualified attorneys to chair investor arbitrations with less experience, saying the change is necessary to increase the number of public chairpersons in response to an increase in arbitration.

## ENERGY & ENVIRONMENTAL

---

### Oregon's Rejection Of Coal Terminal Permit Upheld

An administrative law judge on Friday ruled that Oregon's state land agency acted within its authority when it denied a permit for a proposed Columbia River coal terminal, rebuffing arguments made by nearby coal-producing states that the decision ran afoul of the federal commerce clause.

### BLM Had Authority To Craft Fracking Rule, 10th Circ. Told

The Bureau of Land Management and environmental groups backing its recently vacated regulations on hydraulic fracturing told the Tenth Circuit on Friday that a district court relied on a cramped and "manifestly incorrect" view of the agency's authority when it struck down the rule.

### DC Consumer Advocate Appeals \$6.8B Exelon-Pepco Merger

The Office of the People's Counsel for the District of Columbia on Friday turned to the district's Court of Appeals in an attempt to block Exelon Corp.'s \$6.8 billion acquisition of Pepco Holdings Inc., which regulators approved in March.

### Seneca Frack Waste Deal Fails To Protect Town, Court Told

Opponents of a recent deal between Seneca Resources Corp. and a Pennsylvania town, effectively invalidating the town's ordinance preventing the company from storing fracking waste in an underground well, told a Pennsylvania federal court Monday it should let them intervene to protect their rights to clean water.

### US Rep. Wants Out Of NJ Water Agency's Adversary Suit

A New Jersey congressman urged a federal judge Thursday to release him from a lawsuit accusing the overseers of a defunct water agency of allowing it to become corrupt, arguing that his role as a public official renders him immune from personal liability.

## IP & TECHNOLOGY

---

### BMI Says It Never Conceded Full Licensing Of Music Rights

BMI told a New York federal court Friday it has always maintained it should be allowed to grant fractional rights to songs under a decades-old antitrust consent decree it is challenging, contrary to what the government may say.

## REAL ESTATE

---

### NYC Homeowners Say HUD Mortgage Sell-Offs Hurt Blacks

The U.S. Department of Housing and Urban Development's practice of selling delinquent Federal Housing Administration mortgages to private firms is

Orrick Herrington  
Paul Hastings  
Pietragallo Gordon  
Quinn Buseck  
Schwabe Williamson  
Sidley Austin  
Skadden  
Snell & Wilmer  
Tonkon Torp  
Troutman Sanders  
Wasserman Jurista  
White & Case  
WilmerHale  
Winston & Strawn

## COMPANIES

Aetna Inc.  
American Civil Liberties Union  
American International Group Inc.  
American Society Of Composers  
Authors & Publishers  
American Trucking Associations  
Inc.  
Applegate Farms LLC  
Associated Press  
BTI Consulting Group Inc.  
Bank of America Corporation  
Broadcast Music Inc.  
CBS Corporation  
CTIA  
Caliber Home Loans Inc.  
Electrolux AB  
Exelon Corporation  
Facebook  
Financial Industry Regulatory  
Authority Inc.  
Getty Images Inc.  
Humana Inc.  
JPMorgan Chase & Co.  
Johnson Controls Inc.  
Lambda Legal Defense &  
Educational Fund  
LinkedIn Corp.  
Lone Star Funds  
Los Angeles Clippers  
Lowe's Companies, Inc.  
Microsoft Corporation

discriminatory because of its disproportionate impact on black homeowners, according to a putative class action complaint filed Friday in New York federal court.

### [Nev. City's Mortgage Law Harmed Wells Fargo, 9th Circ. Says](#)

The Ninth Circuit on Monday vacated a lower court decision allowing a homeowners association to foreclose on a Nevada property over \$1,298 in delinquent fees without telling Wells Fargo, saying a state law requiring mortgage lenders to "opt in" for such notifications violates due process.

## EMPLOYMENT

---

### [5th Circ. Won't Unblock Law Shielding Gay Marriage Objectors](#)

A Mississippi law meant to protect those who object to same-sex marriage will stay blocked during the state's Fifth Circuit challenge, the appellate court said Friday, to maintain the status quo.

### [New York City Lawmaker Floats Salary History Ban](#)

The New York City Public Advocate has unveiled legislation to bar employers from requesting job applicants' salary history, following in the footsteps of Massachusetts, which recently passed a similar measure to combat gender wage discrimination.

## PRIVACY & CONSUMER PROTECTION

---

### [GSA's Cybersecurity Controls Are Strong, Watchdog Says](#)

The General Services Administration's inspector general gave the agency high marks on its policies and procedures for protecting the data it holds, in a departure from separate audits that found deficient cybersecurity controls at other federal agencies.

### [UNC Wants Stay In Bathroom Case Pending High Court Ruling](#)

The University of North Carolina on Friday asked a federal judge to pause the federal government's and the American Civil Liberties Union's suits challenging a law that requires transgender people to use public bathrooms that correspond with their birth gender until the U.S. Supreme Court rules on a related Virginia case.

### [Transgender Student OK'd To Join Ohio School Bathroom Suit](#)

An Ohio federal judge on Monday allowed a transgender elementary school student to intervene in a lawsuit brought by a Buckeye State school board over the federal government's directive that public schools let transgender students use bathrooms that match their gender identities.

### [Gov't Pans Old-School View Of Title IX In Ill. Locker Room Suit](#)

Attorneys for the U.S. Department of Education and a Chicago-area school district told an Illinois federal magistrate judge Monday that they don't need to use a literal reading of Title IX when deciding policies on transgender students' use of locker rooms, arguing interpretations must evolve as the times do.

## PRODUCT LIABILITY

---

### [Sen. Again Goes After NHL Commish Over Head Trauma Link](#)

U.S. Sen. Richard Blumenthal called on the National Hockey League in a

[Murray Energy Corp.](#)

[NFL Enterprises LLC](#)

[National Association of Broadcasters](#)

[National Basketball Association](#)

[National Collegiate Athletic Association](#)

[National Fuel Gas Co.](#)

[National Hockey League](#)

[Pepco Holdings Inc.](#)

[Robert Half International Inc.](#)

[Sierra Club](#)

[Skype Technologies SA](#)

[Spotify Technology SA](#)

[The Walt Disney Company](#)

[Timbervest LLC](#)

[Twilio Inc.](#)

[Twitter Inc.](#)

[U.S. Bancorp](#)

[UnitedHealth Group Inc.](#)

[Vodafone Group plc](#)

[Walgreen Co.](#)

[Wells Fargo & Co.](#)

[Yahoo! Inc.](#)

## GOVERNMENT AGENCIES

[Bureau of Labor Statistics](#)

[Bureau of Land Management](#)

[California Environmental Protection Agency](#)

[California Natural Resources Agency](#)

[Centers for Medicare & Medicaid Services](#)

[Commodity Futures Trading Commission](#)

[Consumer Financial Protection Bureau](#)

[Delaware Department of Natural Resources and Environmental Control](#)

[Equal Employment Opportunity Commission](#)

[European Commission](#)

[Executive Office of the President](#)

[Federal Communications Commission](#)

[Federal Deposit Insurance Corp](#)

letter released Monday to fund more research on a possible connection between hockey and degenerative brain conditions in the latest salvo with a league commissioner over the dangers of head trauma in professional sports.

## TAX

---

### CPAs Ask Treasury To Nix 'Duplicative' Reporting Demands

The American Institute of Certified Public Accountants urged the IRS to shed certain reporting requirements for Americans living overseas, saying Monday that the requirements have become duplicative and unnecessary in light of recently enacted laws.

## IMMIGRATION

---

### Trump Speech Outlines Immigrant Screenings, Regional Bans

Republican presidential nominee Donald Trump on Monday laid out his proposals for new immigration policies in a speech in Youngstown, Ohio, saying he would put an end to nation-building, institute new screening tests and ban immigration from certain regions.

### Solo Immigrant Minors Entitled To Bond Hearings, Attys Say

Attorneys representing immigrant children being held at detention facilities on Friday urged a California federal court to enforce a 1997 settlement to ensure that unaccompanied minors retain their rights to bond hearings.

## TELECOMMUNICATIONS

---

### FCC's Wheeler Touts Record, Pushes For Rest Of Agenda

Key votes by the Federal Communications Commission to ensure an open internet and help expand broadband access for low-income Americans have split along party lines and show that elections have consequences, FCC Chairman Tom Wheeler said Sunday, arguing that the FCC must stay the course on unlocking the set-top box market, privacy rules and other key issues.

### FCC's Set-Top Plan Must 'Honor Sanctity' Of Contracts: CBS

Unlocking competition in the market for TV set-top boxes with an approach relying on apps controlled by pay-TV providers could be the best route for the Federal Communications Commission, CBS Corp. said, so long as it "honors the sanctity" of existing contracts and content rights.

### Twilio Urges FCC To Protect 'Consented' Blocked Texts

Twilio again urged the Federal Communications Commission last week to protect text messages under the agency's Open Internet Order, according to an ex parte filing posted Friday, describing a "mountain" of evidence showing that cellphone carriers are unilaterally blocking "lawful, desired text messages."

### LPTV Investors Ask DC Circ. To Rehear Auction Challenges

Low-power TV investors and a religious LPTV station urged the D.C. Circuit on Friday to reconsider tossing their challenge to the upcoming spectrum auction, saying the Federal Communications Commission has trampled the rights of LPTV license holders.

### Aetna Ditches Most ACA Plans In Blow To Health Law

Federal Housing Administration  
Federal Housing Finance Agency  
Federal Reserve System  
Financial Crimes Enforcement Network  
Government Accountability Office  
Internal Revenue Service  
National Security Council  
North Carolina Department of Justice  
Occupational Safety and Health Administration  
Office of Foreign Assets Control  
Office of the Comptroller of the Currency  
Securities and Exchange Commission  
The Newark Watershed Conservation & Development Corp.  
U.S. Copyright Office  
U.S. Department of Education  
U.S. Department of Health and Human Services  
U.S. Department of Homeland Security  
U.S. Department of Housing and Urban Development  
U.S. Department of Justice  
U.S. Department of State  
U.S. Department of the Interior  
U.S. Department of the Treasury  
U.S. Environmental Protection Agency  
U.S. General Services Administration  
U.S. Senate  
U.S. Supreme Court  
Ute Indian Tribe  
Wyoming Attorney General's Office

Aetna Inc. on Monday said that heavy financial losses will force it to abandon 11 of 15 Affordable Care Act marketplaces in which it participates, adding to fast-rising concerns about the ACA's future.

## EXPERT ANALYSIS

---

### Law Students Should Explore BigLaw Pro Bono Options

I worry too many law students see the priorities of BigLaw in tension with a meaningful commitment to pro bono work, making them reluctant to ask questions in interviews about pro bono opportunities and a firm's commitment to its community. This needs to change, says Skadden partner and former White House legal adviser Michael Scudder.

### Ensuring Compliance With CMS 60-Day Overpayment Rule

Health care providers will welcome several provisions within the Centers for Medicare and Medicaid Services' final regulations on its 60-day overpayment rule that provide greater clarity and more leniency. However, CMS has also repeatedly emphasized that all providers and suppliers must take proactive, as well as reactive, steps in order to satisfy the law's requirements, say Linda Baumann and Hillary Stemple at Arent Fox LLP.

### Proposed IRS Rules Would Limit Section 355 Distributions

Regulations recently proposed by the Internal Revenue Service and the U.S. Department of the Treasury indicate that the government remains focused on Section 355 distributions that appear to be motivated in whole or substantial part by a desire to avoid corporate-level gain with respect to nonbusiness assets, say attorneys with Kirkland & Ellis LLP.

### Rare Subpoena Case May Impact Congressional Investigations

It is uncommon for a federal court to have an opportunity to rule on a congressional subpoena, but in *Senate Permanent Subcommittee on Investigations v. Ferrer* a D.C. federal court recently ruled in favor of the Senate subcommittee. This unlikely case has the potential to contribute significantly to the case law concerning congressional investigations, say attorneys at Covington & Burling LLP.

### 5 Tips To Prepare For New HMDA Reporting

Given the upcoming significant changes to the collection and reporting requirements of the Home Mortgage Disclosure Act, financial institutions should begin reviewing their products to determine which may fall within the expanded scope of the new HMDA rule. Unsurprisingly, increasing the number of data points collected and reported could lead to a rise in reporting errors, say Kitty Ryan and Sherry-Maria Safchuk of BuckleySandler LLP.

### A Key Victory For SEC In Battle Over Administrative Courts

The D.C. Circuit's ruling last week in *Lucia v. U.S. Securities and Exchange Commission* will undoubtedly bolster the SEC's use of its administrative forum even in the face of continued criticism that the forum gives the agency an unfair advantage, say Thomas Krysa and Lawrence Treece of Brownstein Hyatt Farber Schreck LLP.

## LEGAL INDUSTRY

---

### 3 Ways Your Firm Is Letting You Down

Life in BigLaw is expected to be tough, with long hours and high stress par for



the course. But sometimes, that high salary can feel more like an effort to ward off complaints than compensation, especially if your firm is lacking in a few key areas. Here, Law360 looks at a few ways your firm may be letting you down.

### [Litigation Powerhouse: Skadden](#)

By continuing to build its global roster of talented trial attorneys and showcasing its ability to handle complex litigation in many sectors — including successes in high-profile matters for the NBA and NFL, among others — Skadden Arps Slate Meagher & Flom LLP has earned a spot among Law360's Litigation Powerhouses for 2016.

### [Law Firms Won't See Big Profit Bumps In 2016, Report Says](#)

Law firms shouldn't expect much, if at all, in terms of profit growth between 2015 and 2016 due in large part to weak demand and a projected uptick in expenses, according to a report released Monday by Citi Private Bank's law firm group.

### [Calif. Fee Ruling Keeps Checks On Plaintiffs Bar Windfalls](#)

While California's class action plaintiffs bar may applaud the state high court's backing of blunt percentage calculations for attorneys' fees, experts say the court's clear support for employing a time-focused lodestar as protection against award windfalls should quell some of the celebration.

### [Eversheds COO Leaving After Decade In Firm Leadership](#)

After 10 years of senior leadership at Eversheds LLP, the British multinational law firm's chief operating officer will step down after the end of 2016, the firm said Monday.

### [Rainmaker Q&A: Kilpatrick Townsend's Tina Williams McKeon](#)

Pitching for work is a lot like dating. You must accept that you will not be well-matched with everyone. Let those go by and find the good matches, says Tina Williams McKeon, a partner at Kilpatrick Townsend & Stockton LLP.

### [Rainmaker Q&A: Labaton Sucharow's Eric Belfi](#)

The practice of law and client development are constantly changing. If it's not U.S. Supreme Court decisions or legislative changes, it's your main point of contact of 10 years going into retirement. You have to be nimble and be able to build new relationships, says Eric Belfi, a partner at Labaton Sucharow LLP.

#### **JOBS**

[Search full listings](#) or [advertise your job opening](#)

Not sure if your firm subscribes? Ask your librarian.

We hope you found this message to be useful.  
However, if you'd rather not receive future emails of this sort,  
you may unsubscribe [here](#).

Please DO NOT reply to this email. For customer support inquiries, please call 1-646-783-7100 or visit our [Contact Us](#) page.

