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Subject: GOP Push To 'Repeal' Chevron Deference May Come Up Short

PUBLIC POLICY

Friday, January 6, 2017

TOP NEWS

Analysis

[GOP Push To 'Repeal' Chevron Deference May Come Up Short](#)

Congressional Republicans eager to stop judges from deferring to the EPA and other agencies in legal challenges to those agencies' rules are touting a proposed bill they say would end the long-established practice of "Chevron deference," but experts say the legislation won't actually eliminate courts' reliance on agency expertise.

[House Passes Bill To Put Rules To Up-Or-Down Vote](#)

Major administrative rulemakings and rulings could have to go to Congress for an approval vote if a bill the House passed Thursday becomes law.

[House GOP Bill To Nix Obamacare Embraces Med Mal Reform](#)

A bill unveiled by conservative House Republicans on Wednesday that aims to repeal and replace the Affordable Care Act contains three medical malpractice provisions, including a proposed requirement that would allow certain cases to be more easily removed to federal court.

Analysis

[Antitrust Exemption Repeal Resurfaces Amid ACA Battle](#)

Congressional Republicans looking to replace the Affordable Care Act are once again eyeing a plan to repeal antitrust immunity for health insurers, but experts say a new wave of enforcement would be unlikely even if the long-thwarted proposal passes on the back of a broader health care overhaul.

Analysis

[States' Minimum Wage Hikes Roll On Without Federal Increase](#)

When the Arizona Supreme Court last week allowed the state's new \$10 minimum wage to take effect in the midst of a pending legal challenge, it cleared the way for the state to join 18 others and numerous municipalities in welcoming higher wage floors on Jan. 1, a trend management-side attorneys say is likely to continue in the absence of a federal wage hike. Here, Law360 takes stock of where minimum wages stand nationwide as 2017 begins.

Analysis

[GOP's Higher Tax Deductions May Be Bad For Homeowners](#)

A key platform of the House Republicans' tax reform plan to almost double tax breaks for individuals and families could actually end up driving down housing prices by making tax incentives less effective for homebuyers, according to one of the nation's largest lobby groups.

LAW FIRMS

Akerman
Akin Gump
Arnold & Porter Kaye Scholer
Ashby & Geddes
Baker & McKenzie
Bateman & Pugh
Buchanan Ingersoll
Chamberlain Hrdlicka
Clifford Chance
Constantine Cannon
Covington & Burling
Cravath Swaine
Dechert
Dentons
Dewey & LeBoeuf
Dickinson Wright
Estes Thorne
Fisher Phillips
Frankfurt Kurnit
Greenberg Gross
Greenberg Traurig
Gunderson Palmer
Hagens Berman
Hogan Lovells
Holland & Knight
Hunton & Williams
Jackson Kelly
Jackson Lewis
K&L Gates
Kanji & Katzen
Kasowitz Benson
Katten Muchin
Klehr Harrison
Kleinbard LLC

Atty Brings Fight Over NY Office Law To Supreme Court

A New Jersey lawyer has brought her attempt to undo a New York law requiring attorneys practicing in the state to have physical bases there to the U.S. Supreme Court, claiming the Second Circuit's decision upholding the law should be reversed.

BANKING & SECURITIES

Currency Trading Firm Drops IPO Plans Amid Crackdown

U.K. foreign exchange broker FxPro has postponed plans for an initial public offering following a crackdown by the U.K.'s Financial Conduct Authority on the spread-betting industry, saying it will wait for a clearer regulatory environment before taking action.

White Urges SEC Head To Work On Accounting Standards

Departing U.S. Securities and Exchange Commission Chair Mary Jo White issued a statement Thursday urging her replacement to continue to pursue global standards for financial reporting, a day after President-elect Donald Trump said he would nominate a Sullivan & Cromwell LLP partner to fill her spot.

Feds Add Bank Sales Tactics To Risk Watchlist

The top U.S. national bank regulator said Thursday that it is increasing its scrutiny of bank sales practices following the Wells Fargo & Co. fake accounts scandal and has included sales practices among its semiannual review of risks facing the industry for the first time.

ENERGY & ENVIRONMENTAL

24 AGs Back Pruitt For Head Of EPA

Two dozen Republican state attorneys general signed a letter Wednesday expressing their "unqualified support" for Scott Pruitt, President-elect Donald Trump's nominee to lead the U.S. Environmental Protection Agency, in advance of his confirmation hearing.

GOP Targets Stream Protection Rule Over Coal Concerns

Congressional Republicans aim to clamp down on the Interior Department's stream protection rule as part of a series of votes to nullify rules passed in the last six months of President Barack Obama's term, according to House Speaker Paul Ryan, who said Thursday the rule could potentially impact thousands of jobs involved in coal production.

Pa. GOP Senators Can't Enter Del. River Fracking Suit

A federal judge on Thursday denied a request from three Republican Pennsylvania state senators to intervene in a lawsuit brought by a landowner challenging the Delaware River Basin Commission's fracking moratorium, ruling that they lacked sufficient interest in the outcome of the case.

Minn. Says ND Can't Reap \$1.3M In Emission Law Appeal Fees

North Dakota and a coalition of coal and energy companies aren't entitled to \$1.3 million in attorneys' fees awarded by a lower court for prevailing in the appeal of a decision invalidating Minnesota's restrictions on out-of-state coal-fired power plants, Minnesota told the Eighth Circuit on Wednesday.

DC Circ. Will Mull EPA Methane Authority Fights En Masse

Kutak Rock

Latham & Watkins

Locke Lord

Loeb & Loeb

Manatt Phelps

McGuireWoods

MoloLamken LLP

Morgan Lewis

Norton Rose Fulbright

Paley Rothman

Paul Hastings

Quattlebaum Grooms

Quinn Buseck

Quinn Emanuel

Reed Smith

Riley Pope

Robins Kaplan

Ropes & Gray

Seward & Kissel

Sidley Austin

Skadden

Squire Patton Boggs

Steptoe & Johnson LLP

Stoel Rives

Sullivan & Cromwell

Tabet DiVito

The Williford Firm LLC

Trucker Huss

Venable LLP

Warren Environmental Counsel
LLC

Weber & Rose

White and Williams

Wilkinson Walsh

Winthrop & Weinstine

COMPANIES

Aetna Inc.

Alliance for Telecommunication
Industry Solutions

Altman Weil Inc.

America Fujikura Ltd.

American Bar Association

American Cable Association

American Federation of Labor &
Congress of Industrial
Organizations

The D.C. Circuit on Wednesday consolidated challenges to the U.S. Environmental Protection Agency's methane rules for new oil and gas infrastructure with challenges to previous emissions rules for the sector, setting the stage for the appeals court to decide whether the EPA has the authority to issue such regulations.

[Pa. Town Tells 3rd Circ. Groups Can't Challenge Seneca Deal](#)

A Pennsylvania municipality that reached a deal with Seneca Resources Corp. and dropped an ordinance preventing the company from storing fracking waste in an underground well told the Third Circuit Wednesday that a set of challengers including its municipal authority can't stand in the way of the agreement.

HEALTH & LIFE SCIENCES

[4th Circ. Says It Can't Hear ADA Case Over Medicaid Waivers](#)

The Fourth Circuit on Thursday dismissed an appeal from two disabled South Carolina residents and their parents, who claim the state wrongly took away Medicaid benefits given through a waiver program, determining the court didn't have jurisdiction over the potential class action because the district court failed to rule on retaliation claims.

[Trump's HHS Pick Must Face Ethics Inquiry, Democrats Say](#)

Top Democratic senators on Thursday called for an ethics investigation into stock trades in health care companies by President-elect Donald Trump's choice for health secretary, adding fuel to an already fiery confirmation fight.

TRANSPORTATION & INFRASTRUCTURE

[Clean Air Council's Building Reg. Suit Nixed By Pa. Court](#)

A Pennsylvania court ruled Thursday that the Clean Air Council did not have standing to pursue claims that a slate of new building code provisions adopted in 2015 ran afoul of constitutionally enshrined environmental protections.

INSURANCE

[Ryan Promises Planned Parenthood Defunding In ACA Repeal](#)

House Speaker Paul Ryan promised that the coming congressional repeal of the Affordable Care Act would also include measures to defund Planned Parenthood, a popular plank among Republicans who object to its providing abortion services.

EMPLOYMENT

[Perez Send-Off Warns Against Slippage Of Worker Protections](#)

Outgoing U.S. Secretary of Labor Thomas Perez touted in an exit memo Thursday various pro-worker policies and enforcement efforts during his tenure while cautioning the incoming administration to not lose sight of traditional worker protections as the economy becomes more technologically advanced and workers assume alternative working arrangements with employers.

PRIVACY & CONSUMER PROTECTION

American Petroleum Institute In
Amgen Inc.
Anthem Inc.
Arctic Cat Inc.
Arizona Chamber of Commerce
Blue Cross Blue Shield of
Michigan Inc.
Blue Cross and Blue Shield
Association
CIGNA Corporation
CKE Restaurants, Inc.
CONSOL Energy Inc.
CTIA
ConAgra Foods, Inc.
Consumer Watchdog
Credit Suisse Group AG
DePuy Inc.
Electronic Privacy Information
Center
Friedman LLP
Gilead Sciences Inc.
Goldman Sachs Group Inc.
Humana Inc.
International Code Council Inc.
Johnson & Johnson
Lambda Legal Defense &
Educational Fund
Las Vegas Sands Corp.
Lawyers' Committee for Civil
Rights Under Law
Morgan Stanley
National Association of Realtors
National Collegiate Athletic
Association
National Fuel Gas Co.
Natural Resources Defense
Council
Paramount Pictures Corp.
Pfizer Inc.
Planned Parenthood Federation
Public Company Accounting
Oversight Board
Public Knowledge
Reckitt Benckiser Group PLC
Sanofi-Aventis
Sierra Club
Starbucks Corporation

Amazon Looks To Intervene In Shipping Cost Row At DC Circ.

Amazon is looking to intervene in a push by the United Parcel Service Inc. to have the D.C. Circuit review new federal rules on what costs can be attributable to shipping paid by consumers, telling the court in a Tuesday brief that it has a clear interest in the proceeding.

Intel Chiefs Continue To Back Russia Election Hack Claims

Senior U.S. intelligence officials on Thursday said that an unclassified version of a report into foreign interference with the 2016 U.S. presidential election will be made public next week, and stood by earlier statements pointing to Russia for the pre-election hacks on Democratic groups.

Texas Gov't Contracts Would Lose Privacy Under New Bills

Government contracts would be subject to more public scrutiny under Texas legislation filed this week proposing to lift previous rules that allow public contract bids and final contract details to remain private, with the bills coming in direct response to two Texas Supreme Court decisions.

FCC Takes Heavy Fire As Industry Seeks Privacy Reversal

A bevy of industry organizations have asked the Federal Communications Commission to rethink its new privacy rules for broadband providers, with cable, advertising, carrier and other trade groups raising questions about the agency's authority and process and whether the burdens are necessary.

Groups Ask DC Circ. To Weigh TSA Body Scanner Incidents

Consumer groups asked the D.C. Circuit on Thursday to consider two recent highly publicized passenger screening incidents at airports in Los Angeles and Detroit as it weighs a challenge to the Transportation Security Administration's final rule on airport body scanners, saying the technology is intrusive and hurting passengers.

Texas Republicans Propose 'Bathroom Bill'

The Texas Privacy Act was introduced Thursday by the state's lieutenant governor and a fellow Republican in the state Senate, who said the bill would protect the privacy of Texans in restrooms and changing facilities.

PRODUCT LIABILITY

NJ Hospital Slapped With Bias Suit By Transgender Man

A Catholic hospital in New Jersey has been slapped with a discrimination lawsuit in federal court by a transgender man who claims he was refused a hysterectomy that was deemed medically necessary to treat his gender dysphoria.

GOVERNMENT CONTRACTS

DOD Issues Memo To Further Justify Pending R&D Rule

The U.S. Department of Defense's top acquisition official on Wednesday argued that a rule issued as part of a contentious overhaul to independent research-and-development funding had merely codified long-standing DOD practice, while unveiling an upcoming portal intended to make it easier for contractors to follow the rule.

DHS Improved On Obama's Watch, Outgoing Head Says

Outgoing U.S. Department of Homeland Security Secretary Jeh Johnson on

T-Mobile USA Inc.

Tax Foundation

The Boeing Company

Turner Broadcasting System Inc.

United Parcel Service Inc.

Wal-Mart Stores Inc.

Wells Fargo & Co.

Zeughauser Group LLC

GOVERNMENT AGENCIES

Bureau of Citizenship and
Immigration Services

Competition and Markets Authc

Consumer Financial Protection
Bureau

Delaware River Basin Commiss

Drug Enforcement Administrati

Equal Employment Opportunity
Commission

European Commission

Federal Communications
Commission

Federal Trade Commission

Financial Conduct Authority

Internal Revenue Service

Los Angeles World Airports

Menominee Indian Tribe

National Security Agency

Navajo Nation

New York Attorney General's
Office

Office of the Comptroller of the
Currency

Oglala Sioux Tribe

Postal Regulatory Commission

Securities and Exchange
Commission

South Carolina Department of
Health and Human Services

Standing Rock Sioux Tribe

Transportation Security
Administration

Tulalip Tribes of Washington

U.S. Department of Agriculture

U.S. Department of Defense

U.S. Department of Health and
Human Services

U.S. Department of Homeland

Wednesday issued a memorandum highlighting the progress he believes the department achieved during the Obama administration and touting its efforts to become more effective and efficient in achieving its primary goal.

INTERNATIONAL TRADE

Froman Offers Parting Shot Against Trump Trade Doctrine

U.S. Trade Representative Michael Froman on Thursday warned against the dangers of withdrawing from the global economy and opening the door for a China-dominated trading system, offering a firm rebuke of the sort of policy proposals offered by President-elect Donald Trump.

China's Market Economy WTO Case Draws Eye Of Others

Canada and Japan on Thursday decided to keep a closer eye on China's World Trade Organization case challenging the U.S. and European Union's failure to consider Beijing a "market economy," citing the dispute's potential to drastically alter the course of global anti-dumping policy.

TAX

AICPA Calls On IRS To Simplify Interest Capitalization Rules

The American Institute of Certified Public Accountants told the IRS on Wednesday that the agency needs to simplify regulations covering capitalized interest, which involves long-term property costs, saying that the rules place a "substantial" administrative burden on certain industries.

Atty Won't Stop Push To Keep IRS From Coinbase Users' Info

A Berns Weiss LLP attorney and customer of the virtual currency exchanger Coinbase Inc. has told a California federal court that the IRS tried to "artificially moot" his efforts to quash a John Doe summons to obtain customer information from Coinbase by saying it no longer wants information on him.

NATIVE AMERICAN

Wash., County Can't Dodge Tulalip Tribes' Biz Tax Dispute

A federal judge on Thursday largely rejected the state of Washington and Snohomish County's bid for a quick win in a lawsuit in which the Tulalip Tribes are challenging taxes imposed by the state and county on non-Native American businesses and their patrons at a village on reservation lands.

SD Tribe Members Can't Get Fees In Voter Discrimination Suit

A federal judge on Wednesday rejected a bid for attorneys' fees by Oglala Sioux Tribe members who recently saw their lawsuit seeking to force a South Dakota county to open a satellite office for voter registration and absentee voting on the tribe's reservation dismissed.

TELECOMMUNICATIONS

T-Mobile Asks For More Time On FCC Changes To Alerts

Wireless carrier T-Mobile US Inc. on Tuesday urged the Federal Communications Commission to take a more cautious path to modernizing the wireless emergency alerts system, saying additional time for testing and implementation of the changes is needed to ensure a smooth transition.

Security

U.S. Department of Justice

U.S. Department of Labor

U.S. Department of the Interior

U.S. Department of the Treasury

U.S. Environmental Protection Agency

U.S. Postal Service

U.S. Senate

U.S. Supreme Court

Open Internet Group Slams Bill To Nix 'Midnight' Regs

Public interest group Public Knowledge said Wednesday that it has signed on to a letter to the House over a bill that could let Congress undo en bloc rules passed in the final year of the Obama administration, saying that the broad repeals would be an ideological "blunt instrument."

Sen. Thune Says 'It's Time To Update' Telecom Law

Sen. John Thune, R-S.D., who chairs the Senate Commerce, Science and Transportation Committee, said Wednesday that he is interested in rewriting the Telecommunications Act but that a "step by step" rather than comprehensive process may be the way forward.

FCC Republicans Rage At Broadcaster Reporting Order

The Federal Communications Commission's GOP contingent slammed the agency's Media Bureau for upholding reporting requirements for noncommercial educational TV stations, saying Wednesday that the bureau misstepped in "unilaterally" making the decision without the FCC majority's support.

PEOPLE

Ex-Senate Finance Tax Counsel Joins Covington & Burling

Anticipating significant movement on tax policy under an incoming Republican trifecta government, Covington & Burling LLP has brought a former tax counsel on the U.S. Senate Finance Committee to its public policy and government affairs practices, the firm announced on Thursday.

Latham Snags Former Assistant SG For Appellate Practice

A former Latham & Watkins LLP associate has returned to the firm as partner after working for three years at the Office of the Solicitor General, bolstering the firm's Washington, D.C., office with his experiences arguing in front of the U.S. Supreme Court seven times.

UK Competition Watchdog Taps 3 For Senior Roles

The U.K. Competition and Markets Authority revealed three project director appointments Thursday, including an internal promotion and the hire of a Reckitt Benckiser Group PLC compliance professional.

EXPERT ANALYSIS

Looking Ahead: Employer-Provided Health Care Under Trump

Because the Republicans do not have a filibuster-proof majority in the Senate, a complete repeal of the Affordable Care Act is unlikely. However, Republicans in Congress can pass a bill unwinding major portions of the ACA that apply to group health plans and sponsoring employers, and the Trump administration can make substantial changes to the ACA rules for group health plans unilaterally, says Eric Schillinger of Trucker Huss APC.

The Path Forward For Industrial Hemp In Indian Country

Historically, the legality of growing industrial hemp has been complicated by the commodity's classification as a Schedule 1 drug. As the movement for national legalization marches on, tribes interested in growing hemp should take steps to ensure that they do not lose ground relative to non-Indian farmers, says Michael Reif of Robins Kaplan LLP.

New Year, New Immigration Laws For Calif. Employers

No one can deny that 2017 will be a year of change, but when it comes to laws relating to immigration and employment, change may look different in California compared to the rest of the nation, says Gregory Wald of Squire Patton Boggs LLP.

LEGAL INDUSTRY

Why BigLaw Is Kicking Surnames & Ampersands To The Curb

Maintaining a strong brand is key for BigLaw firms slugging it out in a sector flooded by competition and rife with consolidation. Here, a look at how a law firm's name impacts its brand and expert advice on how to win at the name game.

Kasowitz Benson Doles Out Bonuses To Associates

Kasowitz Benson Torres & Friedman LLP will be handing out bonuses to its New York associates for 2016 performance based on the benchmark bonus scale set by Cravath Swaine & Moore LLP, according to a copy of a firm memo sent out on Thursday.

Dewey Execs Say Cooperator's New Plea Changes Retrial

The two former top executives of Dewey & LeBoeuf LLP facing a retrial next month over allegations that they defrauded the law firm's financial backers before it collapsed sought leave on Thursday to solicit testimony about the first trial, in light of a revised plea deal last fall for the star cooperator in the case.

Del. Justices Give Attys More Power To Claim Client Awards

The Delaware Supreme Court's ruling this week that charging liens need not be tethered directly to uncompensated legal work may encourage lawyers to press for liens on client judgments to which they have only a distant connection, experts say.

Norton Rose Fulbright To Shutter Pittsburgh Office

Norton Rose Fulbright intends to close its Pittsburgh, Pennsylvania, office, which opened in 2011 with six environmental and energy lawyers from K&L Gates LLP, the firm confirmed on Thursday.

Law360's Weekly Verdict: Legal Lions & Lambs

Skadden Arps Slate Meagher & Flom LLP and other law firms representing Johnson & Johnson in litigation over a faulty hip implant made it on the legal lions list this week by getting a \$1 billion judgment against the drugmaker slashed by half, while Squire Patton Boggs LLP wound up a legal lamb after a federal jury slammed its client, DuPont, with a \$10.5 million punitive damages verdict for dumping allegedly dangerous chemicals.

Blind Man Asks Justices To Hear LSAT Appeal In ABA Suit

A legally blind Michigan man accusing the American Bar Association of discriminating against the visually impaired by failing to provide certain provisions for taking the LSAT has urged the U.S. Supreme Court to take up his case, saying the ABA is the responsible party.

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