

LEGAL UPDATES

In Case You Missed It – Our 2025 State of Litigation Recap

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The May 14, 2025 State of Litigation event, sponsored annually by Lathrop GPM, brought together a dynamic mix of legal minds, business leaders and policy experts to unpack the most critical developments shaping the current U.S. litigation landscape.

This year’s program tackled the legal profession’s role in defending the rule of law, the shifting balance of federal and state enforcement, and the rising tide of bankruptcy filings. Attendees also gained practical insights into preserving privilege in complex communications, navigating regulatory uncertainty under the Trump administration, and managing the ethical and cybersecurity risks posed by AI.

Whether you joined us in person or are just catching up now, the following top-level takeaways offer a concise look at the key themes and actionable guidance shared throughout the event.

The Rule of Law – Lawyers, Business, Mainstreet the ABA and You: A Fireside Chat

Presented by: William Bay, President, American Bar Association, and The Hon. Steve Leben, Douglas Stripp Distinguished Professor of Law, UMKC School of Law

Overview

- **The Rule of Law Is Under Pressure** — Legal professionals, judges and institutions like the ABA are facing unprecedented attacks – some from within

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- Jean Paul Bradshaw, II
- Kathleen Fisher Enyeart
- Maisa Frank
- Jackson R. Hobbs
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the U.S. government. These include efforts to undermine judicial independence and question the need for due process.

- **Representation ≠ Endorsement** —Every state supreme court affirms (through court-adopted conduct rules for lawyers) that representing a client does not mean endorsing their views. Defending this principle is crucial as lawyers and firms today are increasingly criticized for their clients' positions.
- **Stand Up and Speak Out** — The ABA urges lawyers to use their voices, time and resources to defend the rule of law. Publicly supporting judicial independence and legal ethics is vital in preserving democratic institutions.
- **Combatting Public Distrust** — With only 17% of Americans saying lawyers have high or very high ethical standards, the profession must prioritize transparency, ethics education and increased public service to rebuild trust.
- **Diversity and Excellence Go Hand in Hand** — The ABA rejects the false choice between diversity and excellence, emphasizing that diverse perspectives enhance the quality of the legal profession and justice system.
- **Engage the Next Generation** — There's a growing need to reach young people – especially those under 35 – through education, storytelling and digital communication that resonate with their values and information habits.
- **This Is a Defining Moment for the Profession** — As Bill Bay stated, "This can be our finest hour." Lawyers have a responsibility to lead, protect the legal system and inspire confidence in justice – now more than ever.

Navigating Federal-State Enforcement: A Conversation

Presented by: [Kurt Schaefer, Director, Missouri Department of Natural Resources](#), and [Jean Paul Bradshaw, Partner, Lathrop GPM](#)

Overview

- **Understand Cooperative Federalism** — The EPA sets the environmental standards, but state agencies like Missouri's DNR implement them – often with flexibility in how they are met. About 80-85% of Missouri DNR's permitting is guided by EPA directives.
- **Relationships Matter** — Lawyers should build strong relationships with state regulators. Because many decisions involve discretion, having trust and open lines of communication can significantly impact outcomes for clients.
- **Accountability Is Local** — State agencies like the DNR are accountable to state legislatures and can face budgetary consequences, making them more responsive than federal agencies in many cases. Knowing your local legislative environment is key.
- **Energy Policy Is Evolving – and Urgent** — Missouri is actively developing a statewide energy policy to meet growing demand. There is increasing interest in nuclear, gas and coal to supplement intermittent energy sources like wind and solar.

- **Permitting Is a Bottleneck for Energy Development** — Air permitting remains a major hurdle in expanding energy infrastructure, including nuclear. Missouri is part of national efforts to explore modern financing and regulatory approaches to nuclear power.
- **Critical Minerals Are a Strategic Priority** — Missouri ranks among the top states for critical minerals. However, most U.S.-mined minerals are still processed in China. State and federal collaboration is needed to bolster domestic supply chains.

Legal and Business Insights on Bankruptcy Trends

Presented by: [The Hon. Cynthia Norton, Western District of Missouri Bankruptcy Court](#), and [Brian Holland, Partner, Lathrop GPM](#)

Overview

- **Bankruptcy Filings Are Rising – But Still Historically Low** — After a significant dip during the COVID-19 pandemic, bankruptcy filings have increased by 13% over the past year, with Chapter 11 filings up 20%. Overall numbers, however, remain far below historical peaks.
- **Stimulus Delayed the Wave** — Judge Norton attributes the pandemic-era drop in filings to stimulus payments and aid programs. Now that these have ended, rising debt levels – especially in credit cards and student loans – are likely to drive new filings.
- **Consumer Debt Is Reaching a Tipping Point** — National credit card debt now stands at \$1.211 trillion, and student loan debt is at \$1.693 trillion. With five million student loan borrowers in default, even a modest bankruptcy surge from this group could have national impact.
- **Consumer Bankruptcy Cases Dominate Bankruptcy Filings** — In the Western District of Missouri over the past year, 97.4% of all bankruptcy filings were consumer bankruptcies (similar to national figures), with less than 1% of all bankruptcy cases representing business bankruptcy filings.
- **Chapter 11 Is a Tool – But Often a Last Resort** — Chapter 11 creates a pause for companies to reorganize, but only around 10% actually do so; most end in liquidation. Tools include rejecting burdensome leases and restructuring secured debt.
- **Industry Watch – Trucking, Healthcare and Fast-Casual Dining** — These sectors are under financial stress due to inflation, rising wages, fuel costs and food prices. Rural hospitals in particular are struggling due to thin margins and Medicaid cuts.
- **Private Equity Is Changing the Game** — Traditional banks are stepping back, while private equity is playing a larger role in lending and distressed asset purchases. These firms can act faster than banks but raise systemic concerns if they retreat abruptly.

- **Legal Insight – Know the Business Behind the Bankruptcy** — Both Judge Norton and Brian Holland stress that bankruptcy is not just a legal issue – it’s a business problem. Successful outcomes depend on understanding the economics behind each case.

Preserving Privilege in a Crowded Room: Talking to Insurers, Brokers & Funders

Presented by: [Brent Vincent, Partner, Lathrop GPM](#), and [Alana McMullin, Associate, Lathrop GPM](#)

Overview

- **Privilege Is Not Absolute and Can Be Waived** — Attorney-client privilege protects legal advice, not business decisions. It can be waived when third parties like insurers, brokers or funders are involved – unless steps are taken to preserve it.
- **Work Product Has Stronger Protections, But Limits** — Work product doctrine protects materials prepared in anticipation of litigation. But disclosure to third parties – like consultants or insurers – can waive it unless precautions are taken.
- **State Law Governs Privilege with Insurers** — Whether communications with insurers remain privileged depends on jurisdiction. States like Missouri, Illinois and California tend to protect these communications, while others, like New York, require heightened justification.
- **Understand the Three Phases of Insurer-Insured Communication** — Privilege is unlikely to apply at the notice of claim stage, more likely under a non-reservation defense, and more complex when an insurer defends under a reservation of rights due to potential adversity.
- **Funders and Brokers – A Growing Risk Area** — Communications with brokers can be protected through agency principles. Litigation funders pose more risk – especially in jurisdictions requiring disclosure or transparency, like California. Courts and legislators are revisiting funder communications.
- **Best Practices Are Essential** — Use privilege labels (e.g., “Common Interest” or “Work Product”), limit recipients, prioritize oral discussions, and keep counsel in the loop. Assume courts will apply the narrowest privilege view.
- **Common Interest Agreements Can Help – But Must Be Done Right** — These agreements can preserve privilege when interests align, but they must be clear, documented and specific. They are particularly useful with insurers and funders.
- **Privilege Is Only as Strong as Your Defense of It** — Labeling and agreements help, but courts look at substance over form. You must be ready to aggressively defend privilege if challenged.

The Trump Administration: What’s Keeping GCs Up at Night?



Panelists: [Maisa Frank](#), *Partner, Lathrop GPM*; [Kathleen Fisher Enyeart](#), *Counsel, Lathrop GPM*; [Brian Woolley](#), *Senior Counsel, Lathrop GPM*; and [Jackson Hobbs](#), *Associate, Lathrop GPM*

Overview

- **Executive Orders Are Driving Policy – Not Legislation** — President Trump has relied heavily on executive orders – 26 on day one and 142 in the first 100 days – dramatically shifting policy without new legislation. GCs must stay alert to sudden regulatory changes.
- **DEI Programs Face Legal Scrutiny** — Executive orders aim to dismantle federal DEI programs and scrutinize private-sector efforts. The EEOC cautions against any employment decision or program based on a protected category, but provides guidance for acceptable training and other activities.
- **Tailor DEI Efforts To Withstand Challenges** — Employers should ensure DEI programs emphasize inclusion, opportunity and legal compliance. Employee training remains critical. A thorough review of the purposes, execution and labels used for these activities may help mitigate risk exposure.
- **Federal Oversight Is Expanding Beyond Government Contractors** — The administration is targeting public companies, universities, nonprofits and professional associations for civil rights compliance. Even organizations not directly under federal contracts are on the radar.
- **Whistleblower Risk Is Rising – Including for Private Insurance** — The DOJ’s whistleblower program is expanding – now reaching commercial health insurance fraud. Expect more scrutiny of internal controls, especially in healthcare, and potential False Claims Act exposure.
- **Tariffs, Customs and Export Violations Are DOJ Hotspots** — The False Claims Act is being aggressively used to pursue trade violations. Companies should proactively audit sourcing, valuation practices and export documentation to avoid civil enforcement actions.
- **Immigration Enforcement Is Back on the Table** — Expect a rise in ICE visits, employment-based investigations and I-9 scrutiny. Companies should review I-9 compliance procedures and ensure a clear plan is in place if visited by immigration authorities.
- **New DOJ Memo on Criminal Priorities** — The DOJ has issued new guidance under the Trump administration emphasizing voluntary disclosure, offering significantly reduced penalties – or even declinations – for companies that proactively report misconduct and fully cooperate, alongside expanded incentives for whistleblowers.

A.I., Ethics and Cybersecurity – What You Need to Know

Keynote Presenter: [Rob Clark, Jr.](#), *International speaker, leadership coach and thought leader*
(robclarkjr.com)

- **Cyberattacks Are a “When,” Not an “If”** — Rob Clark’s real-world ransomware story underscores the urgency of having an incident response plan. Cybercrime is projected to cost \$10.5 trillion globally in 2025 – preparedness is no longer optional.
- **Human Error Is the Biggest Threat** — An estimated 95% of cyber breaches stem from human mistakes. Poor password habits, phishing, and unsecured home networks are among the top risks – training and awareness are critical.
- **The NIST Framework Is the Cybersecurity Gold Standard** — Legal teams should understand the simplified NIST model: preventive, detective, and responsive controls. The full framework (SP 800-53) is comprehensive but essential for compliance and resilience.
- **Passwords and MFA Are Non-Negotiable** — Use complex passphrases and multi-factor authentication on all systems. Password reuse across platforms remains a glaring vulnerability – even for attorneys who hold trusted access.
- **AI Isn’t Always Right – and It Can Be Dangerous** — AI “hallucinations” have already led to real legal sanctions. Always verify AI-generated content, especially legal citations, and avoid feeding sensitive client data into public tools.
- **Ethics in AI Requires More Than Compliance** — Distinguish legality from ethics. Frameworks like the platinum rule and virtue ethics can guide tough decisions – such as how autonomous systems weigh life-or-death outcomes.
- **Security and Ethics Must Be Ongoing Conversations** — Cybersecurity isn’t a one-time investment – it’s a culture. Engage your team, monitor constantly, and revisit your ethical and security protocols regularly.

For more information on these topics or our annual State of Litigation event, please contact any of the presenters tagged in this overview, or your regular Lathrop GPM attorney.