

Problem viewing? [Click to view it online](#)

January 25, 2023



## In This Issue:

- [Energy](#)
- [Environmental, Social and Governance \(ESG\)](#)
- [Financial Services](#)
- [Cybersecurity, Privacy & Data Governance](#)
- [Employee Benefits](#)
- [Franchising](#)
- [Investment Management & Broker-Dealer](#)
- [Government Relations](#)
- [Retail & Consumer Goods](#)
- [Mergers & Acquisitions](#)
- [Firm News](#)
- [Recent Transactions](#)
- [Welcome New Corporate Attorneys](#)

## Energy

### U.S. Department of Commerce Imposes Sweeping Country-Wide Import Duties on Certain Solar Cells and Models

December 5, 2022

By [Thomas Allen](#) & [Kurtis Anderson](#)

On December 2, 2022, the International Trade Administration (“ITA”) of the U.S. Department of Commerce preliminarily issued a “country-wide” circumvention determination in its circumvention inquiry regarding the imposition of anti-dumping and countervailing import duties on certain solar cells and modules from Vietnam, Cambodia, Malaysia, and Thailand...[read more](#)

### The DOE, LPO, and Inflation Reduction Act Incentivize Significant Tribal Energy Development

November 18, 2022

By [Mark Riedy](#), [John Loving](#) & [Stephen Anstey](#)

Pound-for-pound, Tribes have the potential to be among the United States’ most prolific clean energy developers. Tribal lands, which compose approximately 5.8% of the total land area in the contiguous United States, have the potential to produce 6.5% of the entire country’s renewable utility-scale technical energy, with Alaska Native Villages poised to generate significant additional energy...[read more](#)

### DOE Solicits Concept Papers for the \$7 billion Regional Clean Hydrogen Hubs (H2Hubs) Program

October 25, 2022

By [Mark Riedy](#), [Thomas Allen](#), [Siegmar Pohl](#), [John Loving](#), & [Stephen Anstey](#)

The United States Department of Energy (DOE), through the Regional Clean Hydrogen Hubs (H2Hubs) Program, is providing \$6-7 billion in grant funding to support the development of six to ten H2Hubs across the United States. DOE’s Office of Clean Energy Demonstration (OCED), in collaboration with the Office of Energy Efficiency and Renewable Energy (EERE), Hydrogen and Fuel Cell Technologies Office (HFTO), and the DOE Hydrogen Program, released a Funding Opportunity Announcement (FOA) governing the administration of the H2Hubs Program. Concept Papers responding to the FOA were due November 7, 2022, and full applications are due April 7, 2023...[read more](#)

## Environmental, Social and Governance (ESG)

### Mind your P's and P's – SEC Settles Enforcement Action Related to ESG Policies and Procedures

January 9, 2023

By [Thomas Cain](#), [Kate McCurry](#) & [Skyler Shields](#)

The Securities and Exchange Commission (the “SEC”) has again set its sights on registrants’ environmental, social, and governance (“ESG”)–related investing. In another major action against registrants involving ESG-related policies and procedures, the SEC recently charged a registered investment advisor for policies and procedures failures involving one separately managed account strategy and two mutual funds marketed as ESG investments...[read more](#)

### DOL Opens ESG Door: What Does It Mean for Plan Fiduciaries?

December 5, 2022

By [Peter Daines](#) & [Sterling Perkinson](#)

Department of Labor (“DOL”) Secretary Walsh recently announced final regulations in a blog post titled “Removing Barriers to Considering ESG Factors in Retirement Plan Investments.” While the rules open the door to more employer retirement plans taking into account environmental, social, and governance (“ESG”) factors in investment decisions, fiduciaries still need to be careful to ensure that their fiduciary processes reflect appropriate consideration of ESG factors. The new rules also address how fiduciary standards apply to voting proxies and exercising other shareholder rights with respect to plan investments...[read more](#)

### October Monthly Minute | Advertising Best Practices to Avoid ESG Pitfalls

JD Supra | October 26, 2022

By [Barry Benjamin](#) & [Farah Cook](#)

Once a month, we cover an interesting topic in 60 seconds. This month, partners Farah Cook and Barry Benjamin shared their thoughts on some of the best advertising practices for avoiding ESG pitfalls...[read more](#)

## Financial Services

### Digital Assets Regulation Blog

January 23, 2023 - October 26, 2022

By [Stephen Anstey](#)

The Digital Assets Regulation Blog covers various aspects of digital assets regulation, development, and administration, as well as related topics. Over the last five years, the combined market capitalization for U.S. digital assets has grown from \$14 billion to nearly \$3 trillion. This tremendous growth has led to increased attention and regulation from regulatory bodies in the United States and across the globe...[read more](#)

## Cybersecurity, Privacy & Data Governance

### For Your 2023 Worry List: Anti-Wiretap Class Actions Against Website Operators Surge, But Proper Consent Can Reduce Risk

January 13, 2023

By [Barry Benjamin](#), [Vita Zeltser](#), [John Brigagliano](#), & [Zain Haq](#)

Website session replay technology continues to fuel class action litigation alleging violations of anti-wiretap laws in all-party consent states. In 2021, we issued an alert highlighting that session replay lawsuits were beginning to gain traction. Plaintiffs filed even more cases in 2022, and such class actions present legal risk for any company using session replay technology or other technology that captures a website user’s communications without their consent in states where all parties to a communication are required to give consent under applicable anti-wiretap laws...[read more](#)

### Four New State Data Laws Becoming Effective in 2023

JD Supra | December 23, 2022

By [Amanda Witt](#), [Jon Neiditz](#), [Vita Zeltser](#), [John Brigagliano](#), [Jennie Cunningham](#), & [Zain Haq](#)

In addition to the CPRA, there are four new state laws going into effect in 2023. If you haven’t done so already, we recommend examining whether these laws apply to your organization before January 1, 2023 to ensure timely

compliance. Fortunately all of these laws exclude employee and B2B personal data from their scope...[watch now](#)

## Countdown to 2023: Privacy Compliance Checklist for The End of The Year

December 15, 2022

By [Amanda Witt](#), [Jon Neiditz](#), [Vita Zeltser](#), [John Brigagliano](#), [Jennie Cunningham](#), & [Zain Haq](#)

In January of 2022, we recommended adding “updating privacy contracts” to your list of New Year’s resolutions. With 2023 around the corner and a number of new privacy laws and regulations going into effect, we have another list for you. This time, we’ll call them “Pre - New Year’s Resolutions” because you’ll want to have some of these to-dos done (or at least started) before January 1st. Ideally, this will serve as a year-end review checklist, because most of you have been keeping up on these issues with us all year (or longer)!...[read more](#)

## RCG Summit | Privacy & Data Issues in M&A Due Diligence

November 1, 2022

By: [Vita Zeltser](#)

On November 1, 2022, Vita Zeltser presented on *Privacy and Data Issues in M&A Due Diligence* at Kilpatrick Townsend's inaugural RCG Summit. In this session, Vita covers what you need to know, including questions to ask and considerations, if you discover privacy issues in an M&A deal...[watch now](#)

## 8 Key Takeaways for In-House Counsel When Negotiating Data-Related Issues in SaaS, PaaS and IaaS

October 24, 2022

By [Sonia Baldia](#) & [Jeff Connell](#)

Kilpatrick Townsend attorneys Sonia Baldia and Jeff Connell recently presented at the “Association of Corporate Counsel National Capital Region Fall Conference: Advanced Topics for In-House Counsel” in Vienna, Virginia. As businesses continue to accelerate cloud adoption and digital transformation efforts, in-house legal counsel must protect one of their company’s most valuable assets: data...[read more](#)

## 5 Key Takeaways | How GDPR has Impacted American Companies and the Future of Transatlantic Data Transfers

October 19, 2022

By [Amanda Witt](#)

The European Union’s General Data Protection Regulation (“GDPR”) marked a turning point in privacy and data protection practices globally and transformed how American companies approach the protection of personal data. Because of the large potential fines and complexity of the GDPR, American companies devoted significant resources to developing privacy and compliance programs to prepare for the effectiveness of the GDPR in 2018. GDPR has also proven to be an inspiration for comprehensive privacy laws that have been adopted and proposed in the United States...[read more](#)

## Employee Benefits

### SECURE 2.0 Act of 2022, as enacted | Summary of Key Provisions

January 6, 2023

By [Sterling Perkinson](#) & [Robert Daily](#)

On December 29, 2022, President Biden signed the Secure 2.0 Act of 2022 (the “Secure 2.0 Act”) into law. The Secure Act 2.0 builds off of the Secure Act, the last major retirement plan legislation enacted at the end of 2019, and brings important changes to retirement plans...[read more](#)

### IRS to Allow Remote Notarizations for Retirement Plan Withdrawals on a Permanent Basis

January 4, 2023

By [Sterling Perkinson](#)

As part of its response to the COVID-19 pandemic, the IRS issued temporary relief that allowed for remote notarizations of spousal consents and other participant elections for retirement plan withdrawals under certain circumstances. This temporary relief was set to expire on December 31, 2022, but on December 30, 2022, the IRS published proposed regulations that would make this relief permanent. The preamble to the proposed regulations provides that taxpayers may rely on the rules before the applicability date of final regulations, so the proposed regulations in effect extend the temporary relief indefinitely...[read more](#)

### Taxation of Infertility Treatments and Surrogacy Benefits

January 3, 2023

By [Robert Daily](#), [Martha Sewell](#) & [Mark Stember](#)

Many people, for one reason or another, are unable to start or expand a family. Some people look to assisted reproductive technologies (“ARTs”) to conceive a child. These ART treatments include in vitro fertilization (“IVF”), intracytoplasmic sperm injection (“ICSI”), egg donation, and gestational surrogacy. ARTs can be performed on the intended parents or for the benefit of intended parents with the help of unrelated egg donors or surrogates. The costs of ARTs, which are often substantial, will always be covered by the intended parents (never the unrelated egg donors or surrogates) and often will not be covered by health insurance. Although, increasingly employers are offering benefit programs that seek to cover the costs of ARTs and other infertility-related treatments...[read more](#)

## Senate Proposes Secure 2.0 Act

December 22, 2022

By [Sterling Perkinson](#) & [Robert Daily](#)

On December 19, 2022, the Senate Appropriations Committee released the 2023 Consolidated Appropriations Act, which includes retirement legislation called the “Secure 2.0 Act.” This proposed bill...contains provisions on mandatory automatic enrollment of new 401(k) and 403(b) Plans, the increase of RMD age to 75, ability for retirement plans to make Roth employer contributions, requirement of catch-up contributions to be made on a Roth basis (except for employees with prior year wages of \$145,000 or less), allowance of matching contributions on employee’s student loan payments, and allowance of an emergency savings account for participants...[read more](#)

## DOL to Allow Self-Correction of Late Deposits of 401(k) Plan Deferrals and Loan Repayments

November 18, 2022

By [Peter Daines](#) & [Sterling Perkinson](#)

On November 18, 2022, the DOL released proposed text for a revised Voluntary Fiduciary Correction (“VFC”) Program and related prohibited transaction exemption (“PTE”) 2002-51. The most significant aspect of the revised VFC Program is that employers would be permitted to self-correct certain late deposits of participant deferrals or loan repayments under the VFC Program...[read more](#)

## IRS Extends Determination Letter Program to 403(b) Plans

JD Supra | November 10, 2022

By [Peter Daines](#) & [Sterling Perkinson](#)

The IRS has issued guidance that for the first time permits companies to apply for determination letters for individually-designed 403(b) Plans. Under the new guidance, determination letters will be available for 403(b) plans that have not previously received a letter, on termination, and at other times to be specified in subsequent IRS guidance...[read more](#)

## IRS 2023 Retirement Benefit Plan Limits

October 21, 2022

By [Sterling Perkinson](#) & [Mark Stember](#)

For information on the 2023 IRS Retirement Benefit Plan Limits click [here](#).

## 2023 Health and Fringe Benefit Plan and Other Limits

October 20, 2022

By [Mark Stember](#)

For information on the 2023 Health and Fringe Benefit Plan and Other Limits click [here](#).

## Franchising

### 5 Key Takeaways | Franchising in the USA: Challenges for Latin American Brands

December 16, 2022

By [Marc Lieberstein](#) & [Emiliano Jöcker](#)

On December 6, 2022, at the Asociacion Interamericana de law Propiedad Intelectual (Inter-American Association of Intellectual Property (ASIP)) 23rd Work Sessions and Administrative Council meeting in Medellin, Colombia, Marc A. Lieberstein, Partner at Kilpatrick Townsend LLP spoke with Emiliano Jöcker, Senior Consultant at iFranchise Group to present Franchising in the U.S.A.: Challenges for Latin American Brands...[read more](#)

### 5 Key Takeaways from Coming to America | So You Think Your Franchise is Ready for the U.S. Market?

November 29, 2022

By [Marc Lieberstein](#) & [Lee Plave](#)

On November 3-4, 2022, at the American Bar Association's 45th Annual Forum on Franchising, Marc A. Lieberstein, Partner at Kilpatrick Townsend, and Lee Plave, Partner at Plave Koch PLC, presented Coming To America: So You Think Your Franchise Is Ready For The U.S. Market? The United States is often looked at as a target marketplace for non-US franchisors. But the vast US marketplace can be a challenge to enter, with its distinctly different federal and state franchise laws and regulations, as well as its variety of available forms of intellectual property. Marc and Lee addressed the legal, business and marketplace considerations for in-bound franchisors looking to come to the U.S., along with the numerous issues U.S. lawyers should be prepared to address...[read more](#)

### **A Peek Behind Recent No Poach Antitrust Actions in Franchising**

*New York Law Journal* | **October 25, 2022**

By [Marc Lieberstein](#) & [Tina Fahmy](#)

Over the last few years companies have faced an upswing in antitrust litigation related to no-poach/no-hire agreements. Recent decisions involving no-poach/no-hire agreements between franchisors and franchisees have created uncertainty as to whether these entities can be liable for Section 1 antitrust violations, and which legal standards apply in such cases, creating substantial risk for franchisors and franchisees alike...[read more](#)

## Investment Management & Broker-Dealer

### **SEC Proposes Rule for Investment Advisers Engagement of Service Providers**

**November 15, 2022**

By [Thomas Cain](#) & [Jeffrey Skinner](#)

Last week, the Securities and Exchange Commission (the "SEC") released a proposed rule (the "Proposed Rule") under the Investment Advisers Act of 1940 (the "Advisers Act") that, if adopted as proposed, would require SEC registered investment advisers ("RIAs") meet certain minimum requirements before outsourcing certain services or functions related to their business. In the accompanying press release, the SEC stated that the use of third-party service providers has increased, and the Proposed Rule would protect investors by ensuring that an RIA's outsourcing "is consistent with [the RIA's] obligations to their clients." However, many in the industry have noted that the RIA already owes a duty to its clients in outsourcing services to third-parties and there is no evidence that RIAs currently misunderstand their fiduciary obligations in engaging and outsourcing services to third-parties...[read more](#)

### **The Reports, They Are A-Changin' – SEC Adopts Final Rules to Revamp Shareholder Reports**

**November 7, 2022**

By [Skyler Shields](#), [Kate McCurry](#) & [Thomas Cain](#)

On October 26, 2022, the Securities and Exchange Commission (the "SEC") adopted final rule and form amendments (the "Rules") updating the annual and semi-annual shareholder reports (collectively, "Reports") that mutual funds, exchange-traded funds, and other open-end management investment companies deliver to clients. In an effort to make Reports more digestible for retail investors, the Rules aim to make Reports more concise and visually engaging than those currently provided to shareholders...[read more](#)

## Government Relations

### **Election 2022 and Beyond: Ride a Truly National Strategy to Navigate Shifting Political Tides at Federal and State Levels**

**November 1, 2022**

By [Fritz Vaughan](#)

The next presidential election may not be until 2024, but thinking of this year's election cycle as just a "midterm" is a mistake. When *all* the votes are tallied across America, the policy ramifications of Election Day 2022 may be every bit as consequential for your business or industry than in a presidential cycle. Developing a cohesive national government affairs strategy can help you navigate whatever political tide crashes to shore and shift it in your favor...[read more](#)

## Retail & Consumer Goods

### **Advertising Law Issues: 2022 Look Back and 2023 Look Ahead**

**January 5, 2023**

By [Barry Benjamin](#), [Michele Floyd](#), [Michelle Wilco](#), & [Kristin Adams](#)

For proper business planning purposes, with the turn of the calendar, it's a good idea to try to project where the world is going. It's hard to do that, though, without looking at where we've been. In the legal world, that means reviewing the biggest legal issues to roil the legal community over the past year. With that, Kilpatrick Townsend's Advertising Team takes a look at five of the biggest legal issues from the year 2022, with an eye toward predicting what the five biggest legal issues will be for 2023. We also try to provide some useful recommendations to mitigate risks, but only you, dear reader, can judge how useful our recommendations really are...[read more](#)

## 5 Key Takeaways | Emerging Technology in Retail and Consumer Goods

*JD Supra* | December 22, 2022

By [Jeff Connell](#) & [Farah Cook](#)

Kilpatrick Townsend's Farah Cook and Jeffrey Connell recently presented on the topic of "Emerging Technology in Retail and Consumer Goods." Innovative technologies continue to alter the retail and consumer goods space, especially following rapid adoption and advancement during the pandemic. Ms. Cook and Mr. Connell examined three key transformative technologies—facial recognition, voice technology, and virtual reality—that promise to shape business risk allocation through their impact on the regulatory and legal environment...[watch now](#)

## Mergers & Acquisitions

## 8 Key Takeaways | Biggest Surprises in Cross-Border IP and Patent Deals

November 1, 2022

By [Siegmar Pohl](#), [Joseph Snyder](#) & [Pallavi Shah](#)

Kilpatrick Townsend Partners Siegmar Pohl and Joseph Snyder recently participated in a panel discussion at the Licensing Executives Society 2022 Annual Meeting in San Francisco. They were joined by Pallavi Shah, Managing Director of Mobity. Their session covered key provisions that all cross-border agreements have in common, including: choice-of-law and forum selection clauses; foreign filing licenses & export control; compulsory licenses; no challenge clause; EU antitrust law on tech transfer agreements; grace period for an inventor's own work; prophetic examples and post-filing data; and exclusions from patentability...[read more](#)

## Firm News

[Kilpatrick Townsend Counsel, Benjamin Smith, featured on \*The Squeaky Clean Energy Podcast\*](#)

[KTS Strategies Senior Managing Director, Ches McDowell, appeared on \*On The Record to Discuss Legislation to Legalize Online Sports Betting in North Carolina\*](#)

[Kilpatrick Townsend Ranked 5<sup>th</sup> Largest Law Firm in Atlanta by \*Atlanta Business Chronicle\*](#)

[Kilpatrick Townsend's Financial Institutions Team Grows in Atlanta](#)

[Kilpatrick Townsend Attorneys Recognized in \*Business North Carolina Magazine's\* 2023 "Legal Elite"](#)

[Kilpatrick Townsend Partner, Sterling Perkinson, quoted: "IRS: Remote Notarization, a Pandemic Development, May Stay"](#)

[Kilpatrick Townsend Elects New Partners and Elevates New Counsel for 2023](#)

[Firm Ranked 45<sup>th</sup> Largest in Colorado Among Top 200 Law Firms](#)

[135 Kilpatrick Townsend Attorneys Recognized in 2022 \*Super Lawyers\*](#)

[Kilpatrick Townsend Partner, Gary Bronstein, interviewed: "Bank M&A 2022 Deal Tracker: 11 deals announced in November"](#)

[Kilpatrick Townsend Attorneys, Sterling Perkinson and Peter Daines, quoted: "DOL Proposes Self-Correcting of Delinquent 401\(k\) Contributions"](#)

[Kilpatrick Townsend Ranked 30<sup>th</sup> Overall for Social Impact in the U.S.](#)

[Kilpatrick Townsend Ranked 9<sup>th</sup> in the U.S. for Pro Bono Firms with 251-600 attorneys](#)

[Kilpatrick Townsend referenced: "How Law Firms Are Focusing Their Pro Bono Efforts"](#)

[Kilpatrick Townsend Partner, Gary Bronstein, quoted: "Washington Federal-Luther Burbank deal-close target date aggressive – attorneys"](#)

[Kilpatrick Townsend Chair, Henry Walker, named one of Georgia's Most Influential Leaders 2022 in Georgia-Trend Georgia 500 publication](#)

[Kilpatrick Townsend Earns Sweeping Recognition in U.S. News – Best Lawyers® 2023 "Best Law Firms" Rankings](#)

[Article by Kilpatrick Townsend Chair, Henry Walker, in Best Lawyers: "To Serve and To Lead"](#)

[4 Key Takeaways - Recap: GAPABA 4th Annual Women's Leadership](#)

[Kilpatrick Townsend Attorneys Garner 36 Rankings on the 2022 International Who's Who of Business Lawyers](#)

[Kilpatrick Townsend Associate, Michael Grace, receives the Winston Under 40 Leadership Award](#)

## Recent Transactions

### **Merger of Equals Announced Between The Community Financial Corporation and Shore Bancshares, Inc., Creating One of Maryland's Top Community Banks** December 2022

Represented The Community Financial Corporation in a merger of equals transaction with Shore Bancshares, Inc. that will create one of Maryland's top Community Banks with approximately \$6 billion in assets.

### **AT&T Sells Maritime Cellular Networks Provider** October 14, 2022

Represented AT&T, a global telecommunications provider, in the sale of Wireless Maritime Services, a joint venture which provides cellular and wireless communications services on cruise ships.

## New Corporate Attorneys



**Meghan Farmer**  
**Partner | Technology, Privacy & Cybersecurity**  
**Atlanta**  
+1 404 541 6816  
[mfarmer@kilpatricktownsend.com](mailto:mfarmer@kilpatricktownsend.com)

Meghan is a privacy and data protection specialist and strategic advisor who leverages her nearly 15 years of diverse privacy experience to provide clear, actionable guidance to business leaders, cross-functional stakeholders, and technical product teams.



**Ross Speier**  
**Partner | Financial Institutions**  
**Atlanta**  
+1 404 745 2423  
[rspeier@kilpatricktownsend.com](mailto:rspeier@kilpatricktownsend.com)

Ross focuses his practice on counseling banks and financial services providers regarding federal and state regulation of consumer financial products and services.



**Karen Arista Lindqvist**  
**Associate | Nordic Legal Services**  
**Stockholm**  
+46 8 505 646 25  
[karistalindqvist@kilpatricktownsend.com](mailto:karistalindqvist@kilpatricktownsend.com)

Karen focuses her practice on public procurement.



**Zain Haq**  
**Associate | Technology, Privacy & Cybersecurity**  
**Atlanta**  
+1 404 815 6046  
[zhaq@kilpatricktownsend.com](mailto:zhaq@kilpatricktownsend.com)

Zain helps clients navigate a range of cybersecurity, privacy, risk management, and regulatory compliance matters.



**Katherine Jeffery**  
**Associate | Technology, Privacy & Cybersecurity**  
**Atlanta**  
+1 404 532 6961  
[kjeffery@kilpatricktownsend.com](mailto:kjeffery@kilpatricktownsend.com)

Katherine focuses her practice on information technology, business outsourcing agreements, systems integration, software as a service (SaaS) transactions, technology licensing, and other technology and commercial transactions.



**Alee Soleimanpour**  
**Associate | Employee Benefits & Tax**  
**Denver**  
+1 303 607 3372  
[msoleimanpour@kilpatricktownsend.com](mailto:msoleimanpour@kilpatricktownsend.com)

Alee focuses his practice on tax-related matters and disputes.



**Kadri Timmusk**  
**Associate | Nordic Legal Services**  
**Stockholm**  
+46 8 505 646 26  
[ktimmusk@kilpatricktownsend.com](mailto:ktimmusk@kilpatricktownsend.com)

Kadri focuses her practice on dispute resolution, primarily within construction and consultant law.

To view our latest Quarterly IP Digest, please click [here](#).

© 2023 Kilpatrick Townsend & Stockton LLP

[Manage Subscriptions](#) | [Unsubscribe](#) | [Forward to a Colleague](#) | [Privacy Policy](#) | [Anti-Spam](#)

1100 Peachtree Street, Suite 2800, Atlanta, GA 30309-4528