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O'Connor Carnathan & Mack

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Summarizing opinions from Jan. 1, 2026 through Mar. 31, 2026

FEATURED DECISIONS:

Bokhari v. N.E. Savings Bank

2026 Mass. Super. LEXIS 7 (Feb. 18, 2026) (Salinger, J.)

Home Seller Permitted to Bring Chapter 93A Claim Against Buyer's Bank

Plaintiffs Syed and Polly Bokhari (the "Bohkaris") entered into a purchase and sale agreement to sell their home after receiving a mortgage pre-approval letter issued by defendant North Eastern Savings Bank (the "Bank") to the prospective buyer. The letter represented that the Bank had approved the buyer based on its "review of [the buyer's] credit profile and verification of [the buyer's] assets and income." The Bokharis presented evidence that these representations were false because the Bank had neither reviewed the buyer's credit nor verified the buyer's financial information. The buyer later backed out of the transaction and pursued another property. According to the Bokharis, taking their home off the market and relisting it after the failed sale created the perception that something was wrong with the property, leaving them unable to find another buyer. They sued the Bank for fraud, negligent misrepresentation, and violations of G.L. c. 93A. The Bank thereafter moved for summary judgment on all three claims. The court denied the Bank's motion for summary judgment, holding that a jury could reasonably conclude that a lender's allegedly false mortgage pre-approval letter proximately caused the plaintiffs' losses and constituted an unfair or deceptive act under G.L. c. 93A, even in the absence of a direct business relationship between the parties.

The court rejected the Bank's argument that the plaintiffs could not establish proximate causation as a matter of law. Although the Bank contended that the Bokharis' inability to sell their home fell outside the scope of any foreseeable risk arising from the pre-approval letter, the court emphasized that proximate cause is ordinarily a jury question. Viewing the evidence in the light most favorable to the plaintiffs, a reasonable jury could conclude that sellers were among the parties the Bank should have expected to rely on its representations and that the alleged losses were a foreseeable consequence of issuing a pre-approval letter without conducting the represented review and verification.

The court likewise declined to rule that the buyer's decision to breach the purchase and sale agreement constituted a superseding cause. Whether an intervening act breaks the chain of causation depends on foreseeability, and reasonable jurors could differ as to whether it was foreseeable that a buyer approved through an allegedly deficient pre-approval process might fail to complete the transaction.

Finally, the court rejected the Bank's contention that the Chapter 93A claim failed because the Bank had no direct commercial relationship with the Bokharis. The court explained that Chapter 93A does not require privity. A defendant acts in a business context where its conduct interferes with trade or commerce, even indirectly. A jury could find that the bank, acting in the course of its lending business, knowingly or negligently conveyed false information to facilitate a real estate transaction and thereby induced the Bokharis to enter into the purchase agreement. Such conduct, if proven, could constitute an unfair or deceptive act under Chapter 93A. ■

Vasan v. Harvey

No. 25-2643-BLS1 (Jan. 14, 2026) (Krupp, J.)

Defendant Did Not Waive BLS Venue Objection By Filing Related Action in BLS

Plaintiff Sita Vasan, acting as trustee of the Michael Andrew Sheehan Revocable Trust (the "Trust"), filed suit against defendant Elizabeth Harvey ("Harvey"), alleging that Harvey borrowed $150,000 from the Trust in 2018 to finance an energy project through EIP Investment LLC ("EIP"), agreed to repay the loan with interest and a project success fee, and assigned a life insurance policy as collateral. The complaint asserted claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and fraud in the inducement, alleging that the defendant failed to repay the loan, misused loan proceeds, and failed to pay the agreed-upon success fee after the project began generating power. Although the plaintiff resided in Bethesda, Maryland and the defendant resided in Holden, Massachusetts, the plaintiff filed the action in Suffolk County and sought assignment to the BLS, which the court accepted. The defendant filed a motion to dismiss under Mass. R. Civ. P. 12(b)(3) for improper venue. The court allowed the motion, held that acceptance of a case into the Business Litigation Session does not override Massachusetts venue statutes, and transferred the action to Worcester Superior Court.

The court concluded that venue was improper under G.L. c. 223, § 1, which requires a transitory action to be brought in the county where a Massachusetts party resides or has its usual place of business. Because the plaintiff lived outside Massachusetts and the defendant lived in Worcester County, Worcester County was the only proper venue. The court emphasized that acceptance into the BLS does not create venue in Suffolk County, citing Superior Court Administrative Directive No. 24-1, which expressly preserves venue objections even after a case is accepted into the BLS.

The plaintiff argued that the defendant had waived any venue objection by filing a separate, related BLS action involving EIP. The court rejected that argument, holding that a party's decision to file one case in the BLS waives venue only in that action and does not constitute a blanket waiver in later-filed cases, even if related. Nor could considerations of efficiency or judicial economy overcome the mandatory venue requirements of the statute. ■

The Commerce Ins. Co. v. AAA Northeast

No. 2684CV00003-BLS2 (Jan. 30, 2026) (Salinger, J.)

Conclusory Assertions of Harm to Customer Relationships and Goodwill Insufficient to Support Preliminary Injunction

Plaintiff Commerce Insurance Company (which does business as "MAPFRE") brought suit against AAA Northeast and related entities alleging they breached a 2006 marketing agreement by allowing Motor Club Insurance Company ("MCIC"), which was partially owned by AAA Northeast, to market automobile insurance to AAA members using the AAA emblem and preferential pricing in competition with MAPFRE. MAPFRE asserted claims for breach of contract, intentional interference with advantageous business relations, unjust enrichment, and violations of G.L. c. 93A and sought preliminary injunctive relief. The court denied MAPFRE's motion for a preliminary injunction, emphasizing that a plaintiff seeking such

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extraordinary relief must present competent evidence of irreparable harm that cannot be remedied through money damages.

The court first noted several procedural deficiencies in MAPFRE's request. The motion itself failed to specify the relief sought and improperly relied solely on the verified complaint rather than the memorandum required by Superior Court Rule 9A. The proposed injunction broadly prohibited interference with MAPFRE's contractual rights without identifying the conduct to be restrained, raising concerns under Mass. R. Civ. P. 65(d), which requires injunctions to describe prohibited acts with reasonable detail. MAPFRE further compounded these defects by filing its supporting memorandum and affidavits weeks later, without leave of court and in violation of Rules 9A and 6(c).

More fundamentally, however, the court concluded that MAPFRE failed to demonstrate irreparable harm. The verified complaint contained only conclusory assertions that MAPFRE had suffered damage to customer relationships, reputation, and goodwill. Even considering the untimely affidavits and memorandum, MAPFRE offered no evidence that it had actually lost customers, that any future lost profits could not be quantified, or that any injury to goodwill belonged uniquely to MAPFRE rather than being compensable through damages. The court reiterated that economic losses, including harm to goodwill and market share, generally do not constitute irreparable harm absent evidence that the injury is incalculable or threatens the very existence of the business. ■

Nierenberg v. Lyman

No. 22-1881-BLS1 (Jan. 13, 2026) (Krupp, J.)

Fraud-Based Claims Could Be Based on Statements Defendant Made to Third-Party

Plaintiff Albert Nierenberg ("Nierenberg") alleged that his son invested money from a joint account in investment vehicles offered by defendant M. Connor Benjamin Lyman and related entities, and that the defendants later refused to return those funds. Nierenberg asserted claims under the Massachusetts Uniform Securities Act, G.L. c. 110A, including claims based on the sale of unregistered securities and unlicensed activity, as well as common-law claims for fraud, fraudulent concealment, negligent misrepresentation, conversion, and violations of G.L. c. 93A. Both sides moved for summary judgment. The court denied both motions.

The court concluded that genuine disputes of material fact precluded judgment as a matter of law. Most significantly, the parties disputed whether the money invested from the joint account actually belonged to Nierenberg and whether he was the true purchaser of the securities. Those factual issues bore directly on his standing and ability to recover under the various statutory and common-law theories and therefore had to be resolved at trial.

The court also rejected the defendants' argument that the fraud-based claims failed because any alleged misrepresentations were made only to Nierenberg's son and not directly to Nierenberg himself. Relying on Massachusetts precedent and the Restatement (Second) of Torts, the court explained that a defendant may be liable for misrepresentations communicated through a third party where the defendant intended or had reason to expect that the statements would be relayed to, and relied upon by, the plaintiff. Thus, the absence of direct communications between the defendants and Nierenberg did not entitle the defendants to summary judgment on the fraud, misrepresentation, and Chapter 93A claims. ■

Zhu v. Mukerjee

No. 25-3283-BLS1 (Jan. 7, 2026) (Krupp, J.)

Preliminary Injunction Denied Where Plaintiffs Failed to Demonstrate Misuse of Confidential Information

Plaintiff Dr. Hongli Zhu ("Zhu"), a Northeastern University professor and researcher in the field of all-solid-state batteries ("ASSBs"), alleged that Dr. Sanjeev Mukerjee ("Mukerjee"), a fellow Northeastern University professor of chemistry and chemical biology, and former Northeastern Ph.D. student Tongtai Ji ("Ji") misappropriated confidential information developed in Zhu's laboratory after transferring to Mukerjee's laboratory. Zhu and her company, Solid Ionics, Inc., asserted claims for trade secret misappropriation and conspiracy, contending that the defendants used proprietary research and processes developed in Zhu's lab to rapidly advance their own ASSB work. They sought a preliminary injunction barring any further use of the alleged trade secrets. The court denied the motion for a preliminary injunction, holding that the plaintiffs failed to demonstrate a likelihood of success on their misappropriation claims.

Although the defendants disputed whether the information at issue qualified as trade secrets and whether Zhu had standing to assert such claims, the court assumed for purposes of the motion that at least some of the information developed in Zhu's laboratory constituted protectable trade secrets. The motion nevertheless failed because Zhu did not make a sufficient factual showing that the defendants had actually misused any confidential information. The court noted that Zhu described her alleged trade secrets only at a high level of generality and offered little more than conclusory assertions that Ji and Mukerjee had used them.

The court emphasized that the critical inquiry in a misappropriation case is the defendant's conduct – namely, whether the defendant acquired information through a confidential relationship and then used that information without authorization. Here, Zhu did not identify any specific trade secrets that Ji had taken other than knowledge retained "in his head," nor did she provide evidence demonstrating that the defendants actually used any protected information. Her contention that Ji's rapid progress in developing ASSBs necessarily implied misuse amounted to speculation rather than proof and failed to account for Ji's general knowledge, the substantial body of published research in the field, and Mukerjee's independent expertise. The defendants, by contrast, denied using Zhu's confidential information and provided explanations regarding the materials and methods employed in their own research. ■

Capital Artists, LLC v. Asahi Karei Holdings US, Inc.

No. 2584CV01973-BLS2 (Jan. 7, 2026) (Salinger, J.)

Concerns of Adverse Publicity Do Not Justify Impoundment

Plaintiff Capital Artists, LLC ("Capital Artists"), a minority preferred shareholder of Active Protective Technologies ("APT"), brought derivative claims alleging that defendant Asahi Karei breached a note purchase agreement by failing to provide promised funding, charged usurious interest rates, and knowingly participated in breaches of fiduciary duty by certain directors of APT. Capital Artists moved to impound its original complaint, portions of its amended complaint, and several agreements attached as exhibits. Both Asahi Karei and APT joined in the request. The court denied the motions, reaffirming the strong presumption of public access to judicial records and the demanding standard required to overcome it.

The court emphasized that impoundment is "the exception to the rule" and that judicial records are

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presumptively public absent a showing of good cause. The court further explained that the party seeking impoundment bears the burden of demonstrating specific facts justifying secrecy and that the parties' agreement to impound materials, standing alone, is legally insufficient. Applying those principles, the court found that the parties offered only conclusory assertions of competitive harm. Their argument that disclosure of the loan amounts and interest rates could impair APT's ability to obtain future financing was unpersuasive because any prospective lender would necessarily require disclosure of existing debt obligations and their terms. Likewise, the parties failed to explain how disclosure of five- and six-year-old information concerning customers, suppliers, and executive compensation could presently inflict competitive harm. The court also rejected efforts to impound allegations describing Asahi Karei's alleged misconduct, noting that generalized concerns about adverse publicity do not constitute good cause. ■

Cummings v. Deloitte Tax LLP

No. 23-103-BLS1 (Jan. 16, 2026) (Krupp, J.)

Plaintiffs Waived Attorney-Client Privilege Regarding Subject of Attorney's Opinions When They Disclosed Attorney as Expert Witness

This accounting malpractice action arose from defendant Deloitte Tax LLP's ("Deloitte") tax advice concerning the plaintiffs William and Joyce Cummings and third-party defendant W.S. Cummings Realty's 2016 tax returns. During an IRS examination, the plaintiffs retained WilmerHale attorney Roger Ritt ("Ritt") to defend their tax positions and argue that their treatment of certain distributions and losses was reasonable. In the malpractice litigation, however, the plaintiffs disclosed Ritt as an expert witness who intended to testify that Deloitte should have recognized errors in the tax treatment at issue and that Deloitte had been grossly negligent in its advice. Deloitte moved to compel production of more than 3,000 documents withheld on grounds of attorney-client privilege and work product protection relating to WilmerHale's representation during the IRS examination and sought to depose Ritt regarding those communications and the basis for his opinions. The court held that a party waives attorney-client privilege and work product protection as to the subject matter of an attorney's opinions when it elects to call that attorney as an expert witness.

The court concluded that, by choosing to present Ritt as an expert, the plaintiffs placed his advice and opinions at issue and thereby waived privilege and work product protections within the scope of his anticipated testimony. Relying on federal authority, prior decisions addressing at-issue waiver, and analogous Massachusetts precedent, the court reasoned that the truth-seeking process would be undermined if a party could present favorable expert testimony from its former attorney while shielding potentially inconsistent prior statements and the materials underlying those opinions from discovery.

At the same time, the court declined to order wholesale production of all 3,074 withheld documents. Because the privilege log described the documents only generically as "Legal communication and work by WilmerHale re IRS Audit," the court could not determine whether every document fell within the waiver. The waiver extended to Ritt's expert opinions, prior statements related to or inconsistent with those opinions, and the work performed, documents reviewed, and communications that informed those opinions. The plaintiffs were therefore ordered to produce all documents within that scope and to provide a revised, more particularized privilege log for any documents they contended remained protected, bearing the burden of demonstrating that those materials fell outside the waiver. ■

Zemcar Inc. v. Uber Technologies, Inc.

2026 Mass. Super. LEXIS 25 (Mar. 20, 2026) (Salinger, J.)

Plaintiff's Revised Trade Secret Disclosure Still Deemed Insufficient Under MUTSA

Plaintiff Zemcar Inc. d/b/a Grip Mobility Co. ("Grip") alleged that Uber Technologies, Inc. ("Uber") misappropriated trade secrets relating to smartphone applications Grip developed to record rides and monitor transportation services after the parties' business relationship ended. Several months earlier, the Court had stayed trade secret discovery because Grip's initial trade secret disclosure failed to adequately identify the trade secrets at issue. In response, Grip served a revised disclosure approaching 100 pages in length and moved to compel discovery, while Uber sought to continue the protective order staying trade secret discovery. The court denied Grip's motion to compel trade secret discovery and continued the stay of such discovery, holding that Grip had still failed to identify its alleged trade secrets with the "reasonable particularity" required by the Massachusetts Uniform Trade Secrets Act ("MUTSA").

The court acknowledged that Grip's revised disclosure provided substantially more technical detail than its earlier effort, but concluded that it still failed to satisfy MUTSA's threshold disclosure requirement. Grip repeatedly described broad categories of information without clearly identifying which aspects of its applications actually constituted trade secrets and distinguishing them from concepts that were publicly known, obvious to those skilled in the field, or otherwise unprotectable. The disclosure frequently referred to generic functions, such as capturing audio or video, monitoring battery levels, or tracking GPS location, leaving Uber and the court unable to determine whether Grip claimed those general concepts themselves as trade secrets or instead claimed some narrower implementation.

The court emphasized that MUTSA requires plaintiffs to identify alleged trade secrets with sufficient precision to permit the defendant to prepare a defense, enable the court to define the scope of discovery, and prevent a plaintiff from reshaping its theories after reviewing a competitor's confidential information. Grip's disclosure instead resembled an effort to characterize virtually everything associated with its software as proprietary. Cross-references between sections, expansive tables listing approximately 180 purported trade secrets, and vague descriptions of methods and techniques compounded the ambiguity. Even where portions of the disclosure identified potentially protectable source code snippets with adequate specificity, Grip expanded those alleged trade secrets by incorporating broader sections of the disclosure that remained vague and overinclusive.

Rejecting Grip's argument that Uber already knew what information it had received and that discovery should resolve any uncertainty, the court reiterated that MUTSA expressly requires adequate trade secret identification before discovery concerning the defendant's alleged misappropriation may proceed. The statute is designed to prevent plaintiffs from using discovery to determine what a defendant possesses and then retroactively defining those materials as trade secrets. Accordingly, the court ordered Grip to provide a revised trade secret disclosure complying with G.L. c. 93, § 42D(b). ■

The Giving Back Fund, Inc. v. Pasternack

2026 Mass. Super. LEXIS 8 (Feb. 18, 2026) (Salinger, J.)

Court Had Personal Jurisdiction Over Director Who Participated in Remote Board Meetings of a Massachusetts Non-Profit

Plaintiff The Giving Back Fund, Inc. (the "Fund"), a Massachusetts nonprofit organization providing foundation management services to professional athletes, celebrities, and other high-net-worth clients, alleged that former director Joanne Pasternack ("Pasternack") engaged in misconduct while serving on its board from 2021 through early 2023. The Fund alleged that Pasternack falsely informed one of the Fund's clients that it owed the Fund a transfer fee of several hundred thousand dollars, allegedly hoping to leverage that payment into forgiveness of a $45,000 debt she owed the Fund. The Fund claimed that it lost the client as a result and brought claims for breach of fiduciary duty, tortious interference, violations of G.L. c. 93A, breach of contract, and aiding and abetting commercial disparagement. Pasternack moved to dismiss, arguing that the court lacked personal jurisdiction because she had never physically entered the Commonwealth and had interacted with the Fund only through videoconferences, emails, and other remote communications. The court denied the motion to dismiss, holding that repeated participation in board meetings of a Massachusetts nonprofit by videoconference constituted the transaction of business in Massachusetts sufficient to satisfy both the long-arm statute and constitutional due process.

With respect to the long-arm statute, the court emphasized that the phrase "transacting business" is construed broadly and does not require physical presence in the Commonwealth. By repeatedly participating in board meetings conducted from Massachusetts over a period of years, Pasternack engaged in a relationship of substantial duration with a Massachusetts organization and purposefully involved herself in its management. Because the alleged misconduct arose from her role as a director and her participation in the Fund's affairs, the statutory "arising from" requirement was also satisfied.

The court further held that exercising jurisdiction comported with due process. Pasternack had purposefully availed herself of the privilege of conducting activities in Massachusetts by undertaking continuing obligations as a director of a Massachusetts nonprofit. The Fund's claims related directly to those contacts, and requiring Pasternack to defend the action in Massachusetts did not offend traditional notions of fair play and substantial justice. Rejecting any bright-line rule requiring physical presence, the court observed that modern business is frequently conducted through remote communications and that both Massachusetts courts and the Supreme Court have consistently recognized that such contacts can establish the minimum contacts necessary for personal jurisdiction. ■

Redimere Advisors, LLC v. Plymouth Industrial REIT, Inc.
No. 2684CV00083-BLS2 (Jan. 20, 2026) (Salinger, J.)

Disputed Claims Were Not "Debts" Within Meaning of G.L. c. 214, § 3(6)

Plaintiff Redimere Advisors, LLC ("Redimere") brought suit against Plymouth Industrial REIT, Inc. ("Plymouth"), alleging that Plymouth retained Redimere to identify investors for potential financing transactions and promised a two percent "Success Fee" if such a transaction closed. After Plymouth announced a nearly $1 billion merger, Redimere claimed it had introduced the parties and helped negotiate the deal, entitling it to approximately $20 million in fees and treble damages under G.L. c. 93A. Seeking to secure that potential recovery, Redimere moved for a $60 million equitable attachment under the reach-and-apply statute against funds that would be paid in connection with the merger. The court denied Redimere's request, holding that a disputed claim for breach of contract and Chapter 93A damages does not constitute a "debt" capable of supporting prejudgment relief.

The court acknowledged that Redimere had plausibly alleged viable claims for breach of contract or, alternatively, unjust enrichment. The court nevertheless held that the allegations did not establish the existence of a "debt" within the meaning of G.L. c. 214, § 3(6). The court explained that a hotly contested claim for damages arising from an alleged breach of contract or Chapter 93A violation is not a debt subject to the reach-and-apply statute until liability has been established. Because Plymouth vigorously disputed both liability and damages, Redimere could not obtain an equitable attachment based on those unresolved claims.

The court also identified a separate and independent reason for denying relief: the funds Redimere sought to attach did not belong to Plymouth. Under the merger agreement, the consideration for the transaction would be transferred to a paying agent, held in trust for the sole benefit of Plymouth's shareholders, and distributed directly to them. Plymouth itself would never possess or have any legal interest in those funds. Because the reach-and-apply statute permits attachment only of property in which the debtor has a right, title, or interest, Redimere could not reach assets earmarked exclusively for Plymouth's shareholders. The court further rejected Redimere's argument that the shareholders lacked any interest in the merger proceeds because they were not parties to the agreement, concluding that they were intended third-party beneficiaries entitled to enforce the payment obligations. ■

BMR-21 Erie Street LLC v. MIL 21E, LLC
No. 2584CV02648-BLS-1 (Feb. 2, 2026) (Barry-Smith, J.)

Amending Complaint to Add Allegations Against Parties Other Than Bankruptcy Debtor Did Not Violate the Automatic Stay

BMR-21 Erie Street LLC ("Landlord") sued its tenant MIL 21E, LLC ("Tenant") for unpaid lease obligations and also sought to hold five affiliated entities ("Tenant Affiliates") liable by piercing the tenant's corporate veil. After the Tenant Affiliates moved for judgment on the pleadings, the Tenant filed for bankruptcy protection, triggering the automatic stay under 11 U.S.C. § 362. The Landlord then moved to amend its complaint to expand its allegations against the non-debtor affiliates. The Tenant Affiliates argued that the proposed amendment violated the bankruptcy stay by continuing the action against the Tenant and, in any event, was futile because the amended allegations still failed to justify disregarding the corporate form.

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The court held that a plaintiff may amend its complaint to pursue veil-piercing claims against non-debtor affiliates of a bankrupt defendant without violating the automatic bankruptcy stay and that detailed allegations of affiliate misconduct were sufficient to survive a challenge at the pleading stage.

The court rejected the argument that the amendment violated the automatic stay. Relying on bankruptcy authority addressing similar circumstances, the court explained that the stay protects the debtor, not non-debtor affiliates, and does not bar a plaintiff from continuing to prosecute claims against other parties. Because the Landlord expressly acknowledged that its claims against the Tenant were stayed and did not assert new claims against the debtor, the proposed amendment merely expanded the allegations against the non-debtor affiliates and did not constitute an impermissible continuation of the action against the Tenant.

The court also found that the proposed amended complaint was not futile. Although Massachusetts courts consider numerous factors when deciding whether to pierce the corporate veil, the inquiry is not a mechanical "counting exercise." Accepting the allegations as true, the Landlord had plausibly alleged common ownership, common leadership, and pervasive control among the affiliated entities. It further alleged that the Tenant Affiliates siphoned funds from the Tenant, caused the Tenant to withhold rent and become insolvent, and interfered with the Tenant's business relationships by steering licensees away from the leased premises and toward facilities operated by the Tenant Affiliates. Those allegations were sufficiently detailed to support a plausible veil-piercing claim, even if their truth remained subject to challenge at later stages of the litigation. ■

Schoonover v. Burnell Controls, Inc.

2026 Mass. Super. LEXIS 5 (Feb. 26, 2026) (Salinger, J.)

Court Rejects Proposed Third-Party Business Tort Claims for Lack of Compliance With Civil Procedure Rule 14

Plaintiff Christopher Schoonover ("Schoonover"), former vice president and a shareholder in defendant Burnell Controls, Inc. ("Burnell"), sued Burnell for allegedly breaching its obligations to repurchase his shares and repay money he had loaned the company. Burnell sought to expand the litigation by asserting claims that Schoonover secretly worked for competitor Edge Automation ("Edge") while still employed by Burnell, provided Edge with access to Burnell's computer systems, and misappropriated confidential information and trade secrets. Burnell sought to amend its answer to add nine new counterclaims against Schoonover, eight third-party claims against Edge, and numerous additional affirmative defenses. The proposed amendments included claims under the Massachusetts and federal trade secrets statutes, RICO, the Computer Fraud and Abuse Act, and various common-law tort theories. The court denied Burnell's motion, holding that the proposed amendments were futile.

The court concluded that all of the proposed counterclaims were time-barred. Although fiduciary relationships may toll statutes of limitations under G.L. c. 260, § 12 until the injured party has actual knowledge of the fiduciary's wrongdoing, Burnell's own CEO had testified during a Rule 30(b)(6) deposition that, by December 2019, he knew Schoonover was working with Edge, had instructed an employee to configure a laptop to allow Edge remote access, and had enabled Edge to access Burnell's computer systems and proprietary information. The court held that this testimony established Burnell's actual knowledge no later than late 2019. Because the proposed claims were subject to three- and four-year limitations periods and Schoonover did not file suit until June 2024, the new counterclaims were untimely.

The court also rejected Burnell's attempt to assert third-party claims against Edge. Rule 14 permits impleader only where the third party may be liable to

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the defendant for all or part of the plaintiff's claim, such as through indemnification or contribution. Burnell's proposed claims against Edge were independent business tort claims arising from Edge's alleged misconduct and had nothing to do with any liability Burnell might owe Schoonover on his contract claims. The court further noted that Burnell had failed to provide Edge with notice of the proposed amendment, though it concluded that the impropriety of the claims under Rule 14 made further proceedings unnecessary. ■

Leighton v. Blattner Technologies SPV 1, LLC

No. 24-453-BLS1 (Feb. 3, 2026) (Krupp, J.)

Director Entitled to Access Privileged Board Communications with Counsel Until He Became Adverse

After defendant Blattner Technologies SPV 1, LLC ("Blattner") acquired a majority interest in LoadSpring Solutions, Inc. ("LoadSpring") and installed its own directors, plaintiff D. Eric Leighton ("Leighton") was removed as CEO. Leighton then brought direct claims for breach of fiduciary duty, breach of contract, fraud, and defamation, as well as derivative claims on behalf of LoadSpring. Leighton moved to compel production of numerous categories of documents withheld by LoadSpring and others on attorney-client privilege grounds. The court allowed in part and denied in part the motions to compel, clarifying the limits of privilege in the context of board communications, derivative litigation, and communications shared with third parties.

The court first held that, under Delaware law, Leighton was entitled to access privileged board communications generated while he remained a joint client of the board's counsel. Although directors generally have equal access to privileged board information, that right ends once sufficient adversity exists between the director and the corporation. The court identified December 20, 2022 (the date the board voted in executive session to remove Leighton as CEO) as the point at which Leighton's interests became sufficiently adverse that he could no longer reasonably expect to be a client of board counsel. Accordingly, privileged board communications predating that event had to be produced.

The court rejected Leighton's attempt to invoke Delaware's *Garner* doctrine to obtain privileged communications relating to his derivative claims. Although shareholders may, in narrow circumstances, overcome corporate privilege upon a showing of good cause, the court concluded that the doctrine did not apply where the plaintiff simultaneously pursued extensive direct claims arising from the same underlying events. Extending *Garner* in that context would invite litigants to add derivative claims simply to circumvent privilege protections.

The court further held that communications involving third parties were not protected by the attorney-client privilege. The defendants failed to establish that those entities fell within any joint interest arrangement or were necessary participants whose involvement was indispensable to the provision of legal advice. As a result, the inclusion of those third parties waived any otherwise applicable privilege. Similarly, communications that did not involve attorneys, or that had originally been sent to Leighton or his wife, were not privileged and had to be produced. ■

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