

MARCH 2024

# LITIGATION INSIGHTS

## MOORE'S FEDERAL PRACTICE—TOP THREE HIGHLIGHTS

The following three summaries are this month's Editor's Top Picks from the dozens of decisions added to Moore's Federal Practice and Procedure.

### CLAIM PRECLUSION

#### Stipulated Judgments

##### *Autumn Wind Lending, LLC v. Est. of Siegel*

2024 U.S. App. LEXIS 2960 (6th Cir. Feb. 8, 2024)

[Jump to full summary](#)

The Sixth Circuit has held that a stipulated dismissal with prejudice did not have claim-preclusive effect, because the dismissed claims had not been actually litigated and could not have been litigated in the dismissed action.

### SANCTIONS

#### Rule 11

##### *Triantos v. Guaetta & Benson, LLC*

91 F.4th 556, 2024 U.S. App. LEXIS 2038 (1st Cir. Jan. 30, 2024)

[Jump to full summary](#)

The First Circuit has held that a movant's failure to comply with Rule 11's "safe harbor" provision, coupled with the district court's failure to describe the misconduct and explain the basis for its decision to impose sanctions, constitutes plain error justifying the reversal of sanctions imposed under the rule, even in the absence of an objection.

### SELECTING JURORS

#### Juror Bias

##### *Fylling v. Royal Caribbean Cruises, Ltd.*

91 F.4th 1371, 2024 U.S. App. LEXIS 2241 (11th Cir. Feb. 1, 2024)

[Jump to full summary](#)

The Eleventh Circuit has held that the district court abused its discretion by not investigating whether a juror could impartially discharge her responsibilities after learning that the juror's niece worked for the defendant, and by allowing the juror to participate in deliberations.

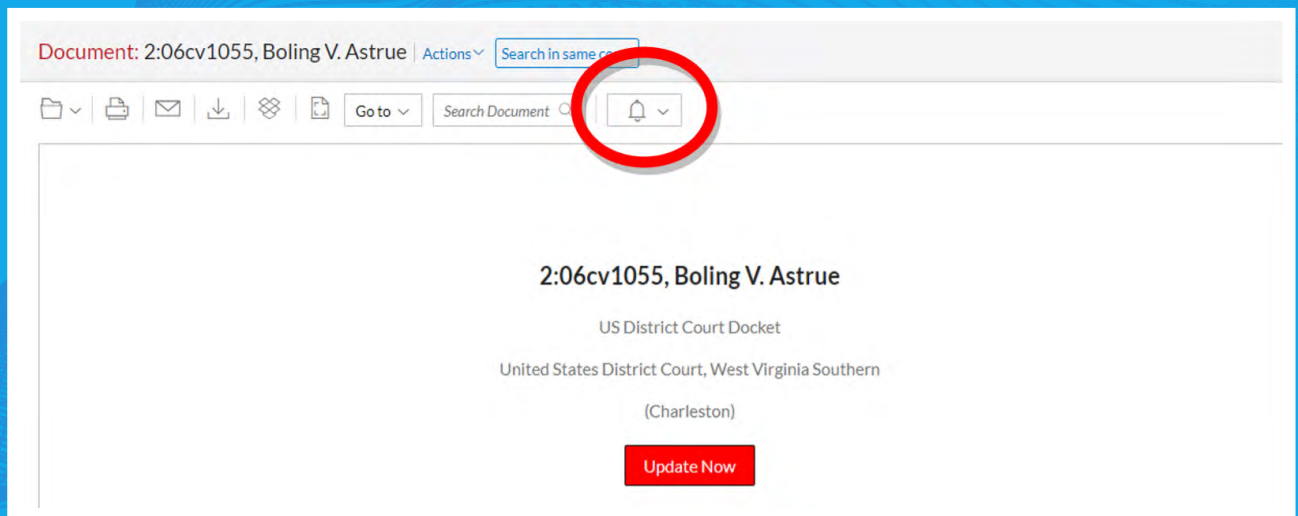
▼ [View Moore's Federal Practice & Procedure in Lexis Advance](#)



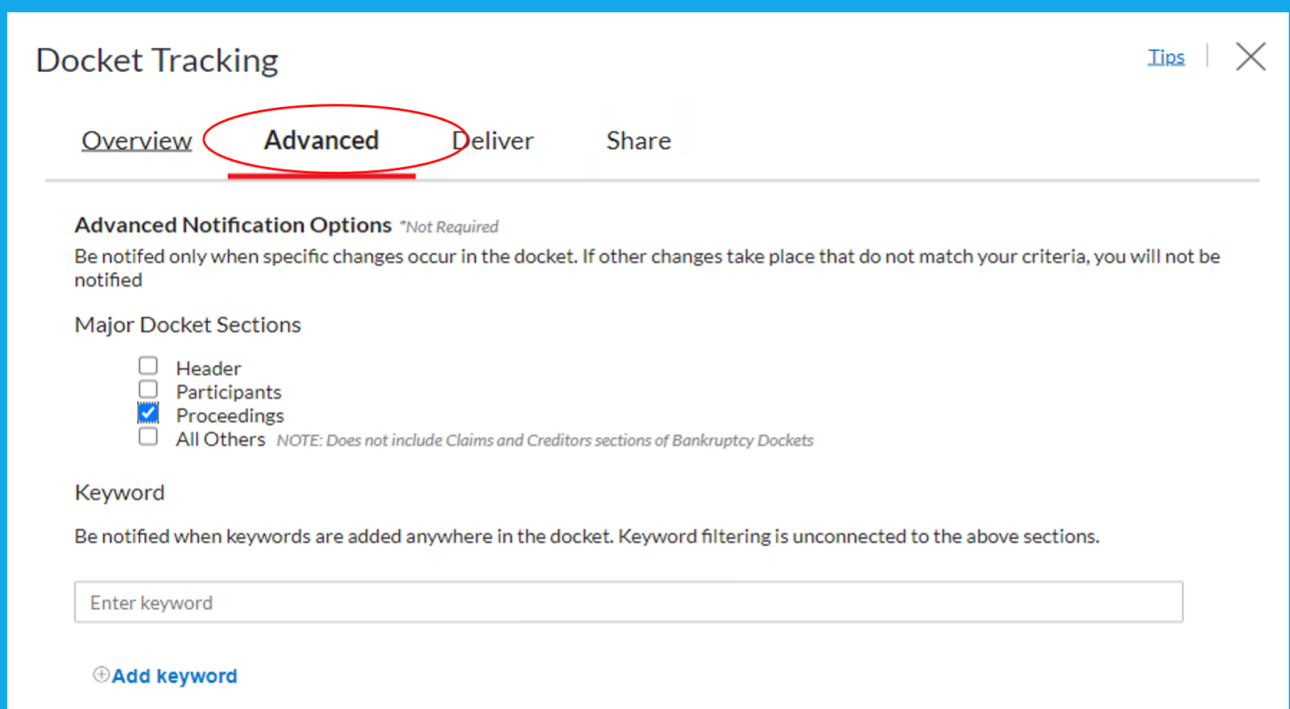
# → New Feature: CourtLink Advanced Tracks

By Mandi Cummings

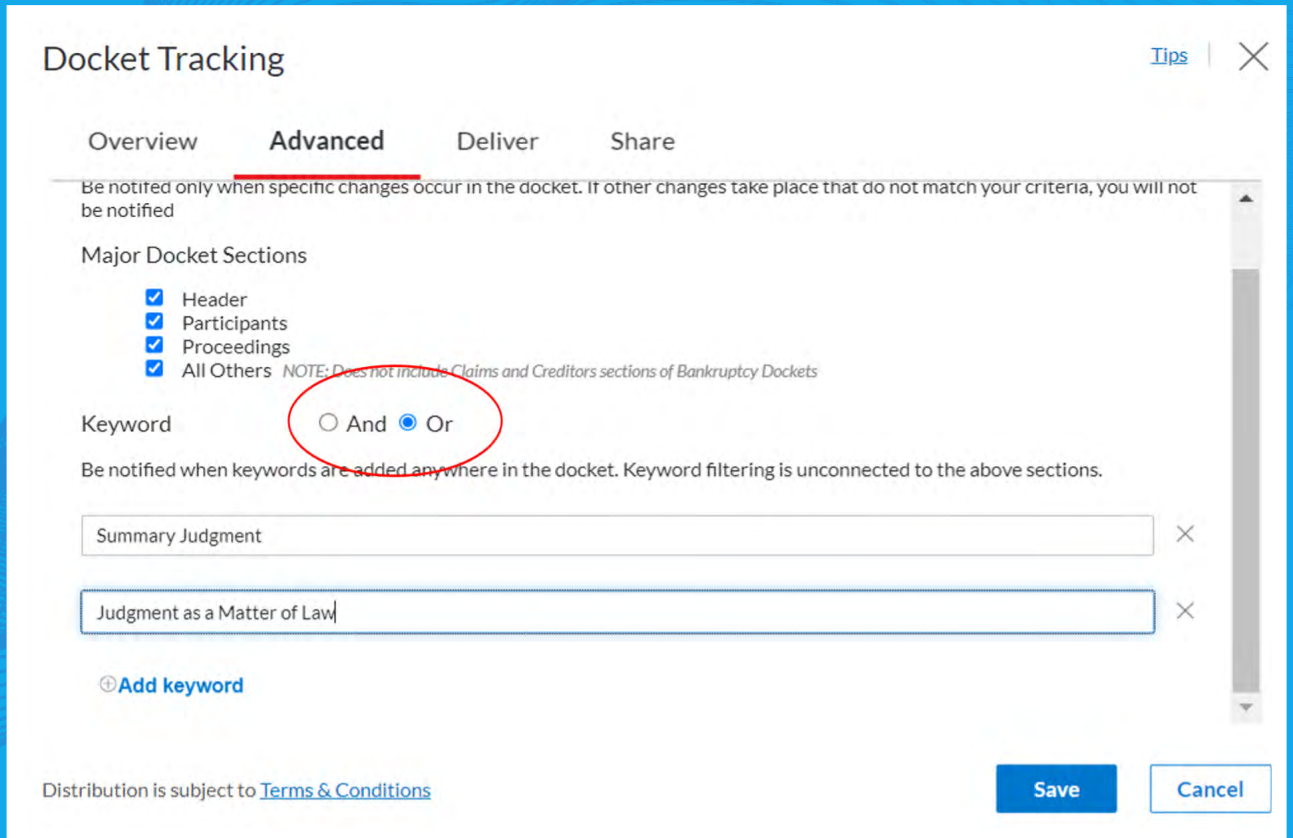
CourtLink’s new Advanced Track feature lets you apply filters to your tracks and be notified of specific changes to your dockets. Tracks allows you to keep abreast of new developments in active federal and state cases on a scheduled basis. It provides updates on the docket for a single existing case. Tracks run continuously in all courts, including the courts that update dockets automatically.



Now when creating a track look to the Advanced tab to receive track emails only when your selected docket sections have changed such as the header, participants, or proceedings section. This allows for a user to avoid unhelpful “noise” notifications and only be notified when specific changes occur in the docket.



You may also be notified only when the keywords that matter to you are added anywhere in the docket. Add multiple keywords to tailor your results or use the use connectors AND/OR to direct CourtLink to provide precise alert results.



**Docket Tracking** Tips ✕

Overview **Advanced** Deliver Share

Be notified only when specific changes occur in the docket. If other changes take place that do not match your criteria, you will not be notified

Major Docket Sections

- Header
- Participants
- Proceedings
- All Others NOTE: Does not include Claims and Creditors sections of Bankruptcy Dockets

Keyword  And  Or

Be notified when keywords are added anywhere in the docket. Keyword filtering is unconnected to the above sections.

Summary Judgment ✕

Judgment as a Matter of Law ✕

[+ Add keyword](#)

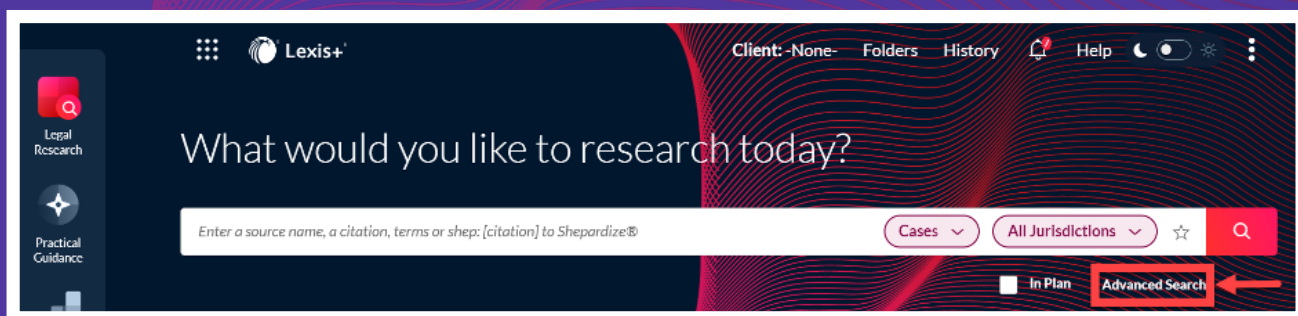
Distribution is subject to [Terms & Conditions](#) Save Cancel

The advanced filters appear on their own tab on the track setup form. You can apply them to new tracks or edit already existing tracks for more specific results.



# → Advanced Search Forms on Lexis+®

Do you need your search to be more specific? Do you know that you can create a search using specific content fields and segments? It's as easy as selecting **Advanced Search** located below the main search box on Lexis+®.



**Advanced Search** is a form-based search feature that allows you to create search queries using content specific fields and segments. This feature defaults to a basic search form that searches within all content type categories, but it also has content type specific forms .

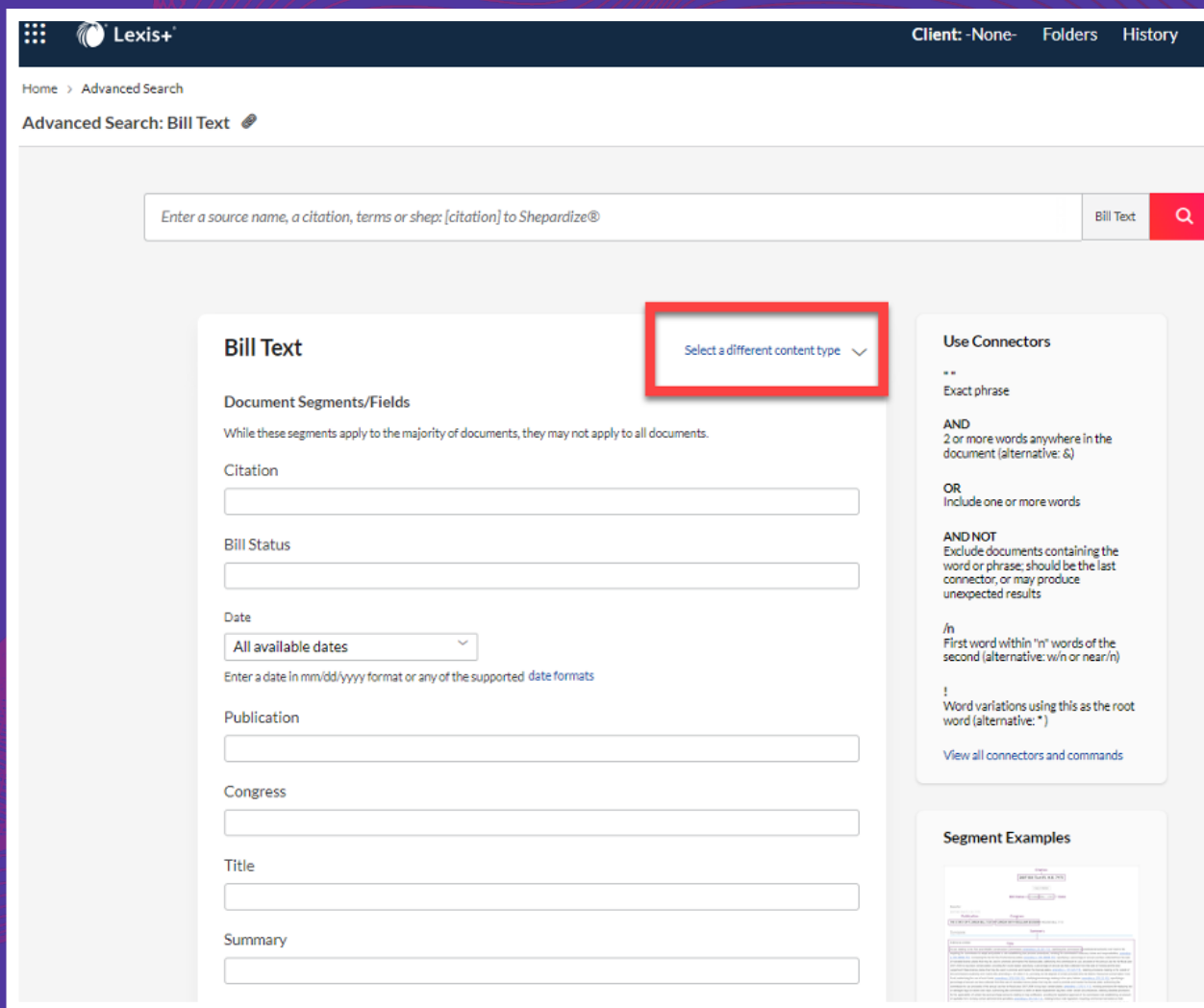
The **Advanced Search** forms are available for all categories available in **Research** including Cases, Statutes & Legislation, Secondary Materials, Administrative Materials, Administrative Codes and Regulations, Experts, News, and Company & Financial. Each form is different and designed specifically to search particular content type categories and subcategories.

## Accessing Advanced Search

The feature defaults to a basic search form where you can enter search terms, select a date, enter a citation or a title, and it searches within all content type categories.

## Selecting a Specific Content-Type Advanced Search Form

All content type **Advanced Search** form categories are listed under **Select a specific content type**. Click on the category to display the form. Certain content-type categories have content type subcategories. Click on the content type to expand the menu and see additional subcategories and search forms.



### Search using Advanced Search Forms

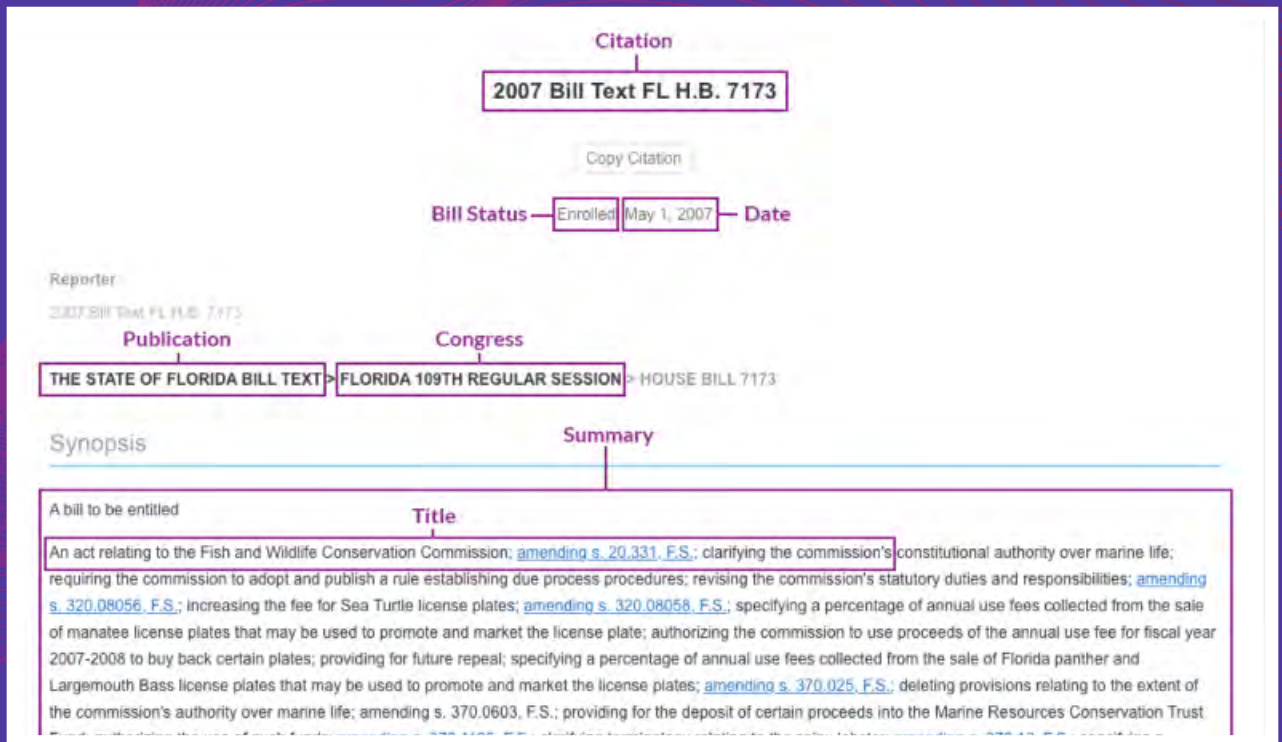
**Advanced Search** is a simple form-based search feature. Once you select the content type category you want to search, you can either enter the search terms in the **Terms** field, or any of the fields that fit your search criteria. The search fields within the form correspond to segments that are typically part of the documents found within the content type or subcontent type categories. As you enter search terms within the fields, the service automatically populates the search terms within the search box with the proper segments separated by the **AND** connector.

**Note:** The service automatically adds the **AND** connector, but you can change it to another connector if necessary.

Some **Advanced Search Forms** have widgets that allow you to choose greater than (>), less than (<), or equal to (=) and enter a number in the accompanying field. For example, the **Length** widget on the Law Reviews & Journals Advanced Search Form and the **Award** widget on the Jury Verdicts & Settlements Advanced Search Form.



**Note:** Many **Advanced Search** forms include a **Segment Examples** graphic on the right side of the page. Click the graphic to see a sample document with the different segments displayed. This helps you understand which fields to use on the **Advanced Search** form.



The screenshot displays a document structure with the following segments and content:

- Citation:** 2007 Bill Text FL H.B. 7173
- Copy Citation:** (button)
- Bill Status:** Enrolled | **Date:** May 1, 2007
- Reporter:** 2007 Bill Text FL H.B. 7173
- Publication:** THE STATE OF FLORIDA BILL TEXT
- Congress:** FLORIDA 109TH REGULAR SESSION > HOUSE BILL 7173
- Synopsis:** (empty field)
- Summary:**
  - Title:** A bill to be entitled
  - Text:** An act relating to the Fish and Wildlife Conservation Commission; [amending s. 20.331, F.S.](#); clarifying the commission's constitutional authority over marine life; requiring the commission to adopt and publish a rule establishing due process procedures; revising the commission's statutory duties and responsibilities; [amending s. 320.08056, F.S.](#); increasing the fee for Sea Turtle license plates; [amending s. 320.08058, F.S.](#); specifying a percentage of annual use fees collected from the sale of manatee license plates that may be used to promote and market the license plate; authorizing the commission to use proceeds of the annual use fee for fiscal year 2007-2008 to buy back certain plates; providing for future repeal; specifying a percentage of annual use fees collected from the sale of Florida panther and Largemouth Bass license plates that may be used to promote and market the license plates; [amending s. 370.025, F.S.](#); deleting provisions relating to the extent of the commission's authority over marine life; amending s. 370.0603, F.S.; providing for the deposit of certain proceeds into the Marine Resources Conservation Trust

# WIN WITH JIM WAGSTAFFE

## Current Awareness Insights!

### **Alert: Claim by Subscribers on Behalf of Insurance Exchange is Not a “Class Action” Allowing Removal Under CAFA**

Erie Insurance Exchange (a Pennsylvania unincorporated association) is owned by its members who are subscribers to Erie’s insurance fund. A dispute arose and Erie (on its behalf through representative subscribers) brought a state court suit against Indemnity, also a Pennsylvania company, for alleged breaches of fiduciary duty in managing the exchange and charging excessive fees. Indemnity removed the action to federal court asserting it was a “class action” and hence removable under the Class Action Fairness Act (“CAFA”, 28 USC §§ 1332(d), 1453).

The Third Circuit held that remand is required because the action, though representative in nature, is not a “class action” under CAFA. The statute treats actions as “class actions” only if they are similar to class actions under Fed. R. Civ. P. 23 (28 U.S.C. § 1332(d)(1)(B)) and that is not the case here. See *Erie Ins. Exchange v. Erie Indemnity Co.*, 68 F.4th 815 (3d Cir. 2023).

See also *Minnesota By Ellison v. American Petroleum Inst.* 63 F.4th 703, 716-717(8th Cir. 2023) (state parens patriae suit not a class action); *Canela v. Costco Wholesale Corp.*, 971 F.3d 845, 850–852 (9th Cir. 2020) (PAGA action not a removable “class action”).

Fed Civ Proc Before Trial: The Wagstaffe Group [§ 8-VI\[F\]\[3\], 8.284](#)—Requirement for CAFA Class Actions.



**CLAIM PRECLUSION****Stipulated Judgments*****Autumn Wind Lending, LLC v. Est. of Siegel***

2024 U.S. App. LEXIS 2960 (6th Cir. Feb. 8, 2024)

**The Sixth Circuit has held that a stipulated dismissal with prejudice did not have claim-preclusive effect, because the dismissed claims had not been actually litigated and could not have been litigated in the dismissed action.**

- ▼ **Background.** Autumn Wind Lending, LLC (“Autumn Wind”) lent substantial amounts of money to Insight Terminal Solutions, LLC (“Insight”). As part of the loan agreement, Insight had represented to Autumn Wind that it did not have any existing indebtedness, and it agreed to obtain Autumn Wind’s consent before incurring further debt while the loan was outstanding.

Insight failed to repay the loan when it matured, and shortly thereafter it filed for bankruptcy protection. Proofs of claim were filed in the bankruptcy proceedings by three entities run by John J. Siegel, who had also been the manager of Insight prior to its bankruptcy. Each of those claims represented debts incurred by Insight in violation of its agreement with Autumn Wind.

Autumn Wind submitted a Chapter 11 reorganization plan, which the bankruptcy court confirmed. The confirmed plan transferred all equity interest in Insight to Autumn Wind, making Insight a wholly owned subsidiary of Autumn Wind. Insight then filed an adversary complaint in the bankruptcy court, seeking recharacterization, disallowance, and reduction of the proofs of claim in the bankruptcy proceeding. The adversary complaint also sought damages from Siegel and the other entities managed by him, based on allegations of fraudulent misrepresentation and tortious interference. Several months later, the parties to the adversary proceeding stipulated to dismiss the fraudulent-misrepresentation and tortious-interference claims with prejudice.

Although Autumn Wind had not been a party to the bankruptcy adversary proceeding, it was the parent company of Insight for the entirety of that proceeding. Nevertheless, about five months after the dismissal of the bankruptcy adversary proceeding, Autumn Wind filed a separate suit, in another federal district, asserting fraud against Siegel and tortious interference against the other entities managed by him. The lawsuit was transferred to the district in which the bankruptcy proceedings were held. (Autumn Wind filed an amended complaint to name Siegel’s estate after he died.)

The defendants moved to dismiss the complaint, arguing that Autumn Wind’s claims were barred as res judicata by the bankruptcy court’s adoption of Autumn Wind’s reorganization plan. The district court denied that motion.

The bankruptcy court then partially granted Insight’s motion for summary judgment by disallowing the proofs of claim filed by two of Siegel’s other entities. However, after a trial, the bankruptcy court allowed the third entity’s claim, entering final judgment on that claim on the same day on which the district court denied the defendants’ motion to dismiss. The bankruptcy court’s final judgment incorporated the parties’ earlier stipulation to dismiss with prejudice Insight’s fraudulent-misrepresentation and tortious-interference claims against Siegel and his three other entities.

The defendants then filed another motion in the district court, seeking reconsideration of their previous motion to dismiss, arguing that Autumn Wind’s claims were barred by the res judicata effect of the bankruptcy court’s final judgment. The district court granted the motion and dismissed the complaint, concluding that the defendants had met their burden of proving that all the elements of res judicata were satisfied. Autumn Wind appealed.

- ▼ **Bankruptcy Court's Final Judgment Did Not Preclude Autumn Wind's Claims.** Under the doctrine of res judicata, also called claim preclusion, a final judgment on the merits bars further claims by the parties or their privies based on the same cause of action [see *Bragg v. Flint Bd. of Educ.*, 570 F.3d 775, 776 (6th Cir. 2009)]. Autumn Wind argued on appeal that the district court had erred in concluding that the doctrine applied to bar Autumn Wind's lawsuit, because not all of the elements of res judicata were met.

The Sixth Circuit panel began by noting that a party asserting a defense of res judicata has the burden of proving all of the following elements: (1) a court of competent jurisdiction rendered a final decision on the merits in the first action; (2) the second action involves the same parties, or their privies, as the first; (3) the second action raises an issue that was actually litigated or that should have been litigated in the first action; and (4) the two actions were based on the same cause of action [see *Sanders Confectionery Prods., Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 480 (6th Cir. 1992); see also *Winget v. JP Morgan Chase Bank, N.A.*, 537 F.3d 565, 572 (6th Cir. 2008)].

The failure to prove any element renders the application of res judicata inappropriate [see *Browning v. Levy*, 283 F.3d 761, 771 (6th Cir. 2002)]. In the present case, the Sixth Circuit concluded that Autumn Wind's claims were not barred by res judicata, because the defendants had failed to establish the third element—that the district-court action raised an issue that was actually litigated or that should have been litigated in the bankruptcy adversary proceeding.

Autumn Wind argued that it could not have brought its own claims in the adversary proceeding because the bankruptcy court lacked subject-matter jurisdiction to hear them. Before reaching this question, however, the Sixth Circuit panel looked at the effects of Insight's stipulated dismissal of its claims with prejudice in the adversary proceeding. The court of appeals noted that if Insight was a privy of Autumn Wind, then Autumn Wind would have been bound by the res judicata effect of Insight's stipulated dismissal.

The appellate court concluded that Insight's stipulated dismissal with prejudice did not bar Autumn Wind's present claims, despite the district court's observation that a stipulated dismissal with prejudice operates as a final adjudication on the merits [see *Warfield v. AlliedSignal TBS Holdings, Inc.*, 267 F.3d 538, 542 (6th Cir. 2001)]. The court of appeals pointed out that, contrary to the district court's understanding, the stipulated dismissal went only to the first element of res judicata (the existence of an adjudication on the merits); it did not mean that the claims were actually litigated or should have been litigated (the third element).

The Sixth Circuit panel explained that the issues underlying Insight's purported claims against the defendants were never determined by the bankruptcy court. Rather, the dismissal was effective by virtue of the parties' stipulation, without any contestation or litigation or judicial action [see *Exact Software N. Am., Inc. v. DeMoisey*, 718 F.3d 535, 540 (6th Cir. 2013); see also *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 501, 121 S. Ct. 1021, 149 L. Ed. 2d 32 (2001)].

The court of appeals pointed out that it could not be said that Insight should have litigated Autumn Wind's claims in the adversary proceeding. Insight lacked standing to seek damages from the defendants; Autumn Wind, not Insight, was the entity that allegedly suffered the injury as a result of Insight breaching the terms of the loan agreement [see *TransUnion LLC v. Ramirez*, 594 U.S. 413, 427, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021)]. Insight itself was not harmed when the defendants lent money to Insight, which was not forced to incur the additional debt, nor was it misled by Siegel, who served as its manager. In sum, Insight had no cause of action against the defendants for the fraud and tortious-interference claims.

The court of appeals went on to conclude that Autumn Wind could not have brought its claims in the bankruptcy adversary proceeding on its own behalf. The court pointed out that the stipulated dismissal in the adversary proceeding of the fraudulent-misrepresentation and tortious-interference claims had been based on the fact that those claims belonged not to Insight, the debtor, but to Autumn Wind, which was not the debtor in bankruptcy.



The defendants argued that Autumn Wind's claims were related to Insight's bankruptcy case, and that the bankruptcy court therefore would have had supplemental jurisdiction under 28 U.S.C. § 1367 over Autumn Wind's claims. Whether a bankruptcy court may exercise supplemental jurisdiction was an open question in the Sixth Circuit. However, the appellate panel in this case found it unnecessary to address that question, because it concluded that Autumn Wind's claims were not related to the bankruptcy. The court explained that although Autumn Wind's claims in the present case and Insight's claims in the bankruptcy adversary proceeding were nearly identical, that near-identity of claims was a drafting error that occurred before the parties realized that those claims belonged solely to Autumn Wind, as discussed above. Therefore, contrary to the defendants' contention, Autumn Wind could not have pursued its claims in the adversary proceeding because Autumn Wind and the defendants were both creditors of Insight, and the bankruptcy court lacked jurisdiction to adjudicate a prepetition dispute between creditors that would have no effect on the bankruptcy estate [see *Sanders Confectionery Prods. Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 483 (6th Cir. 1992)].

- ▼ **Confirmation of Chapter 11 Reorganization Plan Did Not Preclude Autumn Wind's Claims.** The defendants alternatively argued that the bankruptcy court's confirmation of the Chapter 11 reorganization plan precluded Autumn Wind's claims. The Sixth Circuit panel disagreed, concluding that the plain language of the reorganization plan released Autumn Wind's claims against Insight, but not against the defendants.

The court of appeals specifically rejected the defendants' contention that the plan satisfied all "Obligations" of Insight to Autumn Wind and that those "Obligations" included all of Autumn Wind's damages arising from Insight's breach of the loan agreement. According to the defendants, if the plan satisfied all damages from the breach, there could be no remaining recovery for tortious inducement of that breach, so the plan effectively released the defendants from liability.

The court of appeals pointed out that Autumn Wind's claims were related to intentional torts, not to a guarantor's liability for a debt satisfied in bankruptcy. Under such circumstances, a potential overlap in damages for breach of contract and tortious interference does not serve to bar either claim [see *Midwest Precision Servs., Inc. v. PTM Indus. Corp.*, 887 F.2d 1128, 1138 (1st Cir. 1989); Restatement (Second) Torts § 774A(2) (any overlap in damages in claims for tortious interference and breach of contract "does not affect the damages awardable," but overlap might "reduce the damages actually recoverable on the judgment")].

- ▼ **Conclusion and Disposition.** Because Autumn Wind's claims were not barred by res judicata or by the confirmed Chapter 11 reorganization plan, the Sixth Circuit reversed the district court's judgment of dismissal and remanded the case for further proceedings.

## SANCTIONS

### Rule 11

#### *Triantos v. Guaetta & Benson, LLC*

91 F.4th 556, 2024 U.S. App. LEXIS 2038 (1st Cir. Jan. 30, 2024)

**The First Circuit has held that a movant's failure to comply with Rule 11's "safe harbor" provision, coupled with the district court's failure to describe the misconduct and explain the basis for its decision to impose sanctions, constitutes plain error justifying the reversal of sanctions imposed under the rule, even in the absence of an objection.**

- ▼ **Facts and Procedural Background.** After a foreclosure and sale of his home, Nicholas Triantos ("Triantos") and his attorney Michael McArdle ("McArdle") sued various parties in Massachusetts state court, including the foreclosing bank, the law firm that represented it in the foreclosure sale, Guaetta & Benson, LLC (G&B), and three of the firm's individual partners. The bank removed the action to federal court, and McArdle withdrew as counsel of record before any further action occurred in federal court. Triantos and his new attorney filed an amended complaint that contained eight causes of action under both state and federal law. G&B and the other defendants moved to dismiss for failure to state a claim. The district court granted the motion and dismissed on September 21, 2017.

Some two months later, G&B filed a motion for Rule 11 sanctions against both Triantos and McArdle. At that time, however, Triantos had already appealed the dismissal of the merits, so the district court stayed the motion pending the result of the appeal. After the First Circuit affirmed the dismissal [see *Triantos v. Deutsche Bank Nat'l Trust Co.*, 2020 U.S. App. LEXIS 42704 (1st Cir. Sept. 16, 2020) (unpublished)], the district court held a hearing on the renewed motion and later made a one-line docket entry imposing a \$10,000 sanction for joint and several liability on both Triantos and McArdle. Because of McArdle's earlier withdrawal, he received no notice of the hearing and was not aware of the sanctions for more than two months. He therefore filed a motion for relief from judgment under Federal Rule of Civil Procedure 60(b), but the district court denied relief. Triantos and McArdle brought separate appeals, which were not consolidated.

- ▼ **McArdle's Appeal.** The appeal by McArdle reached the First Circuit first and resulted in reversal for a very simple reason. The only action taken by McArdle after removal was to withdraw as attorney of record, so he did not "present" any paper to the court that could be the basis of Rule 11 sanctions [*Triantos v. Guaetta & Benson, LLC*, 52 F.4th 440 (1st Cir. 2022)]. The record of the case also established that he was never served with the motion for sanctions.
- ▼ **Triantos's Appeal—No Waiver.** The appeal by Triantos was more complicated, because he never objected to any procedural irregularities as to the motion until after his initial appellate documents had been filed, and simply opposed the sanctions on the merits. The First Circuit therefore initially had to consider whether any procedural irregularity was waived by Triantos' belated objections on appeal. The court noted that although Triantos was a lawyer, he did transactional work only, had no litigation experience, and was therefore functionally equivalent to a pro se litigant. Moreover, the court noted that although the objection was belated, that factor was mitigated by two separate considerations: (1) the procedural errors were noted in the separate McArdle appeal; and (2) they were raised in time for G&B to respond, so the policy to prevent "sandbagging" was not implicated. The court therefore declined to apply the waiver rule against Triantos, despite the fact that his initial appellate briefs did not mention any procedural irregularities.
- ▼ **Plain-Error Review.** Despite the absence of an appellate waiver, the First Circuit also had to consider whether Triantos' failure to previously object in district court barred review in the court of appeals. The general rule is that when a party fails to raise an argument in district court, it is forfeited and review is only for plain error, which requires an error that is clear or obvious, and that not only (1) affected substantial rights, but also (2) seriously impaired the fairness, integrity, or public reputation of the proceedings. In this case, that standard was

easily met, because the district court imposed a sanction that was unambiguously barred by the language of Rule 11, so allowing it to stand would be inconsistent with the purposes of the rule.

- ▼ **Effect of Safe-Harbor Violations.** The First Circuit then noted that the district court violated the “safe harbor” provisions of Rule 11 in two distinct ways. First, because a Rule 11 motion must be served at least 21 days before it is filed with the court, the movant may not rely on simultaneous service through e-filing under Rule 5. Because G&B used that method of service, the motion should not have been considered, let alone granted. More fundamentally, however, the safe harbor is designed to allow for the correction of the alleged violation, so a motion that is served after the offending contention is rejected on the merits is always too late. Because the motion was not served until after the dismissal for failure to state a claim, Triantos was deprived of the opportunity to make such a correction. So once again, the motion should not have been considered at all, let alone granted.
- ▼ **Violation of Rule 11(c)(6).** Finally, the First Circuit noted that the district court overlooked its own duty under Rule 11 to enter an order describing the conduct of Triantos that was being sanctioned and explaining the basis for the sanction [see Fed. R. Civ. P. 11(c)(6)]. A one-line docket entry imposing a \$10,000 sanction was flatly inconsistent with that duty, because it contained neither a description nor an explanation. The court declined to infer the district court’s reasoning from the totality of the record, including comments at the motion hearing, because doing so would have been inconsistent with the plain meaning of the rule requiring both a description and an explanation.
- ▼ **Disposition.** The combination of all these procedural errors justified relief for plain error despite the lack of an objection in district court from the sanctioned party, so the First Circuit reversed and vacated the order imposing Rule 11 sanctions.



## SELECTING JURORS

### Juror Bias

#### *Fyelling v. Royal Caribbean Cruises, Ltd.*

91 F.4th 1371, 2024 U.S. App. LEXIS 2241 (11th Cir. Feb. 1, 2024)

**The Eleventh Circuit has held that the district court abused its discretion by not investigating whether a juror could impartially discharge her responsibilities after learning that the juror's niece worked for the defendant, and by allowing the juror to participate in deliberations.**

▼ **Background.** The plaintiff tripped, fell, and struck her head while on board Royal Caribbean's Harmony of the Seas cruise ship. She sued Royal Caribbean for negligence. The case proceeded to trial, which lasted for two weeks. Both parties submitted proposed voir dire questions. One of Royal Caribbean's proposed questions, which the plaintiff did not object to, was whether the prospective jurors knew or were related to anyone employed by a cruise line. The plaintiff asked for limited attorney voir dire, which the court denied, explaining its typical practice of not allowing lawyers to ask questions during voir dire.

At the beginning of jury selection, the court allowed counsel for each party to introduce themselves, their clients, and others in the courtroom with them. Royal Caribbean's counsel introduced himself, his co-counsel, his paralegal, his IT consultant, and Royal Caribbean's corporate representative. The district court asked the venire panel, "Do you know any of these folks?" No one said yes. The district court then requested that the parties read their witness lists and asked the members of the venire panel if they knew any of the witnesses. Again, no one said yes.

Next, the district court individually asked prospective jurors to state their names, occupations, and marital statuses, and asked them whether they had been involved in any lawsuits, had served on any juries, or had any immediate family members who had been involved in a lawsuit. The district court also asked the panel members whether they had children and, if so, what their children's occupations were.

After individual questioning, the district court posed several questions to the venire panel as a group. Those questions included whether panel members knew any other prospective juror before that day, whether they belonged to a religion or group that would prevent them from judging the case, whether they or someone close to them had been injured on a cruise ship, whether they had ever suffered a concussion or a brain injury, whether they would accept their role as the factfinder, and whether they had any physical, emotional, or language problems that would make it difficult for them to participate. The district court did not ask Royal Caribbean's proposed question about whether the prospective jurors had any relatives who worked for a cruise line.

Finally, the district court asked, "Can you think of any reason why you cannot sit on this jury and render a fair and impartial verdict based on the evidence and the law as I instruct you?" Only one prospective juror raised his hand. The district court asked him what his reason was. The prospective juror answered that he was an investor in Royal Caribbean. The court excused that person.

The parties then selected the jury, with each party exercising several challenges. Eight jurors were selected in total. The jury was impaneled and sworn, and the district court gave the jury preliminary instructions. After opening statements, the district court dismissed the jury for the day. It then informed the parties and their lawyers that while the courtroom deputy was gathering the jurors' information, one of the jurors—Juror Eight—said that her niece worked for the defendant. The district court stated, "I don't know that that's disqualifying because I did ask is there anything that you—have any reason to think that you might not be fair and impartial in this case." The plaintiff's counsel suggested that the juror should be excused because she would likely "be reluctant to return any kind of significant verdict." The district court responded, "If she thought it was going to put them out of business, that would be one thing. I doubt that this case is significant as it is to put them out of business." Ultimately, the district court advised the parties that it would wait until the end of the case and if there were still eight jurors, would excuse her as an alternate.

On the ninth day of trial, the district court informed the parties that it had changed its mind about Juror Eight's fitness to deliberate, reasoning that "she has indicated that she could be fair." It also observed that even though the plaintiff might have used a peremptory challenge on her, the plaintiff "had already used all of [her] peremptory challenges, long before we got to this juror." When counsel protested that the plaintiff could not have known about Juror Eight's niece when exercising her challenges, the district court reiterated that Juror Eight's niece's employment did not justify her removal from the jury, reasoning that any verdict "is not going to break Royal Caribbean and therefore, her niece is not likely to get fired." The district court also stated that any family relationship to the parties is "covered by asking [jurors] if they could be fair and impartial in the case." Juror Eight remained on the jury and participated in deliberations.

The jury returned a verdict soon after being instructed. It found that both parties were negligent, with the plaintiff's negligence accounting for 90 percent of her damage. In light of the 90-percent-comparative-negligence finding, the plaintiff was awarded \$75,000 of the \$750,000 damage finding. The district court entered judgment in accordance with the verdict, and the plaintiff appealed.

- ▼ **Trial Court Should Have Investigated Juror Eight for Bias.** The Eleventh Circuit explained that a district court must dismiss a juror for cause if the juror reveals actual bias or if bias is implied because of the juror's relationship to a party. A corollary of the requirement to excuse biased jurors is the duty to investigate colorable claims of juror bias when they arise. When a district court becomes aware of potential juror bias, the trial judge must develop the factual circumstances sufficiently to make an informed judgment as to whether bias exists. Developing an adequate record sometimes requires specific and direct questioning of an individual juror. Specific questioning is necessary when, under all of the circumstances presented, there is a reasonable possibility that a particular type of prejudice might have influenced the jury. Broad, vague questions of the venire will not suffice when a reasonable possibility of bias develops.

The trial judge has an obligation to impanel an impartial jury. Pretrial voir dire is the primary vehicle through which the district court can detect potential juror bias. Voir dire examination serves to protect against a partial trier of fact by exposing possible biases, both known and unknown, on the part of potential jurors. District courts have discretion in determining how best to conduct voir dire. Furthermore, a district court's obligation to protect the right to an impartial jury does not end when the jury is impaneled and sworn. Even when a "reasonable possibility" of juror bias is revealed after trial has begun, the district court must develop the factual circumstances sufficiently to make an informed judgment on the existence of actual bias.

In this case, the district court's discovery—after impaneling the jury—that Juror Eight's niece worked for Royal Caribbean triggered its duty to investigate the potential bias. But the district court did not do so. It did not place Juror Eight under oath to ask her specific, direct questions about whether she could serve impartially despite her niece's employment by Royal Caribbean. In addition, the district court allowed Juror Eight to deliberate when it could have excused her for cause and still had enough jury members to return a verdict [see Fed. R. Civ. P. 48(a) ("A jury must begin with at least 6 and no more than 12 members, and each juror must participate in the verdict unless excused under Rule 47(c).")]. The appellate court found that permitting Juror Eight to remain on the jury without questioning her further was an abuse of discretion. The duty to develop the facts fully enough so that it can make an informed judgment on the question of actual bias cannot be discharged solely by broad, vague questions once some potential area of actual prejudice has emerged. Because presumed bias depends entirely on surrounding circumstances, the trial judge must develop the factual circumstances sufficiently to make an informed judgment on the existence of actual bias. Once a party has raised a possibility of actual prejudice, specific and direct questioning is necessary to ferret out those jurors who may not be impartial.

In defense of its decision, the district court pointed to Juror Eight's silence in response to its general question whether anyone could think of a reason they could not be impartial. Courts have repeatedly rejected the view that general questions can satisfy a district court's duty to explore potential juror bias.

The district court also suggested that it could reasonably expect Juror Eight to be impartial because the plaintiff was not seeking a verdict large enough to put Royal Caribbean out of business or cause Royal Caribbean to fire Juror Eight's niece. Royal Caribbean also asserted that "the employment of Juror [Eight's] niece likely held little to no weight in Juror [Eight's] mind." The Eleventh Circuit observed that one can only speculate about facts that might have affected Juror Eight's decisionmaking, and such speculation is an inadequate substitute for a complete record. Without a record speaking to the details of Juror Eight's relationship with her niece or of her niece's employment, the appellate court declined to assume that the district court's failure to investigate was harmless.

- ▼ **Conclusion.** In sum, when it discovered during trial that one of the jurors had a niece who worked for Royal Caribbean, the district court was obligated to investigate the matter further and exercise its discretion properly by developing the facts fully enough to make an informed judgment on the question of actual bias. Because the district court did not conduct such an inquiry, the Eleventh Circuit held that the district court abused its discretion by failing to make an informed judgment on the question of Juror Eight's bias and by allowing Juror Eight to deliberate over the objection of the plaintiff's counsel. Therefore, the appellate court reversed and remanded for a new trial.