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DAILY BUSINESS REVIEW

After Legal Battle Threw Redevelopment Plans Into Limbo, Miami Judge Greenlights Sawyer's Landing

by Melea VanOstrand

A redevelopment project that broke ground earlier this year can now continue after an 18-month legal battle over the property has come to an end.

The litigation involved Block 55 in Overtown, home to a 300,000-square-foot retail and 60,000-square-foot office mixed-use development known as Sawyer's Landing.

Developers Don Peebles and Barron Channer brought two breach of contract claims against the project's developer Swerdlow Group, alleging they lost out their initial rights to develop the land because of a breach of contract.

But those claims were dismissed after Miami-Dade Circuit Judge Michael Hanzman found "no genuine dispute of material fact exists" and concluded that there was no breach of contract, according to a summary judgment order.

The result is good news for Alan Kluger, Steve Silverman, Marko Cerenko and Lisa Jerles of Miami law firm Kluger, Kaplan, Silverman, Katzen & Levine. They represent Swerdlow Group, and argued the litigation only served to obstruct progress.

"Mr. Peebles' lawsuit had no merit from the very beginning and was brought solely to paralyze the development of Sawyer's Landing. With all

SEE SAWYER'S LANDING, PAGE A6

$2 Million in Attorney Fees: This Miami Firm Just Earned a Huge Pay Day and a 7-Figure Settlement for Widow

The finalized settlement terms included a $5 million judgment against the aircraft manufacturer, $700,000 in post-judgment interest and $2 million in attorney fees and costs for a Podhurst Orseck team that included partners Lea Bucciero, left, and Ricardo Martinez-Cid.

by Jasmine Floyd

A Miami-Dade Circuit Court Judge has approved a $7.7 million settlement package in a case surrounding a plane crash that killed 34-year-old pilot Timothy Johnson Jr. of Miami.

The outcome is a win for the plaintiff and counsel from Podhurst Orseck. The finalized settlement terms included a $5 million judgment against the aircraft manufacturer, $700,000 in post-judgment interest and $2 million in attorney fees and costs for a Podhurst Orseck team that included partners Ricardo Martinez-Cid and Lea Bucciero.

The Miami-based attorneys initially filed suit against Continental Motors and RAM Aircraft on behalf of Johnson's estate back in April 2014.

The plaintiff entered into a confidential settlement with RAM aircraft, and the case proceeded against only

SEE FEES, PAGE A6

Suing Over Property Damage That Judge Described as 'an Abomination,' Miami Attorneys Score $4.4 Million Verdict

by Melea VanOstrand

Miami attorneys have scored a major win in a dispute over a property that presiding Miami-Dade Circuit Judge Michael Hanzman referred to as "an abomination."

"There were more problems with it than I care to recite during my findings because it would take too long," Hanzman said in an Oct. 12 bench trial proceeding.

The case involved a dispute over the condition of a floor at a property near Miami International Airport, where the plaintiff claimed they were entitled to a concrete floor that was built to suit their particular needs, but major problems with the workmanship allegedly made the floor unusable.

Coconut Grove's Waldman Barnett co-managing partner Eleanor Barnett, firm partners Jeffrey Lam and Glen Waldman represented PriceSmart, which operates membership clubs in Central America, the Caribbean, and Colombia. Paralegal May Van Gils also worked on the case.

The final damage total is $4.4 million, which doesn't include fees and costs. It's a result Barnett said emphasizes why less is more during trial, especially when

After a bench trial, Miami-Dade Circuit Judge Michael Hanzman found the floor had to be replaced and ruled in favor of PriceSmart.

you have a straightforward case with an experienced judge.

"Having experienced experts who were prepared to explain to the court why the floor failed and why the entire 300,000 square feet need to be removed and replaced made all the difference," said Barnett.

SEE VERDICT, PAGE A2

Election Law Now a Multimillion-Dollar Practice, but Still 'Fraught With Peril'

by Dan Roe and Dylan Jackson

After last year's flurry of pre- and post-election lawsuits, election litigation has not relented as lawyers meet in courtrooms across the country to hammer out voting rights disputes, redistricting disagreements, and a host of other elections-related issues.

Even months after the election, lawyers continue to litigate bans on "line warming" at polling stations, voting laws passed in Republican state legislatures after the election, and gerrymandered redistricting maps in numerous states.

Experts and election lawyers say the increased tempo of election litigation will not slow down—even outside of election years—as new legal issues arise and new law firms emerge to take on these issues, funded by outside organizations and party committees nearly a year after the 2020 election.

An explosion of funding has created an environment where, over the past two decades, election law has transformed from a once-niche area of the law practiced by small groups of lawyers

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PUBLIC NOTICES & THE COURTS

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ELECTION

to a full-blown practice that demands dedicated groups.

According to an analysis of Federal Election Commission data, the six major party committees on both sides—the DNC, DSCC, DCCC, RNC, NRSC and NRCC—increased their spending on legal services more than 1,700% between 2008 and 2021.

Between Jan. 1, 2020, and Oct. 4, 2021, the major parties spent more than $93 million on legal services as law firms battled out pre- and post-election lawsuits and advised them on compliance issues.

The top grossing firms include Jones Day, Consovoy McCarthy, Wilmer Cutler Pickering Hale and Dorr and Perkins Coie, a longtime counsel to the Democratic Party beginning with former partner Robert Bauer.

It's worth noting that this figure does not include outside groups such as the ACLU, NAACP, and the various organizations that funded the so-called Kraken lawsuits headed up by Trump lawyer Sidney Powell, some of which have raised millions to bring legal action.

The Stacey Abrams-founded New Georgia Project, for example, is behind a March lawsuit challenging new voting laws passed by the Georgia Legislature. The organization has retained Perkins Coie and Georgia firm Krevolin Horst, both of which received money from Democratic committees this year and last.

All told, there have been at least 50 federal and state election or voting lawsuits filed since the beginning of the year, according to Democracy Docket, an organization run by Democratic attorney Marc Elias. The figure doesn't include all ongoing challenges by Republican interests.

Experts and election lawyers point to several reasons for the aggressive growth in spending and election practices.

'US VS. THEM'

The foray into election law can be fraught with consequences that often outweigh the benefits, including reputational damage from litigating on behalf of an unpopular candidate or missing criminal law consequences in compliance work for parties and campaigns.

In the former circumstance, the public, including existing or potential clients, is often unwilling or unable to differentiate a law firm's zealous representation of a client from political speech, said Miami election lawyer Ben Kuehne.

"There is a movement by large law firms to attempt to get into this area, but it is fraught with peril," said Kuehne, who worked under David Boies on the *Bush v. Gore* recount committee. "Because this area can oftentimes be compartmentalized into Us vs. Them—whether that be partisan or one side is opposed by the other side. Many nonpolitically involved clients do not want their law firm to take sides."

And while many Big Law attorneys are signing up to take pro bono voting rights cases, their firms' long-term involvement in voting rights matters won't touch the bottom line.

"That's going to be the big test: Will the big firms just focus on national parties and big political committees that raise tens of millions or more?" Kuehne said. "Or will they get involved in some of the equally consequential but lower-level litigation?"

The latter work won't earn the firm as much, if any, money, but the current demand for Big Law help is being met by firms looking for pro bono opportunities.

The razor-thin margins of the 2000 election, and subsequent elections, both federal and state, have created an environment where every single vote is disputed on the ground and in the courtroom, said New York University School of Law constitutional and election law professor Rick Pildes. He added that, unlike in previous elections, both sides believe a loss is existential as the major parties continue to diverge politically and culturally.

In the former circumstance, the public, including existing or potential clients, is often unwilling or unable to differentiate a law firm's zealous representation of a client from political speech, said Miami election lawyer Ben Kuehne.

"The perceived stakes went through the roof in a way that had mostly not been true anymore. If you went back to 2000, as close as that election was, the perceptions of the differences of the two candidates at the time were much smaller," Pildes said.

The 2000 election also revealed just how messy and opaque the voting process is, said Chris Sautter, an election law professor at American University. Think, the "hanging chad" of 2000 and the uproar around voting machines in the 2020 election.

"There's definitely a crisis in trust. And right now it's on the Republican side, but in 2004 in Ohio there was quite a bit of skepticism about the results by Democrats and, in 2016, some skepticism in Wisconsin, Michigan and Pennsylvania," Sautter said.

MONEY, MONEY, MONEY

With millions floating around for legal challenges, dozens of firms have stepped up to litigate throughout the country on behalf of partisan interests.

Since *Bush v. Gore*, Big Law firms such as Perkins Coie, Jones Day, and Wiley Rein have hoovered up the majority of the legal spend from major party committees. And that spend has shot up in recent years.

For instance, in the pre- and post-election in 2008, Perkins Coie billed the major Democratic committees $2.1 million for legal services and administrative fees. During the same period of 2016, the Seattle-based firm billed $8.6 million. But in the lead-up to and aftermath of the 2020 election, Perkins billed $52 million.

Similarly, Jones Day billed the major Republican committees $2.4 million in the 2016 election cycle compared to $6.3 million in the most recent one. Wiley Rein's legal bills to Republican committees increased elevenfold in the last two election cycles.

The 2016 election in particular opened the funding floodgates for election lawyers, Pildes said.

"After the 2016 election, there was a tremendous outpouring of funding to support both groups that do work on election issues and election litigation and funding for, for example, Marc Elias on the DNC side," he said. "You have more organizations focused on these issues, they have a lot more resources. For private law firms there's a lot more money available and an incentive to litigate lots of issues in this space."

But more recently, specialized firms staffed by top ex-Big Law and government lawyers, such as Consovoy McCarthy and the Constitutional Litigation and Advocacy Group, have billed millions to the same committees.

Former Perkins Coie election law chairman Marc Elias created among the biggest specialized firms to enter the market when he departed Perkins in September to form the Elias Law Group, which includes 10 other former Perkins political law group partners.

In a recent interview with Law360, Elias Law Group partner Elisabeth Frost said the practice's increasing profile and partisan stature during the 2020 election cycle contributed to the split.

"We became more and more public-facing on our views about this stuff," said Frost in the article. "And it just became clear that we needed the space, and it was time to spin off."

Dan Roe covers the business of law, focusing on Florida-based and national law firms. Contact him at droe@alm.com. On Twitter: @dan_roe_.

FROM PAGE A1

VERDICT

San Diego-based PriceSmart paid $45 million in 2017 for an 18.59-acre site, warehouse and distribution center at Flagler Station in Medley, near Miami International Airport. The company needed something substantial enough to hold "thousands of shipping pallets, with ceilings high enough and aisles wide enough to allow PriceSmart's heavy forklifts to stack and move those pallets, to and from trucks on more than 100 loading docks," according to the complaint.

But shortly after the building was built, PriceSmart alleged cracks developed in the concrete slab floors, and efforts to fix the floors led to more deterioration. Soon after, employees claimed the cracks almost caused falls, and a forklift allegedly became stuck on one occasion, until, eventually, some of the cracks widened into holes.

Waldman Barnett filed the lawsuit against the project's contractor, Marcobay Construction Inc., seeking damages for breaches of contract, guaranty and warranty.

Marcobay argued it was not responsible for the defective floor because warehouse design professionals "under-designed the structure for its intended use," according to the amended complaint.

Amid Bennaim and David Salazar of Cole, Scott & Kissane in Miami represented Marcobay, but did not have a comment by deadline.

'A PROBLEM FROM DAY 1'

After a bench trial, Hanzman found the floor had to be replaced and ruled in favor of PriceSmart.

Barnett said she was pleased with the ruling because her client "was able to obtain the satisfaction of being entitled to what it originally bargained for."

"It paid $45 million for the land and a brand new warehouse for its distribution center, but instead received a defective floor that was a problem from day one," Barnett said. "There was no question that there was poor workmanship and poor supervision that caused the problems. PriceSmart was also able to settle prior to trial with the seller and developer, which also will help make PriceSmart whole."

Hanzman also commented that "The overwhelming evidence, in this case, was that this floor was an abomination," according to transcripts of the bench trial.

"The replacement is necessitated by the shoddy workmanship and defects in the original floor," Hanzman said. "They are not required to take what is a pair of blue jeans and try to turn it into a tuxedo. They bargained for a tuxedo, they paid for a tuxedo, and they are entitled to rip up this pair of blue jeans they got and lay a proper tuxedo, period."

The biggest challenge for the plaintiffs, Barnett said, was that the damages grew exponentially as the litigation unfolded.

"When we filed the complaint, we only understood a portion of the floor needed to be repaired, which would have totaled less than $1 million. But after emergency repairs were made to the floor earlier this year, it became apparent that the entire floor needed to be removed and replaced at an expense of over $4 million," Barnett said.

Even when trying a case before a judge, as in this case, Barnett advises focusing on the most crucial facts of a case and keeping things simple, rather than getting lost in the weeds: "The idea is not to over-think a case and make sure you can support your claimed damages."

Melea VanOstrand is ALM's South Florida real estate reporter. For story ideas, email her at mvanostrand@alm.com. Want to see the latest real estate news? Follow Melea on her Twitter or Facebook pages.

FLORIDA LEGAL REVIEW

Phone Passcode Poses Problem for Florida Supreme Court

by Jim Saunders

When police responded in 2018 to a call about a shattered window at a home in Orange County, they found a black Samsung smartphone near the broken window.

A woman in the home identified the phone as belonging to an ex-boyfriend, Johnathan David Garcia, who was later charged with crimes, including aggravated stalking.

But more than three years after the shattered window, the Florida Supreme Court is poised to hear arguments in the case and consider a decidedly 21st century question: Should authorities be able to force Garcia to give them his passcode to the phone?

Attorney General Ashley Moody's office appealed to the Supreme Court last year after the Fifth District Court of Appeal ruled that requiring Garcia to turn over the passcode would violate his constitutional right against being forced to provide self-incriminating information.

The Fifth District Court of Appeal decision conflicted with an earlier ruling by the Second District Court of Appeal in an unrelated case, teeing the issue up for the Supreme Court to resolve the dispute. The case has drawn briefs from civil-liberties and defense-attorney groups, who contend that Garcia's rights under the U.S. Constitution's Fifth Amendment would be threatened if he is required to provide the passcode.

"Modern encryption has shifted the balance between criminals and law enforcement in favor of crime by allowing criminals to hide evidence in areas the state physically cannot access," the brief said. "The Fifth Amendment should not be interpreted to now allow criminals to use it as a shield in ways never understood by the Framers."

SHUTTERSTOCK

The Florida Supreme Court is poised to hear arguments in a case and consider a decidedly 21st century question: Should authorities be able to force a defendant to give them the passcode to his cellphone?

But attorneys for Garcia in a June brief argued the case is about "which vision of the right against compelled self-incrimination prevails: those of the Founders who erred on the side of personal liberty or those who defend governmental powers to extract testimony."

"The state advocates gutting the Fifth Amendment for the sake of convenience," Garcia's attorneys wrote. "Compelling defendants to tell the government their passcodes is a convenient way for the state to claw into the endless stores of personal information on a person's smartphone. This unchecked power to sift through an unlimited digital record of the intricate details of a person's life encourages the government to cast a wide net for its agents to fish for evidence of wrongdoing."

The Supreme Court is scheduled to hear arguments Nov. 3. Justice Jamie Grosshans was part of a panel of the Fifth District Court of Appeal that ruled in Garcia's favor in August 2020, about a month before she was appointed to the Supreme Court.

Among the issues in the case is whether requiring Garcia to provide the passcode would be what is known as "testimonial" communication that would violate his rights against self-incrimination.

An Orange County circuit judge issued an order for Garcia to turn over the passcode, but the order was overturned by the appeals court.

"We agree with Garcia that the order under review requires that he utilize the contents of his mind and disclose specific information regarding the passcode that will likely lead to incriminating information that the state will then use against him at trial," the appeals court opinion said. "We therefore conclude that the compelled disclosure of his passcode is testimonial and is protected by the Fifth Amendment."

In the June brief, Garcia's attorneys raised similar arguments.

"If Garcia knows the passcode and can comply with the order, his testimony would confirm the state's otherwise unproven assertion that he owns the phone and controlled it at the time of the incident," the brief said. "The state will use that inference to tie Garcia to any incriminating data on the smartphone. The state is also relying on the 'truth-telling' element of the compelled testimony to prove Garcia's knowledge of the passcode, and thus his prior possession and ownership of the smartphone."

But Moody's office in the March brief disputed that requiring Garcia to give the passcode would amount to testimony.

"At bottom, the state asks respondent [Garcia] not for testimony, but for access to a device it has a warrant to search," the attorney general's brief said. "Because the compelled act is not functionally different than requiring a defendant to unlock the door to a home or turn over the key to a lockbox, no testimony is involved. For that reason alone, respondent cannot refuse to disclose his passcode."

Jim Saunders reports for the News Service of Florida.

Administrative Law Judge OKs Online Medical Marijuana Ordering

by Dara Kam

Leafly and similar sites will be able to resume contracting with Florida medical-marijuana operators to allow patients to order products online, under a ruling issued by an administrative law judge.

Florida health officials this year stopped medical-marijuana operators from using Leafly and other third-party sites to process patient orders, saying the arrangements violated a state law banning operators from contracting for services "directly related to the cultivation, processing and dispensing" of cannabis.

But Seattle-based Leafly Holdings argued that it is not engaging in activity related to the dispensing of cannabis products because the company does not accept payment for or distribute cannabis products to patients. The company filed a petition asking an administrative law judge to find that the Florida Department of Health employed an "unadopted and invalid rule" to conclude that the online services violated the law.

Judge Suzanne Van Wyk didn't go as far Monday as Leafly requested, but she found that the ban on the use of the third-party sites amounted to an unadopted rule and ordered the state agency to "immediately discontinue reliance on its policy … regarding online ordering of medical marijuana through third-party websites."

Leafly CEO Yoko Miyashita hailed Van Wyk's ruling.

"By allowing services like Leafly Pickup, consumers have greater ability to research in advance prior to purchase and retailers have additional effective means of serving the patient communities. We look forward to working with our partners to restart Leafly Pickup throughout Florida effectively immediately," Miyashita said in an email.

Until February, many of the state's medical marijuana operators relied on Leafly and another well-known e-commerce cannabis company — I Heart Jane — to help provide online shopping services for Florida patients.

But many — if not all — operators canceled contracts with the e-commerce companies after receiving a Feb. 1 memo from the Department of Health threatening to impose $5,000 fines on those who continued to rely on the services.

The memo said the services were prohibited under a 2017 law that set up a structure for the Florida cannabis industry. The law requires medical marijuana operators to control all aspects of the business from seed to sale, including cultivation, processing and dispensing of products, rather than allowing companies to handle individual components of the trade.

"Contracting with Leafly.com, or any other third-party website, for services directly related to dispensing is a violation of this provision," then-Department of Health Chief of Staff Courtney Coppola wrote in the February memo.

Health officials argued that the February memo reflected the agency's application of the law to a particular set of facts and was not a rule.

"The department has no duty to promulgate what is clear from the statutory language," Department of Health general counsel Louise Wilhite-St. Laurent said during a September hearing in the case. The February memo "is a simple reiteration of the law," she said.

But Van Wyk disagreed.

The memo "does not merely reiterate the statute, but places a construction on the statute that is not readily apparent on its face. The statute does not address third-party websites or online ordering," she wrote in Monday's 25-page order.

"The letter constitutes the department's interpretation that online ordering is a service directly related to dispensation of medical marijuana; thus the letter implements the statute and prescribes policy. The letter has the direct and consistent effect of prohibiting the practice of MMTCs contracting with third-party websites for online ordering of medical marijuana," she added, using an acronym for medical marijuana treatment centers, the state's name for marijuana operators.

Seann Frazier, a lawyer who represents Leafly, asked Van Wyk to determine whether the agency's policy amounted to an invalid rule, which, under administrative law, is different from an unadopted rule. But Van Wyk said she lacked the authority to determine if the unadopted rule was valid or not.

"Practically speaking, the department may simply discontinue reliance on the agency statement, rather than choosing to adopt the statement as a rule. In that case, a ruling on the validity of the statement as a rule would be advisory in nature," she wrote.

Leafly and similar sites allow patients to shop online, compare prices and view product availability at dispensaries. Patients can order products and be notified when their orders are completed, but customers have to pick up and pay for items in person at dispensaries. MMTCs pay the e-commerce companies for marketing, advertising and ordering services on a subscription basis.

Dara Kam reports for the News Service of Florida.

FROM THE COURTS

Mistrial Denied in Opioid Trial After Juror Did Her Own Research

by Amanda Bronstad

A federal judge in Cleveland who dismissed a juror in an opioid trial for misconduct denied mistrial requests from the defendant pharmacies.

U.S. District Judge Dan Polster, who is overseeing a trial that began on Oct. 4, dismissed Juror No. 4 after she admitted doing her own internet research on a topic brought up in testimony last week. The juror had shared copies of her research with the rest of the jury, prompting the defendants to file motions for mistrial on Sunday.

"The information shared with the jury went to a core issue in the case, which plaintiffs have emphasized throughout the entire trial—whether the defendants were driven by a profit motive to oversupply opioids in Lake and Trumbull Counties," wrote Robert Barnes, of Pittsburgh's Marcus & Shapira, and Diane Sullivan, of Weil, Gotshal & Manges in Princeton, New Jersey, in a mistrial motion filed by Giant Eagle, one of the defendants. "While Juror Number Four has been dismissed from the jury, thirteen other jurors that received the same information remain on the jury, their minds tainted in favor of plaintiffs by the improper extrinsic evidence they received from Juror Number Four."

A separate mistrial motion filed by Giant Eagle and lawyers for the other three defendants—CVS, Walgreens and Walmart—said that no instruction could cure the tainted jury.

"While unfortunate at this stage of the proceedings, to deny a mistrial and complete a trial tainted by juror misconduct would only result in the waste of untold additional resources," they wrote.

They noted that even "lead trial counsel" for the plaintiffs had "voiced concerns about 'continuing a case where we know that the jury has been discussing something that is an issue in the case that has been questioned.'"

"After voir dire had concluded, plaintiffs' counsel went further: 'I'll be candid, Your Honor, I think that it affects this jury, I think it affects everybody whether they recognize it or not, and I think that a mistrial is appropriate,'" the motion continues. "He reiterated '[i]t's not anything I say lightly,' but 'I just want to tell the court I think that a mistrial is appropriate. That's my candor to the tribunal which I owe under my ethical obligation.'"

U.S. District Judge Dan Polster dismissed Juror No. 4 after discovering she had brought "copies of an article regarding Narcan" and began showing it to the other jurors.

But lawyers for the plaintiffs, two Ohio counties, filed a response on Sunday opposing a mistrial and concluded, after consulting with their clients, that the misconduct "did not incurably prejudice any party, that the jury can remain impartial, and that the trial should proceed to conclusion." They also cited the judge's own remarks that the topic of the juror's research "has no bearing" on whether the defendants created a public nuisance. Further, the judge admonished the remaining jurors.

"Such timely proceedings do not require a mistrial—they prevent one," wrote plaintiffs lawyers, who include co-lead counsel Jayne Conroy, of New York's Simmons Hanly Conroy; Joe Rice of Motley Rice in Mount Pleasant, South Carolina; and Paul Farrell of Farrell & Fuller in San Juan, Puerto Rico. "Because the misconduct was discovered during trial and the court had an opportunity to cure, no presumption of harm exists."

In an email to Law.com, W. Mark Lanier, of The Lanier Law Firm in Houston, who is lead trial counsel, said Polster denied the motions on Monday morning.

"Our initial concerns were modified once we had a chance to research the 6th Circuit law," Lanier wrote. "The judge called each juror in this morning and confirmed each could be fair. That is more than enough to deny the motion."

At issue, according to the plaintiffs' opposition, was the cross-examination of Walgreens' divisional vice president of pharmacy compliance and patient safety, Tasha Polster. She testified last week that Walgreens charged customers for naloxone, also known as Narcan, a medication given to individuals who overdose on the prescription painkillers.

The two minutes of testimony addressed a question from a juror last Wednesday: "Was naloxone offered to patients for free when getting 50MMEs? If not, how much did it cost?"

On Friday, according to the mistrial motion filed by all four defendants, the judge questioned Juror No. 4 after discovering she had brought "copies of an article regarding Narcan" and began showing it to the other jurors. He then spoke to each of the remaining 13 jurors and alternates.

"The questioning revealed that Juror 4—immediately after hearing the testimony about naloxone not being offered for free at Walgreens—had gone home, done internet research, and returned the next morning with a stack of fliers listing programs in Northeast Ohio where naloxone is made available free of charge," the mistrial motion said. "This conduct by Juror 4 was in direct violation of the court's repeated admonitions to do no research and consider no outside sources of information on issues related to the case."

Walgreens attorney Kaspar Stoffelmayr, a Chicago partner at Bartlit Beck, declined to comment. CVS attorney Eric Delinsky, of Zuckerman Spaeder, and Walmart's lawyer, John Majoras, of Jones Day, both in Washington, D.C., did not respond to a request for comment.

When asked why she supplied copies of the information to the rest of the jury, according to Giant Eagle's mistrial motion, Juror No. 4 replied that "this feels bigger than this case. We're talking about people's lives. And I didn't want people to think they had to pay for a Narcan kit."

Polster remarked that "in 22-some years," he had "never had a juror … do anything like this," according to Giant Eagle's motion.

Sullivan, Giant Eagle's lawyer, declined to comment.

In their opposition, the plaintiffs' attorneys cited the responses from the other jurors when Polster asked them what they remember about Juror No. 4's research.

"Based on their responses," they wrote, "it is clear that the jurors had largely ignored Juror 4's extrinsic research."

Amanda Bronstad is the ALM staff reporter covering class actions and mass torts nationwide. Contact her at abronstad@alm.com.

Kirby McInerney Announces $200M Award to Single Whistleblower

by Allison Dunn

Nearly $200 million was awarded to a single whistleblower for providing extensive information for a case involving the manipulation of financial benchmarks, according to Kirby McInerney, the New-York based law firm representing the whistleblower.

The award is the largest, publicly announced single whistleblower award from the Dodd-Frank whistleblower reward program. The recipient was not identified.

In a statement last week, Kirby McInerney said the client provided documents and trading information that "catalyzed" investigations by the Commodity Futures Trading Commission, a U.S. federal regulator, and a foreign regulator of manipulation of crucial financial benchmarks used by global banks. The benchmarks are used as the basis for pricing of fixed-income futures, options and swaps, the law office said.

The CFTC's final award determination, the award represents a percentage of recoveries achieved in connection with the CFTC as well as the related settlements.

"We are pleased that the CFTC has recognized that the whistleblower deserved a substantial award and Kirby McInerney fought hard to ensure that its client was recognized under the current award system. Today, we can say the system works," said David Kovel, Kirby McInerney's lead partner on the case. "The whistleblower laws recognize the fundamental truth that incentivizing persons with knowledge to come forward to report on frauds benefits the public as a whole by disclosing violations that likely would never have been caught."

Since issuing the first award in 2014, the CFTC has awarded more than $300 million to whistleblowers.

Allison Dunn reports for Law.com, an ALM affiliate of the Daily Business Review. Contact her at aldunn@alm.com.

DIEGO M. RADZINSCHI

Kirby McInerney said a client provided documents and trading information that "catalyzed" investigations by the Commodity Futures Trading Commission and a foreign regulator of manipulation of crucial financial benchmarks used by global banks.

FROM THE COURTS

Senate Confirms Voting Rights Advocate to Federal Appeals Court

by Avalon Zoppo

The Senate confirmed voting rights attorney Myrna Pérez to the U.S. Court of Appeals for the Second Circuit, making her the second-ever Hispanic woman to sit on the New York-based federal appeals court.

The Senate confirmed her by a vote of 48-43. Pérez, former director of the Brennan Center of Justice's Voting Rights and Elections Program, is the seventh federal appellate nominee confirmed since President Joe Biden took office and replaces Judge Denny Chin, who took senior status in June.

"Over the course of her career, Myrna has become one of the nation's top voting rights and election lawyers, playing a key role in making sure Americans could vote safely in the 2020 election," Sen. Chuck Schumer, D-New York, said before the vote. "But Myrna's qualifications are not limited to her experience as a voting rights litigator. She's also a brilliant attorney with experience in fair housing law, disability rights and employment discrimination."

During Pérez's nomination process, Republican senators attacked her voting rights record and criticized her for continuing advocacy work while being vetted for the seat, but not yet nominated. Sen. Ted Cruz, R-Texas, called Perez the "most dangerous" of all of Biden's appellate nominees.

At her nomination hearing in July, Pérez responded to GOP attacks by telling the committee she would "put aside any personal policy viewpoints" if confirmed. It's also unlikely Pérez will preside over any of the major challenges to recently adopted voting restrictions, which have largely been enacted in states that don't fall under the Second Circuit's jurisdiction.

"I, for the last 15 years, have been an advocate … zealously pursuing the interests of my clients," Pérez said at the hearing. "A judge plays a completely different role. By accepting this nomination, I am pledging to this body [and] to the American public, before my God, that I would faithfully discharge my duties under the Constitution, which require me to put aside any personal policy viewpoints I have and examine what the matter is before me and apply the precedent of the Supreme Court and the Second Circuit."

Pérez has spoken out against efforts to restrict voting and litigated election-law cases throughout the country. She played a key role in preparing six amicus briefs in the U.S. Supreme Court case *Shelby County v. Holder* in 2013.

Myrna Pérez, former director of the Brennan Center's Voting Rights and Elections Program, is the seventh federal appellate nominee confirmed since President Joe Biden took office.

Progressive groups praised Pérez's confirmation for her experience with election law and for bringing professional diversity to the federal appellate bench. The Biden administration has signaled a commitment to diversifying the judiciary, which is largely composed of judges from private practice and with prosecutor backgrounds.

"With voting rights under attack across the country, Myrna Pérez's confirmation will bring the kind of deep expertise in voting law the federal bench needs right now. Her work as a voting rights lawyer will allow her to bring much needed perspective to a federal bench that is skewed in favor of corporate and government interests. Sen. Schumer has been an indispensable partner for President Biden in their efforts to rebalance the courts, and his recommendation of Pérez and other champions of equal justice under the law show he understands the need for professional diversity in our courts," Demand Justice Executive Director Brian Fallon said in a statement.

Before joining the Brennan Center for Justice in 2006, Pérez was a civil rights fellow with the firm Relman, Dane & Colfax and clerked for U.S. District Judge Anita Brody of the Eastern District of Pennsylvania and Judge Julio Fuentes of the U.S. Court of Appeals for the Third Circuit.

"Judge Myrna Pérez exemplifies everything we could hope for in a federal judge: extensive legal experience, professional and demographic diversity, and a deep commitment to equal justice. And her confirmation could not be more timely. States across the country are passing draconian voter suppression laws primarily targeting people of color, and just last week Senate Republicans completely blocked efforts to pass desperately needed voting rights legislation. More than ever, we need judges who understand the importance of fair elections and access to the polls. Judge Pérez is that judge," Alliance for Justice president Rakim Brooks said in a statement.

Pérez is Biden's second appointee to the Second Circuit after Judge Eunice Lee, a former public defender, was confirmed to the bench in August. Beth Robinson, an associate justice on the Vermont Supreme Court, was tapped for a seat on the Second Circuit and is awaiting a confirmation vote after the Senate Judiciary Committee advanced her nomination last week.

Avalon Zoppo is an appellate courts reporter for The National Law Journal, an ALM affiliate of the Daily Business Review. Contact her at azoppo@alm.com. On Twitter: @AvalonZoppo.

Georgia Justices' Input Wanted on Seat Belt Evidence Exclusion

by Greg Land

In a case that could have a major impact on the admissibility of seat belt use in product liability cases, a federal judge has asked the state Supreme Court to decide whether Georgia's statutory bar to evidence relating to a plaintiff's seat belt use applies to claims involving defective air bags.

The lawyer for a woman severely injured when an air bag failed to deploy in a crash has filed a motion in limine to prevent "any evidence in this case, testimony or documentary" as to whether she was wearing a seat belt.

Under Georgia law, the use or nonuse of a seat belt by a vehicle's occupant "shall not be considered evidence of negligence or causation" and "shall not be evidence used to diminish any recovery for damages arising out of the ownership, maintenance, occupancy or operation of a motor vehicle." [O.C.G.A. 40-8-76.1]

Lawyers for the defendant, Ford Motor Co., countered that they're not trying to introduce evidence of the plaintiffs' seat belt use in violation of the statute, but that -- because the air bag was part of the "interconnected designs of restraints and air bags, it is pragmatically impossible to try an alleged failed air bag deployment case, without discussing the restraint system."

"And it would be impossible to conclude that a differently designed air bag would be safer, or would not be more harmful, without considering occupant seat belt use or nonuse," said their response to the motion.

On Oct. 20, Senior Judge Hugh Lawson of Georgia's Middle U.S. District Court certified a three-part question to the state Supreme Court:

"Does O.C.G.A. § 40-8-76.1(d) preclude a defendant in an action alleging defective restraint system design and/or negligent restraint system manufacture from producing evidence related to:

(1) The existence of seat belts in a vehicle as part of the vehicle's passenger restraint system; or

(2) Evidence related to the seat belt's design and compliance with applicable federal safety standards; or

(3) An occupant's nonuse of a seat belt as part of their defense?"

Lawson made clear that the justices should use its own judgment in addressing the applicability and interpretation of the issue, writing that he "disclaims any intention or desire that the Georgia Supreme Court confine its reply to the precise form or scope of the questions certified."

"The answers provided will determine the issues in this case and evidence admissibility," Lawson wrote.

The case involves an accident in March 2020 when Kristin and Casey Domingue were in a 2015 Ford Super Duty pickup that was struck on the passenger side by a Jeep Wrangler in a "T-bone" collision.

Kristin Casey, riding on the passenger side, slammed into the windshield and suffered serious injuries to her head, neck and spine. The passenger-side air bag did not deploy.

A couple of months later, Craig Webster of Tifton's Webster Firm filed a complaint naming Ford for product liability and negligence claims.

According to Webster's motion in limine, Ford contended that the Domingues were not wearing seat belts and anticipated "expert testimony focused on the question of whether Plaintiffs were wearing their seat belts at the time of the subject collision."

Citing a 2009 case from Georgia's Northern U.S. District Court involving "an identical situation" in which DaimlerChrysler sought a new trial after being hit with hefty defective air bag verdict, Webster wrote that the judge ruled that "Georgia's seat belt statute prohibits the jury's consideration of the use or nonuse of a seat belt for any purpose, and the Court's instruction accurately reflected this substantive law." (*Denton v. DaimlerChrysler*, 645 F.Supp.2d 1215.)

Ford is represented by Michael Boorman, Evan Smith IV and Timothy Andrews of Watson Spence in Atlanta and Paul Malek and Alan Thomas of Huie Fernambucq & Stewart in Birmingham, Alabama.

Their response to the plaintiffs' motion said "evidence unrelated to Plaintiffs' actual seat belt use falls outside" the statute's exclusionary limits and that the plaintiffs' allegations and expert testimony "have already opened the door to the admission" to seat belt evidence.

Further, they said, if the statute "were enforced in the manner Plaintiffs advocate, it would be unconstitutional as applied, infringing upon Ford's substantive due process and equal protection rights under both the Georgia and United States Constitutions."

Lawson initially submitted a similar question to the Supreme Court earlier this month but withdrew it to more precisely address the issue.

An appellate brief Webster had already filed said long-standing appellate precedent made clear the statute "does not provide any exception for any classification of defendant. It is a comprehensive prohibition against the 'failure to wear a seat belt' defense on any question of liability or diminution of damages."

The justices should not allow Ford to "dabble around" the statute, the brief said.

"If the court opens the door by allowing Appellee to even mention seat belts in the context of this case, it will be impossible to keep the jury from asking whether Appellants were wearing their seat belts at the time of the collision," the plaintiff's brief said.

Webster declined to discuss the case, but said in an email that he doesn't think the Supreme Court's response will change the law prohibiting evidence of an alleged failure to wear a seat belt.

Ford's counsel did not respond to a request for comment Friday.

Greg Land covers verdicts and settlements and insurance-related litigation for the Daily Report, an ALM affiliate of the Daily Business Review. Contact him at gland@alm.com.

FROM THE COURTS

Ex-Scalia Clerk Makes SCOTUS Debut in Abortion Cases

by Marcia Coyle

The United States and Texas have been frequent adversaries in the U.S. Supreme Court in the last decade or so, but next week, the state's top appellate lawyer will be at the court's lectern for the first time in two of the most controversial cases of the year.

Texas Solicitor General Judd Stone II, who officially took office in February of this year, will appear Nov. 1 in two separate cases that share the same triggering event: the state Legislature's enactment of a ban on abortions after the sixth week of pregnancy, commonly known as S.B. 8, or the "Heartbeat" law.

Stone, a graduate of Northwestern University law school and the University of Texas, is counsel of record in *United States v. Texas* and *Whole Woman's Health v. Jackson*. The justices agreed Friday to review the cases and put all parties on an extraordinary, expedited briefing schedule to be completed in less than a week.

In the United States' challenge, the justices directed the parties to brief whether the federal government can sue in federal court, and get injunctive or declaratory relief "against the State, state court judges, state court clerks, other state officials, or all private parties" in an effort to keep S.B. 8 from being enforced.

The question in *Whole Woman's Health* goes directly to the anti-abortion law's enforcement scheme: Can a state insulate a law blocking the exercise of a constitutional right from federal court review by delegating to the general public the authority to enforce the law through civil suits?

Although his arguments in the back-to-back cases will mark his debut at the lectern, Stone, who was active in the Federalist Society as a law student and has continued that association in his professional life, is no stranger to the operation of the Supreme Court and the soft carpeted hallways flanked by the justices' chambers. He clerked there in the 2014 term for the late Justice Antonin Scalia.

The expedited abortion-related arguments on Nov. 1 would be a challenge for any veteran Supreme Court advocate. Stone, however, will hardly catch his breath when they end. He returns to the lectern eight days later in another closely watched case: *Ramirez v. Collier*.

In that case, a death-row inmate claims his First Amendment free-exercise right and the Religious Land Use and Institutionalized Persons Act were violated by Texas' refusal to allow his pastor to sing prayers and lay on hands in the execution chamber when Ramirez is executed.

Marcia Coyle covers the U.S. Supreme Court. Contact her at mcoyle@alm.com. On Twitter: @MarciaCoyle.

FROM PAGE A1

SAWYER'S LANDING

of Mr. Peebles' claims now dismissed, Swerdlow Group can forge ahead in delivering a direct, positive impact in Overtown in the form of new jobs, new tax revenues and much-needed affordable housing," Kluger said.

Peebles and Channer sued Swerdlow Group over Block 45 and Block 55 in 2020, after the Miami Community Redevelopment Agency ended the Peebles-Channer camp's previously granted rights to those properties. According to court documents, the parties entered into a membership interest purchase and sales agreement in 2016 to formalize the agreement for Overtown Gateway Partners LLC to sell its interest in the development rights for Blocks 45 and 55 in Overtown.

Overtown Gateway Partners and the CRA mutually terminated the Block 45 development agreement in 2016, and they never entered a formal agreement to develop Block 55. The CRA later awarded Block 55 development rights to Swerdlow and his Downtown Retail Associates LLC. Overtown Gateway Partners claimed it was only terminated because it was strong-armed by the CRA for the benefit of developer Michael Swerdlow.

The first count claimed Swerdlow violated confidentiality and non-circumvention clauses of their prior agreement by disclosing confidential information to the CRA, which "set in motion a series of events culminating in the CRA's termination of the Block 55 negotiations with the plaintiffs" after a meeting with the CRA in May 2016. The second count claimed Swerdlow communicated with the CRA in violation of a joint agreement entered between the Swerdlow Group, Peebles and Channer.

Kluger Kaplan attorneys argued Swerdlow Group didn't breach its agreement with the Peebles and Channer entities, and that Swerdlow fairly won the development rights to Block 55.

Hanzman issued two summary judgment orders in favor of Swerdlow's team on the Peebles-Channer breach of contract claims.

Hanzman concluded that the CRA did not terminate its Block 55 negotiations due solely "to anything that transpired in this May 11, 2016 meeting, even assuming that a breach of confidentiality occurred."

Sawyer's Landing will now continue to move forward as planned, according to Swerdlow's attorneys, who said the project is set to be complete in 2022.

According to court documents, Glen Waldman of Waldman Barnett represented the plaintiff TPC Overtown Block 45. He did not respond to a request for comment by the deadline.

Melea VanOstrand is ALM's South Florida real estate reporter. For story ideas, email her at mvanostrand@alm.com. Want to see the latest real estate news? Follow Melea on her Twitter or Facebook pages.

FROM PAGE A1

FEES

Continental. Martinez-Cid and Bucciero would issue a proposal for settlement to Continental, which, if it had accepted it, would have allowed Continental Motors to resolve the case for $3.9 million.

According to Martinez-Cid, Continental Motors did not accept the proposal, which allowed plaintiff, Carly Johnson to collect her fees and costs. The jury found Continental Motors, which does business as Continental Aerospace Technologies, solely liable for Johnson's death, awarding his widow $5 million. Additional interest fees brought the total to $5.7 million.

Martinez-Cid said this brings a conclusion to many years of a very hard-fought legal battle, which started with Johnson's death when his engine failed on takeoff

"Continental Motors Inc. was immediately blaming the maintenance shop that the aircraft had left from. ... There have been a number of accidents due to the failure of these torsional vibration dampers," Martinez-Cid said. "So not only did we win the appeal, but we were also entitled to fees and cost for sanctions that had been assessed and for having to achieved a result well-over a proposal for settlement we had made to them before the trial. We were then able to recover approximately $2 million additionally for that as well. Therefore, this marks the end of the legal battle and achieves justice for the Johnson family."

Martinez-Cid believe it's important for companies in aviation to know that there are firms that are committed to holding them accountable.

"Despite the hurdles, resources and time necessary to prosecute these cases, we are going to do that and these cases are important because they help make aviation safer for all of us," Martinez-Cid said.

Fort Lauderdale attorney Chris Jahr of Wicker Smith O'Hara along with Melville, New York, attorneys Will Skinner and Gary Gardner of the Skinner Law Group represented Continental Motors Inc.. They did not respond to requests for comment by press time.

Eleventh Circuit Judge Peter R. Lopez presided over the case.

The matter arose around Dec. 8, 2012, when there was a plane crash which resulted in the death of the plaintiff's husband, Timothy Johnson, passing away.

According to the Settlement Stipulation and Proposed Order, Johnson tried this case in jury and it resulted in them favoring her against the defendant, Continental Motors Inc. After reaching a compromise pertaining to amounts at issue in addition to the final judgment, both parties agreed and stipulated.

On March 22, 2019, Johnson was aware of $5,000,000 with the addition of interest and attorney fees. After the final judgement, both the plaintiff and defendant settled on the amount of almost $7,700,000. This payment resolves all claims as agreed to by both parties.

"There have been a number of aviation accidents that are due to the failure of these torsional vibration dampers. Until our case, CMI has been successful in either pointing to other factors or keeping those cases from getting to trial, so this is important in that all of the evidence was put in front of the jury and they were able to determine what we had felt all along ," Martinez-Cid said, "Our experts felt very strongly that this damper was not safe and should not have been used in the aircraft and I think that's very important. In any accidents that involved these dampers, they have to take a close look at how they could have caused or contributed to the crash."

Bucciero agreed, adding, "Attorneys should be dedicated, diligent and to continue to work up the case and prepare it for trial."

Jasmine Floyd is a South Florida litigation reporter with the Daily Business Review at ALM. You can reach her at jfloyd@alm.com or 678-472-8947.

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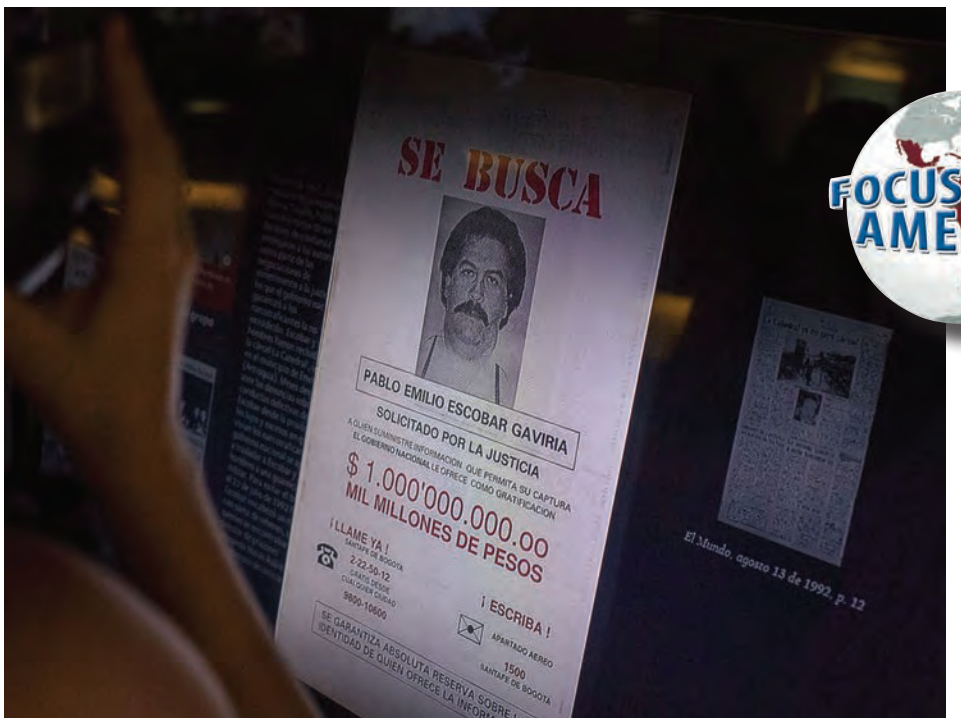
FOCUS LATIN AMERICA

US Judge: Pablo Escobar's Cocaine Hippos Legally 'People'

by John Seewer and Regina Garcia Cano



FABIOLA FERRERO/BLOOMBERG NEWS

The "cocaine hippos" are descendants of animals that drug kingpin Pablo Escobar illegally imported to his Colombian ranch in the 1980s when he reigned over the country's drug trade.

The offspring of hippos once owned by Colombian drug kingpin Pablo Escobar can be recognized as people or "interested persons" with legal rights in the U.S. following a federal court order.

The case involves a lawsuit against the Colombian government over whether to kill or sterilize the hippos whose numbers are growing at a fast pace and pose a threat to biodiversity.

An animal rights groups is hailing the order as a milestone victory in the long-sought efforts to sway the U.S. justice system to grant animals personhood status. But the order won't carry any weight in Colombia where the hippos live, a legal expert said.

"The ruling has no impact in Colombia because they only have an impact within their own territories. It will be the Colombian authorities who decide what to do with the hippos and not the American ones," said Camilo Burbano Cifuentes, a criminal law professor at the Universidad Externado de Colombia.

The "cocaine hippos" are descendants of animals that Escobar illegally imported to his Colombian ranch in the 1980s when he reigned over the country's drug trade. After his death in a 1993 shootout with authorities, the hippos were abandoned at the estate and left to thrive with no natural predators — their numbers have increased in the last eight years from 35 to somewhere between 65 and 80.

A group of scientists has warned that the hippos pose a major threat to the area's biodiversity and could lead to deadly encounters with humans. They are advocating for some of the animals to be killed. A government agency has started sterilizing some of the hippos, but there is a debate on what are the safest methods.

In the suit, attorneys for the Animal Legal Defense Fund asked the U.S. District Court in Cincinnati to give "interested persons" status to the hippos so that two wildlife experts in sterilization from Ohio could be deposed in the case.

Federal magistrate Judge Karen Litkovitz in Cincinnati granted the request on Oct. 15. The animal rights group based near San Francisco said it believes it's the first time animals have been declared legal persons in the U.S.

Their attorneys argued that because advocates for the hippos can bring lawsuits to protect their interests in Colombia that the hippos should be allowed to be considered "interested persons" under U.S. law.

They pointed to a federal statute that allows anyone who is an "interested person" in a foreign lawsuit to ask a federal court to permit them to take depositions in the U.S. in support of their case.

Christopher Berry, the lead attorney for the Animal Legal Defense Fund, called it a narrow but profound ruling.

"This really is part of a bigger movement of advocating that animals' interest be represented in court," he said. "We're not asking to make up a new law. We're just asking that animals have the ability to enforce the rights that have already been given to them."

While animals have been granted legal rights in India, Pakistan and Argentina, courts in the U.S. have been unwilling to do so until now.

A judge in Connecticut called a petition filed four years ago by an animal rights group to grant personhood to three elephants in a traveling petting zoo "wholly frivolous."

In another closely watched case, the New York Court of Appeals, the state's highest court, agreed in May to decide whether an elephant at the Bronx Zoo should get human-like rights and be moved to a sanctuary.

Earlier rulings dismissed the claims from the animal rights groups. The zoo contends that granting legal "personhood" to the the elephant named Happy would set a dangerous precedent and has called the efforts "ludicrous." Gun rights groups also have criticized the move out of concern it could impact hunting or set a precedent.

Backers point to court rulings that have given corporations legal rights and considered them to be legal persons — reasoning that animals should be treated the same under the law.

"Legal personhood is just the ability to have your interest heard and represented in court," Berry said. "It's about enforcing rights they already have under animal cruelty laws and other protection laws."

John Seewer reports for the Associated Press. AP writers Astrid Suarez in Bogota, Colombia, and Regina Garcia Cano in Mexico City contributed to this report.

Facebook Yanks Bolsonaro Video Claiming Vaccines Cause AIDS

by David Biller

Facebook and Instagram have removed from their platforms a live broadcast that Brazilian President Jair Bolsonaro delivered in which he said people in the U.K. who have received two coronavirus vaccine doses are developing AIDS faster than expected.

Facebook's press office confirmed in an emailed statement to The Associated Press that the content was removed Sunday night because it violated Facebook policy regarding COVID-19 vaccines.

"Our policies don't allow claims that COVID-19 vaccines kill or seriously harm people," the statement said. The company didn't respond to AP questions regarding why three days elapsed before the much-criticized content was removed nor whether language barriers played a role, as Bolsonaro was speaking in Portuguese.

The claim was among the most bizarre that the president, who contracted the virus last year and remains unvaccinated, has made about immunization against the coronavirus to date. He spent months sowing doubt about vaccines, especially the one produced by Chinese firm Sinovac. He also warned Brazilians that there would be no legal recourse against Pfizer for anyone suffering side effects, and joked that might include women growing beards or people transforming into alligators.

On Monday during a radio interview, Bolsonaro rebuked criticism he faced for allegedly spreading fake news with his claim about AIDS, and said he had merely read a news article published last October in Brazil. In fact, the media published a loosely related story which pertained only to the type of vaccine in Russia's Sputnik shot, which isn't authorized for use in Brazil, according to fact-checking service Aos Fatos.

Last year, Facebook and Instagram removed posts by the far-right leader that violated community guidelines for COVID-19, including one video in which he claimed the anti-malarial hydroxychloroquine was curing COVID-19 the world over. Broad testing has shown the drug to be ineffective in treating COVID-19. A few months later, Facebook removed dozens of accounts, some used by employees of Bolsonaro and two of his lawmaker sons, for engaging in "coordinated inauthentic behavior."

SHUTTERSTOCK

Brazilian President Jair Bolsonaro said people in the U.K. who have received two coronavirus vaccine doses are developing AIDS faster than expected.

But Monday marked the first time Facebook removed one of Bolsonaro's weekly live broadcasts that serve as a direct channel of communication with his supporters and tend to rack up hundreds of thousands of views.

Bolsonaro has 14.6 million followers on Facebook, and almost 19 million on Instagram. Social media platforms, including the Facebook-owned messaging service WhatsApp, were key for his election victory in 2018. He will run for reelection one year from now. Lately, his allies have been calling on backers to join rival platforms, particularly Telegram.

The Supreme Court's Justice Alexandre de Moraes is overseeing an investigation into the dissemination of allegedly false news that targets close allies of the president, two of his sons and — as of August — Bolsonaro himself. Last week, de Moraes ordered the preventative imprisonment of a prominent Bolsonaro booster and blogger currently residing in the U.S, and directed the federal police to ask Interpol to put out a red alert.

Facebook's actions in Brazil come amid a deluge of stories by 17 American media organizations, including the AP, based on internal company documents that show, in many cases, the company failed to adequately and quickly deal with misinformation. The disclosures were made to the U.S. Securities and Exchange Commission and provided to Congress in redacted form by former Facebook employee-turned-whistleblower Frances Haugen's legal counsel. The redacted versions were obtained by a consortium of news organizations, including the AP.

David Biller reports for the Associated Press.

SPORTS AND ENTERTAINMENT LAW

What's Next After Alston and NIL? College Football Players as Employees?

Commentray by Scott Cole

On Feb. 20, 2015, Peter Sung Ohr, regional director of the National Labor Relations Board (NLRB), issued an unexpected decision, ruling that scholarship players on Northwestern University's football team were employees under the National Labor Relations Act (NLRA), and as such, had the right to form a union. While only applicable to private universities, the decision sent shockwaves through college athletics. If upheld, scholarship football players would be able to collectively bargain the terms of their employment, such as compensation, working hours, health care benefits, and paid time-off. This of course would not only directly conflict with the National Collegiate Athletic Association (NCAA) rules prohibiting pay for play, but significantly undercut the entire concept of amateurism in college sports.

Cole

On appeal, the full NLRB declined to exercise jurisdiction, which made Ohr's decision unenforceable. The NLRB expressed concerned that because it only had jurisdiction over private universities, and most Football Bowl Subdivision (FBS) programs were operated by state universities governed by state labor laws, having college football labor negotiations conducted under a patchwork of conflicting laws would cause instability in the labor market. The NLRB also expressed concern with the size of the Northwestern players' proposed bargaining unit. Allowing the players at each university to form a separate bargaining unit could create inconsistent rights and obligations among players within the same conference, not to mention nationally.

The landscape has changed dramatically since 2015. As a result of the NCAA's decision in late June to waive its rules on athletes' use of their name, image, and likeness, or NIL, college athletes are now able to directly earn compensation from third parties. Athletes with a significant social media following can expect to earn substantial sums from licensing their NIL- but for those athletes without a large following, NIL opportunities will be limited.

So how long will the compensation disparity among college athletes continue before there is a move to directly compensate all athletes for their work? One must only be reminded of Justice Brett Kavanaugh's dissent in the *Alston* case to get a sense of where this might be headed: As he said: "Nowhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate."

BOARD OF CONTRIBUTORS

Is the timing now right for college athletes to become employees?

At least one federal court is already leaving the door open for that possibility. In *Johnson V. NCAA*, college athletes from different universities filed a lawsuit asking the court to rule they were employees of their athletics programs under the Fair Labor Standards Act (FLSA) and entitled to be paid for their services. On Aug. 25, the U.S. District Court for the Eastern District of Pennsylvania denied a motion to dismiss the lawsuit, giving the plaintiffs an opportunity to prove their case.

And Congress is also engaged. Legislation has been filed in the U.S. Senate by Sens. Chris Dodd and Bernie Sanders to make college athletes employees. The bill, the College Athlete Right to Organize Act, would amend the NLRA to make college athletes employees if they receive compensation from the university, including through scholarships. It would also change the definition of employers under the act to include public, as well as private universities, and allow college athletes to form a conferencewide bargaining unit so they could negotiate for all athletes in their conference. A companion bill was filed in the U.S. House of Representatives.

If the bill becomes law, the implications for athletic programs are significant. Consider the following:

- The bill says multiple universities within an athletic conference can be forced to be a multiemployer bargaining unit if players so choose. This would require universities with different resources and structures to jointly negotiate a one-size-fits-all collective bargaining agreement with the players union, which could create financial obligations some programs would struggle to meet.
- If athletes become employees it is more likely college athletics will be deemed a business and not an educational activity. While universities, are normally exempt from federal income taxes, if they operate businesses unrelated to education, they must pay tax on the net income derived from those businesses.
- Athletes who earn salaries will not only pay income tax on their earnings, they also will be required to report that income in applying for student financial aid, likely making them ineligible for Pell Grants. Athletic programs that rely on Pell Grants to pay for athletes' educational and living expenses will now have to fund those expenses directly through payments to the athletes.
- If athletic departments assume the financial burden of player salaries and benefits, where will they find the additional revenue? Options include raising ticket prices, increasing student fees, cutting nonrevenue sports, obtaining additional university support, or cutting staff; each with its own consequences. If programs are cut, it could also implicate Title IX.
- What role will the NCAA play in college athletics if protecting amateurism is no longer a primary mission?

If this bill makes its way through Congress, would President Joe Biden sign it? We know that during his presidential campaign and after taking office, the president has expressed significant support for unions. Interestingly, when Biden became president in 2021, one of his early actions was to fire the NLRB's general counsel Peter Robb. He then appointed an interim general counsel. Who did he choose? None other than Peter Ohr, who issued the original Northwestern opinion. Was there a message in choosing him for that position? While Ohr only served temporarily, his appointment could indicate where the president is leaning on the issue of college athletes and unions.

If college athletes become employees, it will be increasingly difficult to argue that college sports is much different than professional sports. Compensating players may be the right thing to do, but the implications of doing so are significant. Universities should begin thinking through these issues now so that they will not be caught off guard if or when they become a reality.

Scott Cole is a shareholder and leader of the higher education team at GrayRobinson in Orlando. He has extensive experience providing legal advice, strategy, and problem resolution in unique and decentralized higher education environments.

FROM THE COURTS

Investigative Reporter Talks New Book About Judicial Misconduct

by Jacqueline Thomsen

Lise Olsen was working as an investigative reporter for the Houston Chronicle when she got a tip: The case manager for a federal judge was seen running from his chambers in tears, her clothes disheveled. People in the courthouse assumed she was sexually assaulted because of the judge's reputation. "That was my introduction to the world of federal judicial misconduct," Olsen said.

Olsen ran a series of investigative stories that revealed the scope of allegations against the judge, U.S. District Judge Samuel Kent, by case manager Cathy McBroom and others. After a judicial investigation didn't result in Kent's removal, federal prosecutors and lawmakers—armed in part by Olsen's coverage—targeted the judge. And after pleading guilty in federal court and becoming the first federal judge to be impeached for a sex crime, Kent agreed to resign from his judgeship.

In a new book, "Code of Silence," Olsen takes a broader look at judicial misconduct issues, largely through the lens of Kent's case, as well as the allegations against former Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit. Olsen said she decided to write the book to look at the issue of judicial misconduct "in a more global way."

"It was shocking to me how often I heard from people all over the country who had tried to blow the whistle on judges whose behavior apparently had recurred over and over and gotten worse over time, and who had been either disregarded or in some cases had been retaliated against, or had felt completely unable to do anything," Olsen said.

The federal judiciary has taken more action after the allegations against Kozinski emerged in 2017, starting up a working group to examine sexual misconduct in the courts and adopting reforms as a result. Some of those changes include creating a national office to provide information on how to make complaints and altering the code of conduct for all court employees, including judges, to make clear that misconduct should be reported and retaliation is prohibited.

We talked with Olsen recently. Her answers have been edited for length and clarity.

"It was shocking to me how often I heard from people all over the country who had tried to blow the whistle on judges ... and who had been either disregarded or in some cases had been retaliated against, or had felt completely unable to do anything," Lise Olsen said.

One theme in your book is that federal court staff who were experiencing sexual harassment or even being assaulted simply weren't aware of their options. What did your reporting tell you about the way that these reporting systems that currently exist in the federal judiciary function, and what do you see as some of the major issues with the way that they currently operate?

I think one thing that a lot of people are shocked about is that the judges who have really developed sexual harassment law, through their court decisions, are, in fact, exempt from the EEOC. Courts have independently made up their own policies. There was a policy in place in the Fifth Circuit at the time all this happened to Cathy and others. But the court employees assumed it did not apply to judges, judges didn't attend training. And judges aren't subject to the law itself; they can't be held accountable under the law that they actually enforce. But then you have this parallel system, which is this system that was created in 1980. Under the Judicial Conduct and Disability Act, the judges created a secret system in which the chief judge reviews complaints filed against their fellow judges in their circuit, and they decide basically whether anything happens at all. Most of these complaints are dismissed.

There is sort of a protocol for when they're supposed to be investigated, but really no one goes back behind the chief judge and says, "Chief Judge Tymkovich, you really should have formed an investigation when that Kansas judge appeared to be sexually harassing court employees, and not just told him to go to a doctor." Chief judges have a lot of latitude for what they do or don't do, and whether they investigate or not. In the 2000s, there was some controversy over how few complaints were investigated. There was a group led by Justice Breyer who tried to reform the system and make it more open. But even after that, there were judicial employees who had no idea whether they were allowed to complain, they didn't know about the process, there was no training on how to use the process. A lot of people were afraid to do it, even if they knew there was a judge who was out of control.

Another theme in the book is this power that federal judges have, that's documented in several instances throughout the book in regard to Kent and other judges. What did your reporting teach you about the power that judges hold and the lack of accountability they face?

Federal judges are the only employees in our system that have lifetime appointments, they are much like the kings still of our system. And they have that power to hold the other branches of government in check, if we have renegade presidents, renegade members of Congress, they need that power. But the problem is, there's this phenomenon that some judges really let that power go to their heads, and they start to blur or cross the lines into doing things that they themselves, if they saw those facts from a litigant, would probably say "this is impermissible behavior."

Sometimes, of course, judges say and do things that are simply mistakes, they just fly off the handle or whatever. But there are other judges who are abusive to attorneys, who systematically require things from female attorneys or say things to female attorneys that other people would not be allowed to say in public. It's that kind of behavior, thinking they can do anything, that occurs all over the courts.

The chief judge might be, in fact, one of the youngest judges in the circuit. It's very hard for a judge like that to call onto the carpet a senior judge who is a formidable figure, either publicly or privately. Sometimes the chief judges go and talk to these judges privately, the public never gets to know. One of the figures in my book that I explored at length is Judge Kozinski, the former chief judge of the Ninth Circuit. Judge Kozinski years ago was a big advocate for beefing up these reviews because he thought that this was a problem. I think it's very ironic because then later, when Kozinski became chief judge, the conduct he was committing was also not addressed properly, I believe, by the courts—not completely investigated, and not addressed in a timely fashion. There was a complaint against him, he initiated an investigation having to do with his explicit joke collection. But at the time that investigation was done, no one bothered to see if Judge Kozinski was showing examples of that collection to his young clerks, and he was as we know now.

There's a point in the book where you write that Chuck Grassley and Dianne Feinstein seem to have a joint case of "political amnesia" about sexual misconduct being an issue within the judiciary. It seems at times like we go through cycles, where there's an immediate wave of outrage when allegations are first made public. But there's not necessarily sustained attention on addressing this issue. There has been recently introduced legislation this year, but why do you think it is that we go through these cycles, and we don't see major changes happening?

I think you're absolutely right. In the 2000s there were members of Congress, including Jim Sensenbrenner who just retired, who made a big stink over the failures in the system, that there have been serious complaints raised that weren't addressed. Justice Breyer led a committee that did a very serious evaluation of the entire system. That kind of evaluation has not been done since then. What was done with the working group in 2017 was a very rapid review of some things that could be done very quickly by judges for judges. The judiciary looked at itself and I don't think it's effective. I think the judges are too worried about being attacked. Most judges deserve their offices. They're good people, they do a good job, they need that power. But I am concerned that because of the judiciary's interest in protecting the judiciary, that they also protect these rogues, these people who do the wrong things, for way too long. And it should be an embarrassment to them.

I think it would require a larger effort that would include players from outside the judiciary to talk about meaningful reforms. I think there are really great proposals that were on the table before the pandemic and really had traction, there were House hearings ongoing in February 2020. I'm hoping the book will shine some light in some corners and connect some dots for some people and that the work will resume because I think a lot of people are invested in this and still would like to fix and improve the system. Nothing's perfect, but this system is really inadequate. It's not even close to as sufficient as the system that almost any state has for reviewing judicial misconduct.

Jacqueline Thomsen covers Washington, D.C., federal courts and the legal side of politics. Contact her at jathomsen@alm.com. On Twitter: @jacq_thomsen.

COMMERCIAL REAL ESTATE

This is What Hybrid Work Looks Like in Action

by Erika Morphy

Ernst & Young has launched its inaugural EY Future Workplace Index, which tracks executive sentiment and behavioral data around the workplace of the future. The survey – one of the first of its kind and a barometer for the redefinition of the workplace – reveals the future of work is hybrid, meaning historically office-based workforces will work from the office and remote locations at any given time, and, for many, the traditional role of the office will become obsolete.

The survey found that 72% of office-based organizations are currently working in a hybrid environment, and that 75% of respondents anticipate they will not have any one dominant work location going forward. The data points to a new reality: how we work has fundamentally changed, and the office workplace will likely never go back to a traditional nine-to-five, in-office schedule.

"Though hybrid work is here to stay, the C-suite isn't creating the policies necessary for long-term hybrid workplace success," says Mark Grinis, EY Global Real Estate, Hospitality & Construction Leader. "We know the pandemic's effect on future workplaces continues to be substantial. The Index reveals there is a critical gap, and guidelines are needed to maximize sustained workplace success in a hybrid environment."

STOCK.ADOBE.COM

Companies innovate policies to optimize working environments; Three-fourths say no to the traditional office.

COMPANY CULTURE HAS IMPROVED WITH HYBRID WORK

The future is hybrid: Employee flexibility (e.g., choice of work location) has evolved. What used to be a universal perspective on "the right place" to undertake a given role has shifted as 87% of companies say the pandemic has changed the role of the office for their organization.

Productivity has increased: According to 57% of business leaders, productivity is better today than it was pre-pandemic. Companies have found ways to enhance productivity under different working models.

Company culture has actually improved with hybrid work: Seventy percent to eighty-five percent of respondents say their current setup is as or more effective than pre-COVID-19, with productivity, culture, well-being, and operations and processes ranking as the four most improved areas. Eighty-three percent of companies that say their culture has improved currently have less than 50% of their staff full-time in the office.

Small to midsize companies are finding it easier to adapt and thrive in a hybrid workplace: This is particularly the case in the technology and banking sectors, where large firms are finding their current setup less effective than their smaller peers.

OFFICE IS NOT 'DEAD,' IT'S 'CHANGED'

Brian Parker, principal in the office workplace, mixed-use studio at Cooper Carry, believes the workplace is not dead, but has changed.

"There's more focus on "WE" spaces and far less "ME" spaces to support being together when at the office," Parker tells GlobeSt. "There's heavier emphasis on being a 'cultural hub' for an organization so they can physically display and exhibit their mission, vision, values and brand identity. There's movement away from 'corporate-feeling' spaces to much more hospitality-influenced, soft, comfortable environments which feel more like home."

Bill Halter, principal in the office workplace studio at Cooper Carry, believes that hybrid schedules were not introduced during the pandemic. "We were all working some form of 'work from home' before March 2020.

"The pandemic put hybrid work (really remote work) into hyper speed and we all had no choice but to work remotely and learn how to use the supporting technology," Halter tells GlobeSt.

"What was missing during the pandemic was being able to work in person (the other half of hybrid) and we missed that as another work style that is very important to how we collaborate at times.

"Now that we are getting our 'culture hubs', aka physical office space back in our tool kit, we are quickly learning how to be truly hybrid. Time will tell whether it supports the greater enterprise and its ability to perform and create new thinking and solutions or not. Personally, I believe it will be better for the enterprise and its people."

WELCOME TO STUDIO HOP, CREATIVE FRIDAYS

Unispace is a global workplace strategy, design and construction firm. Ryan Caffyn-Parsons, CEO, Americas, tells GlobeSt that his company's blended working approach blends the best of working from home with the best of working in the office.

A hybrid working week is defined as "team members choosing which days they come in and how long for. It's about recognizing work as an activity, not a place, and providing autonomy over their schedule. Being in a studio takes on new meaning. It is where people – whether employees, clients, and other associates – come together to collaborate, innovate and socialize. Remember though, clients come first, and Unispace trusts their team to keep client experience and project delivery as an absolute priority."

Its studio hop set-up gives the opportunity to work from any of Unispace's global studios for up to four weeks each year. Unispace has 48 studios in 26 countries to choose from. "This helps to maximize employee collaboration, broaden their horizons and explore new cultures, or simply better align with holiday plans," Caffyn-Parsons says.

For creative Fridays, this negates the traditional nine-to-five model, Caffyn-Parsons says, and is aimed at minimizing internal meetings on Friday afternoons.

"Unispace urges employees to prioritize their wellbeing and mental health by choosing how to spend their Friday afternoons, whether that's relaxing, learning, volunteering, or socializing," Caffyn-Parsons says.

"As we looked to re-define the future of work, we thought about how we're positively impacting teams' physical and mental wellbeing, making a tangible difference in our communities, proactively investing in teams' career development, and empowering individuals to create the optimal working environment for them and their teams."

ENABLING HAPPIER, MORE PRODUCTIVE EMPLOYEES

Mancini has implemented a hybrid model of three days a week in-person at our New York City, Millburn, or Red Bank, New Jersey office, and two days working from home.

"We have always believed in a flexible work environment," its president and co-owner, Christian Giordano, tells GlobeSt. "This has always been the core of our company culture. We believe in work/life balance because we've found it leads to happier, more productive employees.

"Because we design a lot of commercial offices for our clients, we felt it was important to try out safe and flexible approaches at Mancini first in order to guide our clients as they are reopening and looking to us for direction."

Giordano also maintains that "nothing can replace the power of in-person collaboration, so the three days a week in-person is an essential component of our company culture."

Erika Morphy has been writing about commercial real estate at GlobeSt.com.

Could Homeownership Derail the Rental Market In Secondary Cities?

by Kelsi Maree Borland

During the pandemic, people fled the urban core for secondary metros across the country. The great relocation, as some have called it, wasn't necessarily a new trend; people had been slowly leaving big cities in favor of affordability in smaller cities, and last year, the trend exploded. In response, apartment markets in these cities are seeing high double digit rent growth, record low vacancy rates and new construction activity—but if these new folks in town are headed for homeownership, does the apartment boom already have a ticking clock?

The short answer is no. "This has been a question since I have been in the industry: Is there a binary relationship between rentership and homeownership. It really hasn't emerged. Both have benefited together," Blake Okland, vice chairman and head of multifamily investment sales at Newmark, tells GlobeSt.com.

In some small markets, Okland can imagine a future where there could be some crossover, but for the majority of the market, he says there is little overlap. "The conventional multifamily for-rent product, the single-family for-rent product and for-sale product can co-exist in an ecosystem that is relatively in balance," explains Okland. "In low-barrier-to-entry ex-urban locations, it might be a threat in the future, but it has not manifested itself yet."

However, Okland says there is a growing relationship between single-family rental housing and apartment product, and it is something that new entrants into the single-family rental market should track. "The real dislocation in single-family rental housing is the same problem that has happened in multifamily housing," he says. "There was intense development in specific submarkets at the higher end of the quality spectrum and cost spectrum in multifamily, and now that is happening in single-family. There is not a lot of affordable stock, and it is very difficult to build."

Single-family rentals will also face near-term challenges with new construction, making it hard to meet new demand. "The single-family rental market is historically very scattered, so it is very hard to aggregate. There is so much capital that wants to be in this space, and the quickest way to get there is to build it," he says, adding that the pandemic has dramatically changed supply chains and construction costs. "Supply chains have been transformed in a slightly negative way, and that elongates supply delivery timelines. That impacts costs," says Okland. "Infrastructure spending on the supply chain is another challenge because it could take construction capacity out of the market."

The single-family rental market is expanding alongside apartments in many markets across the country, but ultimately there is enough market demand to meet the supply in all of these housing segments.

Kelsi Maree Borland is a freelance journalist and magazine writer based in Los Angeles, California.

CITY OF DORAL
NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **Zoning Workshop** on **Thursday, November 4, 2021 at 6:00 p.m.** The Meeting will take place at the City of Doral, Government Center, Council Chambers located at 8401 NW 53rd Terrace, Doral, Florida, 33166.

The following application will be presented:

HEARING NO.: 21-11-DOR-01
APPLICANT: Brian S. Adler, Esq., on behalf of Lehman Doral Partners, LLC (the "Applicant")
PROJECT NAME: Lehman Doral Kia & Subaru
PROJECT OWNER: Lehman Doral Partners, LLC
LOCATION: 10155 NW 12th Street, Doral, Florida 33172
FOLIO NUMBER: 35-3032-045-0010; 35-3032-008-0017; 35-3032-000-0121
SIZE OF PROPERTY: 11.41 acres
FUTURE LAND USE MAP DESIGNATION: Business, Institutional and Public Facility
ZONING DESIGNATION: Commercial Corridor District CC
REQUEST: The Applicant is proposing to develop a Kia automobile showroom and an accompanying parts and service building on the previously platted parcel identified by Folio No. 35-3032-045-0010 (the "Kia Parcel"), fronting on NW 12th Street, and a Subaru automobile showroom with a parts and service building and a parking garage on the rear parcel currently identified by Folio No. 35-3032-000-0121 (the "Subaru Parcel"). Access between the two automobile facilities will be provided through a third parcel identified by Folio No. 35-3032-008-0017, which will serve as a connecting driveway (the "Driveway Parcel"), totaling approximately 11.41 acres.

LEGAL DESCRIPTION: The East 45.00 feet of the following property as described in Official Records Book 24375, Page 3970 of the Public Records of Miami-Dade County, Florida:

A portion of the South 1/2 of Section 32, Township 53 South, Range 40 East, Miami-Dade County, Florida, being more particularly described as follows:

COMMENCE at the Southeast corner of the Southwest 1/4 of said Section 32; thence S89°20'56"W along the South line of said Section 32 for a distance of 118.68 feet to a point; thence N01°43'13"W for a distance of 80.01 feet to a point on the northerly right-of-way of N.W. 12th Street; thence continuing N01°43'13"W for a distance of 481.55 feet to the Point of Beginning; thence due West a distance of 273.70 feet to a point; thence S64°49'27"W a distance of 497.70 feet to a point; thence N34°00'00"W a distance of 151.31 feet to a point; thence N 45°56'45" E a distance of 190.52 feet to a point; thence 60.36 feet along a curve to the right having a radius of 150.00 feet and a central angle of 23°03'15" to a point; thence N69°00'00"E a distance of 360.94 feet to a point; thence 245.30 feet along an arc to the left having a radius of 400.00 feet and a central angle of 35°08'13" to a point; thence due East a distance of 84.73 feet to a point; thence S01°43'13"E a distance of 358.49 feet to a Point of Beginning.

AND

A portion of the South 1/2 of Section 32, Township 53 South, Range 40 East, Miami-Dade County, Florida, being more particularly described as follows:

COMMENCE at the Southeast corner of the Southwest 1/4 of said Section 32; thence S89°2O'56"W along the South line of said Section 32 for a distance of 118.68 feet to a point; thence N01°43'13"W for a distance of 80.01 feet to a point of the Northerly right-of-way of N.W. 12th Street; thence continuing N01°43'13"W for a distance of 840.04 feet to the POINT OF BEGINNING; thence N9O"00'00"W for 271.82 feet to a point on the East Line of Tract "A" of MIAMI INTERNATIONAL MALL PROPERTIES, according to the plat thereof as recorded in Plat Book 117 at Page 84 of the Public Records of Miami Dade County, Florida; thence N01°43'13"W along said East line of Tract "A" for 1287.65 feet to the Southwest comer of Tract "A" of GREAT SPRINGS AT I.C.P., according to the Plat thereof as recorded in Plat Book 158 at Page 94 of the Public Records of Miami- Dade County, Florida; thence N89°40'09"E along the South line of said Tract "A" of GREAT SPRINGS AT I.C.P. for 271.77 feet to the Northwest Corner of Tract "K" of INTERNATIONAL CORPORATE PARK SECTION 6; thence S01"43'13"E along the West line of said Tract "K" and along the West Line of Tract "A" of DOLE FLOWERS SUBDIVISION, according to the Plat thereof as recorded in Plat Book 157 al Page 57, of the Public Records of Miami-Dade County, for 1289.22 feet to the POINT OF BEGINNING.

Containing 366,189 Square Feet or 8.41 Acres, more or less, by calculations.

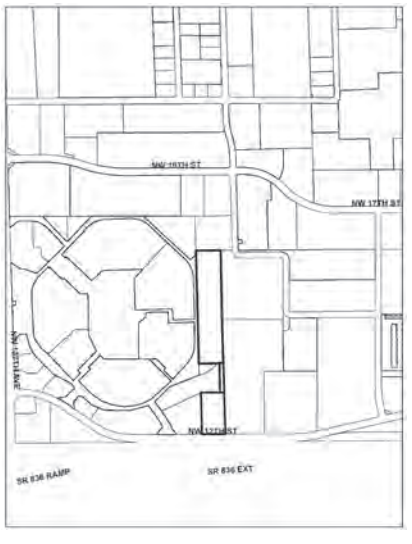
AND

Tract "A" of LEHMAN DORAL SUBDIVISION, according to the Plat therefore as recorded in Plat Book 172 at Page 41 of the Public Records of Miami-Dade County, Florida.

AND

Tract "A" of LEHMAN DORAL SUBDIVISION, according to the Plat therefore as recorded in Plat Book 172 at Page 41 of the Public Records of Miami-Dade County, Florida.

Location Map



ZONING WORKSHOP PROCESS: The zoning workshop consists of two sessions:
1. First Session. The first session of a zoning workshop shall provide a forum for members of the public to learn about proposed developments within the city. Developments may be presented to the public simultaneously, in several locations within the meeting site. During this session, members of the public are encouraged to ask questions and to provide feedback to the applicant about the proposed development. The applicant shall provide visual depictions, such as renderings, drawings, pictures, and the location of the proposed development. In addition, representatives of the applicant shall be available to answer questions that members of the public may have about the proposed development. The members of the City Council shall not be present during the first session of the zoning workshop.

2. Second Session. The second session of a zoning workshop shall provide a forum for the City Council to learn about the proposed developments discussed at the first session of the zoning workshop. No quorum requirement shall apply. Developments shall be presented by the applicants sequentially, one at a time, for the City Council's review and comment. The applicant shall again present visual depictions of the proposed development. In addition, the applicant shall be available to answer any questions that members of the City Council may have about the proposed development.
No quorum requirement shall apply nor will any vote on any project be taken, but roll call will be taken, as it is a publicly noticed meeting.

Information relating to this request is on file and may be examined in the City of Doral, Planning and Zoning Department located at **8401 NW 53rd Terrace, Doral, Fl. 33166**. Maps and other data pertaining to these applications are available for public inspection during normal business hours in City Hall. Any persons wishing to speak at a public hearing should register with the City Clerk prior to that item being heard. Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, all persons who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

NOTE: If you are not able to communicate, or are not comfortable expressing yourself, in the English language, it is your responsibility to bring with you an English-speaking interpreter when conducting business at the City of Doral during the zoning application process up to, and including, appearance at a hearing. This person may be a friend, relative or someone else. A minor cannot serve as a valid interpreter. The City of Doral DOES NOT provide translation services during the zoning application process or during any quasi-judicial proceeding.

NOTA: Si usted no está en capacidad de comunicarse, o no se siente cómodo al expresarse en inglés, es de su responsabilidad traer un intérprete del idioma inglés cuando trate asuntos públicos o de negocios con la Ciudad de Doral durante el proceso de solicitudes de zonificación, incluyendo su comparecencia a una audiencia. Esta persona puede ser un amigo, familiar o alguien que le haga la traducción durante su comparecencia a la audiencia. Un menor de edad no puede ser intérprete. La Ciudad de Doral NO suministra servicio de traducción durante ningún procedimiento o durante el proceso de solicitudes de zonificación.

Connie Diaz, MMC
City Clerk
City of Doral

10/27

21-40/0000559120M

BANKING/ FINANCE

Tesla's Market Value Tops $1T After Hertz Orders 100K Cars

by Tom Krisher

Hertz announced that it will buy 100,000 electric vehicles from Tesla, one of the largest purchases of battery-powered cars in history and the latest evidence of the nation's increasing commitment to EV technology.

The news of the deal triggered a rally in Tesla's stock, driving the carmaker's market value over the $1 trillion mark for the first time.

The purchase by one of the world's leading rental car companies reflects its confidence that electric vehicles are gaining acceptance with environmentally minded consumers as an alternative to vehicles powered by petroleum-burning internal combustion engines.

In an interview with The Associated Press, Mark Fields, Hertz' interim CEO, said that Teslas are already arriving at the company's sites and should be available for rental starting in November.

Hertz said in its announcement that it will complete its purchases of the Tesla Model 3 small cars by the end of 2022. It also said it will establish its own electric vehicle charging network as it strives to produce the largest rental fleet of electric vehicles in North America.

Fields wouldn't say how much Hertz is spending for the order. But he said the company has sufficient capital and a healthy balance sheet after having emerged from bankruptcy protection in June.

The deal likely is worth around $4 billion because each Model 3 has a base price of about $40,000. It also ranks at the top of the list of electric vehicle orders by a single company. In 2019, Amazon ordered 100,000 electric delivery vans from Rivian, a startup manufacturer of electric van, pickup trucks and SUVs. Amazon is an investor in Rivian.

The Hertz order sent Tesla shares soaring nearly 13% to a record closing price of $1,024.86, and pushed the world's most valuable automaker's total market value to just over $1 trillion. The wealth of CEO Elon Musk, the richest person in the world, grew 11.4% to $255.8 billion, according to Forbes.

In his interview with the AP, Fields made clear his belief that electric vehicles are increasingly moving into the mainstream and that Hertz intends to be a leading provider of EVs to rental customers. He pointed to surveys showing that over the past five years, consumer interest in electric vehicles has grown dramatically.

"More are willing to try and buy," he said. "It's pretty stunning."

Fields said that Hertz, which is based in Estero, Florida, is in discussions with other automakers, too, about buying additional electric vehicles as it expands its EV fleet as more models enter the marketplace.

Hertz also is investing in its own charging network. Fields said it has plans for 3,000 chargers in 65 locations across the United States by the end of 2022 and 4,000 by the end of 2023. Many of the sites will be at Hertz locations such as airports, he said, while others will be in suburban areas.

Customers also would be able to use Tesla's own large charging network for a fee, Fields said. The company has a network of about 25,000 chargers worldwide.

Fields declined to say how much Hertz will charge to rent the Teslas or whether they would be more expensive for customers than gas-powered vehicles.

Daniel Ives, a technology analyst at Wedbush Securities, wrote in a note Monday to investors that Hertz's order represents a "major feather in the cap" for Tesla and shows that a broad adoption of electric vehicles is under way "as part of this oncoming green tidal wave hitting the U.S."

China and Europe have been ahead of the U.S. on vehicle electrification. But demand in the United States is accelerating, Ives noted, with Tesla leading the way, followed by startup Lucid Motors, General Motors, Ford and others that are chasing a potential $5 trillion market opportunity over the next decade.

In an interview, Ives said he expected other rental car companies to follow Hertz's lead.

"It's a wake-up call for the rest of the industry as well," he said.

Ives suggested that the deal will help Tesla and other manufacturers by giving thousands of consumers the experience of driving electric vehicles who might not otherwise have done so.

"It's the ultimate test drive," he said. "For a company that doesn't normally market, this is the best brand and marketing deal they've ever struck," he said of Tesla.

Hertz's order may also help alleviate a nationwide shortage of rental cars, he said. Automakers have slashed production and sales to rental car companies because of a global shortage of computer chips.

Still, Ives said he doesn't expect Hertz to receive significant numbers of Teslas until the automaker's new factory near Austin, Texas, starts producing late next year.

Hertz likely will charge customers more to rent the Model 3s compared with conventional vehicles with combustion engines, Ives noted.

Hertz Global Holdings Inc. filed for bankruptcy protection in May 2020, two months after the coronavirus erupted across the country. It was among the first major corporations to be felled by the pandemic as infections surged and shut down travel on a global scale for both companies and vacationers.

Mark Fields, Hertz' interim CEO, said that Teslas are already arriving at the company's sites and should be available for rental starting in November.

In October, Hertz named Fields, a former Ford Motor Co. CEO, as its interim chief executive.

Shortly after Hertz's announcement Monday, the National Transportation Safety Board released a letter from its chairwoman chastising Tesla for failing to respond to recommendations that emerged from several fatal crash investigations involving the company's Autopilot partially automated driver-assist system. The agency recommended four years ago that Tesla limit where its Autopilot system can operate and that it better monitor drivers to make sure they're paying attention.

Tom Krisher reports for the Associated Press.

UPS Profit Tops Estimates on Pricing, E-Commerce Strength

by Thomas Black

United Parcel Service Inc. rode higher prices and strong delivery demand driven by e-commerce to post profit that topped analysts' expectations. It also raised its operating margin outlook to 13% for 2021 from an earlier target of 12.7%.

UPS and rival FedEx Corp. have been grappling with hefty volume since the pandemic hit last year. Both have aggressively raised prices to offset the expense of handling more residential deliveries, which have grown faster than more-profitable commercial packages.

The price increases and shift to higher-profit deliveries drove a 13% gain for UPS's overall revenue per package, offsetting a 2% drop in average volume. The drop in delivery volume was led lower by a 2.7% decline for U.S. domestic, the company's largest unit, and follows a surge in demand a year earlier.

Commercial packages are making a comeback as the economy recovers from COVID-19 lockdowns and as UPS shies away from the least profitable of those residential deliveries, also known as B2C, or business-to-consumer.

"UPS has been growing its high-margin businesses like health care, pharmaceutical and medical devices while lessening its dependence on the lower margin B2C business," said Helane Becker, an analyst with Cowen Inc., in a note to clients.

DIEGO M. RADZINSCHI

Commercial packages are making a comeback as the economy recovers from COVID-19 lockdowns and as UPS shies away from the least profitable of residential deliveries.

Adjusted earnings hit $2.71 a share in the third quarter, up from $2.28 a year earlier, the Atlanta-based courier said Tuesday in a statement. Analysts had predicted $2.54. Revenue rose 9.2% to $23.2 billion in the third quarter, while analysts had expected $22.6 billion.

The company has weathered a labor shortage better than its key competitor because, unlike FedEx, it has a union workforce and pays the highest wages in the industry. Compensation and benefits rose only 0.6% in the quarter from a year ago. Still, UPS's costs for purchased transportation climbed 18% as the courier turned more to outside companies to move packages. Fuel costs jumped 54% on rising gasoline prices.

UPS shares rose 5.7% in early trading in New York. The shares have gained 21% this year through Monday, just shy of a 22% increase for the Standard & Poor's 500 index.

The courier has focused on raising profit margins under Carol Tome, who took over as chief executive officer last year. Tome laid out a strategy of "better, not bigger" to rein in UPS's past tendency to gobble up all the volume it could no matter how well it paid. She also sold the lower-margin freight business in April for $800 million and announced in September an agreement to purchase Roadie, a same-day delivery startup.

The company on Tuesday also increased capital spending plans for the year to $4.2 billion from $4 billion.

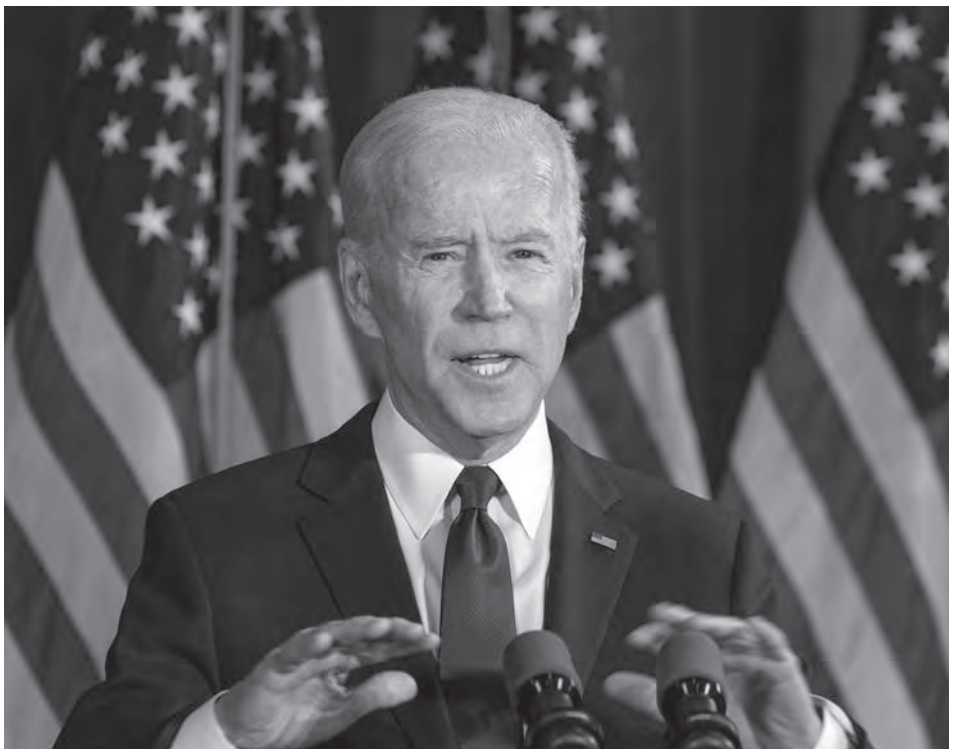
UPS's adjusted operating margins rose to about 12.8% from 11.3% a year earlier as price hikes and its focus on higher-value packages made up for rising costs to hire workers and protect them from Covid-19. Analysts had estimated margins of 12.2%.

Thomas Black reports for Bloomberg News.

BANKING/ FINANCE

Billionaire Tax Runs Into Criticism; Big Biden Plan in Flux

by Lisa Mascaro, Darlene Superville and Alan Fram



SHUTTERSTOCK

President Joe Biden vows any new taxes would hit only the wealthy, those earning more than $400,000 a year, or $450,000 for couples.

The Democrats' idea for a new billionaires' tax to help pay for President Joe Biden's social services and climate change plan has quickly run into criticism as too cumbersome, with some lawmakers preferring the original plan of simply raising the top tax rates on corporations and the wealthy.

With the revenue side of the package deeply in flux, Democrats are at a standstill trying to wrap up negotiations on Biden's overall package. But party leaders insisted Tuesday a broad deal remains within reach as they rush to show progress before the president departs later this week to global overseas summits.

House Speaker Nancy Pelosi told lawmakers during a caucus meeting they were on the verge of "something major, transformative, historic and bigger than anything else" ever attempted in Congress, according to a person who requested anonymity to share the private remarks.

Senate Majority Leader Chuck Schumer opened the Senate with a simple message: "We're working to get it done."

However, vast differences among Democrats remain over the basic contours of the sweeping proposal and how to pay for it. It's now estimated to total at least $1.75 trillion over 10 years, and could still be more.

From the White House, Press Secretary Jen Psaki said Biden's preference was still to have a deal in hand before departing, but she acknowledged that might not happen, forcing him to keep working on the package from afar.

"There are phones on Air Force One and also in Europe," Psaki told reporters.

In the meantime, she said more lawmakers were heading to the White House for negotiations and insisted talks were progressing. "We are almost there," she said.

Resolving the revenue side is key as the Democrats scale back what had been a $3.5 trillion plan, insisting all the new spending will be fully paid for and not pile onto the debt. Biden vows any new taxes would hit only the wealthy, those earning more than $400,000 a year, or $450,000 for couples.

The White House had to rethink its tax strategy after one key Democrat, Sen. Kyrsten Sinema, D-Arizona, objected to her party's initial proposal to raise tax rates on wealthy Americans by undoing the Trump-era tax cuts on those earning beyond $400,000. Sinema also opposed lifting the 21% corporate tax rate. With a 50-50 Senate, Biden has no votes to spare in his party.

Instead, to win over Sinema and others, the White House has been floating a new idea of taxing the assets of billionaires and another that would require corporations to pay a 15% minimum tax, regardless of if they show any profits. Those both appear to be gaining traction with another pivotal Democrat, Sen. Joe Manchin, D-West Virginia, who told reporters he supported new ways to ensure the wealthy to pay their "fair share."

Democrats on the Senate Finance Committee, led by Sen. Ron Wyden of Oregon, are prepared to roll out the tax revenue plan in a matter of days. It is likely to include other revenue-raising tax measures, including a plan to beef up the IRS to go after tax scofflaws.

"Here's the heart of it: Americans read over the last few months that billionaires were paying little or no taxes for years on end," Wyden said at the Capitol.

The billionaires' tax is being modeled on a 2019 bill from Wyden to treat assets as income. Another idea, up to a 3% ultra-rich surtax, has been proposed by Sen. Elizabeth Warren, D-Massachusetts.

Under Wyden's emerging plan, the billionaires' tax would hit the wealthiest of Americans, fewer than 1,000 people. It would require those with assets of more than $1 billion, or three-years consecutive income of $100 million, to pay taxes on the gains of stocks and other tradeable assets, rather than waiting until holdings are sold.

A similar billionaire's tax would be applied to nontradeable assets, including real estate, but it would be deferred with the tax not assessed until the asset was sold.

Overall, the billionaires' tax rate has not been set, but it is expected to be at least the 20% capital gains rate. Democrats have said it could raise $200 billion in revenue that could help fund Biden's package over 10 years.

Senate Republican leader Mitch McConnell called it a "hare-brained scheme" and warned of revenue drying up during downturns. Some Republicans indicated such a tax plan could be challenged in court.

But key fellow Democrats are also raising concerns, saying the idea of simply undoing the 2017 tax cuts by hiking top rates was more straightforward and transparent.

Under the House's bill from the Ways and Means Committee, the top individual income tax rate would rise from 37% to 39.6%, on those earning more than $400,000, or $450,000 for couples. The corporate rate would increase from 21% to 26.5%. The bill also proposed a 3% surtax on wealthier Americans with adjusted income beyond $5 million a year.

The panel's chairman, Rep. Richard Neal, D-Massachusetts, said Monday evening that he told Wyden that the implementation of the senator's proposed billionaire's plan is "a bit more challenging."

Neal suggested that the House's proposal was not off the table despite Sinema's objections. In fact, he said, "our plan looks better every day."

Once Democrats agree to the tax proposals, they can assess how much is funding available for Biden's overall package to expand health care, child care and other climate change programs.

Democrats were hoping Biden could cite major accomplishments to world leaders later this week. They are also facing an Oct. 31 deadline to pass a related $1 trillion bipartisan infrastructure package of roads, broadband and other public works before routine federal transportation funds expire.

After months of start-and-stop negotiations, disputes remain.

Among the unresolved provisions: plans to expand Medicare coverage with dental, vision and hearing aid benefits for seniors; child care assistance; free pre-kindergarten; a new program of four-weeks paid family leave; and a more limited plan than envisioned to lower prescription drug costs.

The climate change provisions may be resolving now that White House floated a new strategy. It involves beefing up clean energy incentives after Manchin rejected a more punitive approach.

Pelosi said she expected an agreement by week's end, paving the way for a House vote on the $1 trillion bipartisan infrastructure bill that stalled during deliberations on the broader Biden bill.

But Rep. Pramila Jayapal, D-Washington, the chair of the Congressional Progressive Caucus whose support will be crucial for both bills, said lawmakers want more than just a framework for Biden's plan before they give their votes for the smaller infrastructure package.

"We want to vote on both bills at the same time," Jayapal told The Associated Press.

Lisa Mascaro, Darlene Superville and Alan Fram report for the Associated Press. AP writers Farnoush Amiri, Hope Yen and Colleen Long contributed to this report.

Women Were Scared of Working at Blackstone, Schwarzman Says

by Nicholas Comfort

Blackstone Inc. had trouble recruiting women until it asked why the prospect of joining the firm was turning them away, co-founder Stephen Schwarzman said at Saudi Arabia's flagship investment conference.

"Like many people in finance, we were having a lot of trouble hiring women, it was a male-dominated business and we made a decision to change that in 2015," Schwarzman said during the opening panel of the Future Investment Initiative, or FII.

"We analyzed it and what we realized is that women weren't applying to Blackstone. We tried to find out why and we found out that they were scared of us. I don't think I'm very scary."

Fellow panelist Ana Botin was quick to jump in and say that what's scary is to be "the only woman always surrounded by men." The Banco Santander SA chairman was the only woman on the eight-person panel, although the conference was opened by female speakers.

In the years since, Blackstone has made a push to tweak its culture and has seen the proportion of women in its hiring cohorts rise to 50% from 10% in 2015, Schwarzman said.

"These things are really possible," Schwarzman told the audience. "But you have to identify what the blockage is and go out and address it."

The private-equity industry, which has long prided itself on an aggressive work-till-you-drop culture, has been trying to boost diversity and work-life balance. Carlyle Group Inc. is awarding a total of about $2 million to more than 50 executives and other employees globally who are excelling at goals tied to inclusion.

Leaders at KKR & Co. gave junior staff every Friday off in November and December last year as executives fretted about burnout after a relentless period for deals.

Blackstone attempted to tackle its shortfall of female applicants by speaking to university students and offering them the chance to experience working at the firm.

"We adapt the culture," Schwarzman said. "The culture was the same, the difference was that people didn't understand what the culture was, so we brought sophomores down and what happened was they had a great time and we went back again and we kept recruiting all through it."

Nicholas Comfort reports for Bloomberg News.

BANKING/ FINANCE

Facebook Froze as Anti-Vaccine Comments Swarmed Users

by David Klepper and Amanda Seitz

Critics say Facebook was slow to act because it worried it might impact the company's profits.

In March, as claims about the dangers and ineffectiveness of coronavirus vaccines spun across social media and undermined attempts to stop the spread of the virus, some Facebook employees thought they had found a way to help.

By subtly altering how posts about vaccines are ranked in people's newsfeeds, researchers at the company realized they could curtail the misleading information individuals saw about COVID-19 vaccines and offer users posts from legitimate sources like the World Health Organization.

"Given these results, I'm assuming we're hoping to launch ASAP," one Facebook employee wrote in March, responding to the internal memo about the study.

Instead, Facebook shelved some suggestions from the study. Other changes weren't made until April.

When another Facebook researcher suggested disabling comments on vaccine posts in March until the platform could do a better job of tackling anti-vaccine messages lurking in them, that proposal was ignored.

Critics say Facebook was slow to act because it worried it might impact the company's profits.

"Why would you not remove comments? Because engagement is the only thing that matters," said Imran Ahmed, the CEO of the Center for Countering Digital Hate, an internet watchdog group. "It drives attention and attention equals eyeballs and eyeballs equal ad revenue."

In an emailed statement, Facebook said it has made "considerable progress" this year with downgrading vaccine misinformation in users' feeds.

Facebook's internal discussions were revealed in disclosures made to the Securities and Exchange Commission and provided to Congress in redacted form by former Facebook employee-turned-whistleblower Frances Haugen's legal counsel. The redacted versions received by Congress were obtained by a consortium of news organizations, including The Associated Press.

The trove of documents shows that in the midst of the COVID-19 pandemic, Facebook carefully investigated how its platforms spread misinformation about life-saving vaccines. They also reveal rank-and-file employees regularly suggested solutions for countering anti-vaccine misinformation on the site, to no avail. The Wall Street Journal reported on some of Facebook's efforts to deal with antivaccine comments last month.

The inaction raises questions about whether Facebook prioritized controversy and division over the health of its users.

"These people are selling fear and outrage," said Roger McNamee, a Silicon Valley venture capitalist and early investor in Facebook who is now a vocal critic. "It is not a fluke. It is a business model."

Typically, Facebook ranks posts by engagement — the total number of likes, dislikes, comments and reshares. That ranking scheme may work well for innocuous subjects like recipes, dog photos or the latest viral singalong. But Facebook's own documents show that when it comes to divisive, contentious issues like vaccines, engagement-based ranking only emphasizes polarization, disagreement and doubt.

To study ways to reduce vaccine misinformation, Facebook researchers changed how posts are ranked for more than 6,000 users in the U.S., Mexico, Brazil and the Philippines. Instead of seeing posts about vaccines that were chosen based on their engagement, these users saw posts selected for their trustworthiness.

The results were striking: a nearly 12% decrease in content that made claims debunked by fact-checkers and an 8% increase in content from authoritative public health organizations such as the WHO or U.S. Centers for Disease Control.

Employees at the company reacted with exuberance, according to internal exchanges.

"Is there any reason we wouldn't do this?" one Facebook employee wrote in response.

Facebook said it did implement many of the study's findings — but not for another month, a delay that came at a pivotal stage of the global vaccine rollout.

In a statement, company spokeswoman Dani Lever said the internal documents "don't represent the considerable progress we have made since that time in promoting reliable information about COVID-19 and expanding our policies to remove more harmful COVID and vaccine misinformation."

The company also said it took time to consider and implement the changes.

Yet the need to act urgently couldn't have been clearer: At that time, states across the U.S. were rolling out vaccines to their most vulnerable — the elderly and sick. And public health officials were worried. Only 10% of the population had received their first dose of a COVID-19 vaccine. And a third of Americans were thinking about skipping the shot entirely, according to a poll from The Associated Press-NORC Center for Public Affairs Research.

Despite this, Facebook employees acknowledged they had "no idea" just how bad anti-vaccine sentiment was in the comments sections on Facebook posts. But company research in February found that as much as 60% of the comments on vaccine posts were anti-vaccine or vaccine reluctant.

Even worse, company employees admitted they didn't have a handle on catching those comments, or a policy in place to take them down.

"Our ability to detect (vaccine hesitancy) in comments is bad in English — and basically non-existent elsewhere," another internal memo posted on March 2 said.

Los Angeles resident Derek Beres, an author and fitness instructor, sees anti-vaccine content thrive in the comments every time he promotes immunizations on his accounts on Instagram, which is owned by Facebook. Last year, Beres began hosting a podcast after noticing conspiracy theories about COVID-19 and vaccines were swirling on the social media feeds of health and wellness influencers.

Earlier this year, when Beres posted a picture of himself receiving the COVID-19 shot, some on social media told him he would likely drop dead in six months' time.

"The comments section is a dumpster fire for so many people," Beres said.

Some Facebook employees suggesting disabling all commenting on vaccine posts while the company worked on a solution.

"Very interested in your proposal to remove ALL in-line comments for vaccine posts as a stopgap solution until we can sufficiently detect vaccine hesitancy in comments to refine our removal," one Facebook employee wrote on March 2.

The suggestion went nowhere.

Instead, Facebook CEO Mark Zuckerberg announced on March 15 that the company would start labeling posts about vaccines that described them as safe.

The move allowed Facebook to continue to get high engagement — and ultimately profit — off anti-vaccine comments, said Ahmed of the Center for Countering Digital Hate.

"Facebook has taken decisions which have led to people receiving misinformation which caused them to die," Ahmed said. "At this point, there should be a murder investigation."

David Klepper and Amanda Seitz report for the Associated Press.

Amazon Signs Satellite Pact With Verizon in Challenge to Musk

by Thomas Seal

Amazon.com Inc. struck a deal to use Verizon Communications Inc.'s network to link up its thousands-strong planned fleet of satellites, stepping up a rivalry with Elon Musk's StarLink system.

Amazon's billionaire founder Jeff Bezos has committed $10 billion to satellite subsidiary Kuiper Systems LLC, which plans to launch 3,236 satellites into low-earth orbit to provide broadband internet access.

Amazon will now explore ways this so-called constellation of spacecraft could link up to Verizon's terrestrial telecommunications network and connect remote areas and businesses, the companies said in a statement Tuesday.

The deal will escalate the new space race fueled by billionaire investment. Bezos, the world's second-richest man, is clashing with the world's richest, Elon Musk, whose Space Exploration Technologies Corp. has sent more than 1,500 low-earth orbit satellites into space, and also competes with Bezos's Blue Origin on launch technology.

Musk recently teased Bezos after his immense wealth surpassed that of the Amazon founder. He's now worth more than a quarter of a trillion dollars, compared to Bezos's $193 billion.

Kuiper Systems in September filed a scathing comment with the Federal Communications Commission, accusing Musk and his companies of flouting regulations with a general attitude that "rules are for other people."

The bid to provide low-earth orbit satellite broadband is also drawing in other investors, including more billionaires and governments. Ventures such as OneWeb, backed by Indian telecommunications tycoon Sunil Mittal and the U.K. government, recently struck a deal with AT&T Inc. to hook up customers via existing land-based networks.

Amazon and Verizon will study technical and commercial models for new services, and will look at expanding Verizon's network using Kuiper's satellite broadband. Verizon and Amazon have already collaborated on other communications technology, such as edge computing.

A spokesman for Verizon said it's a global partnership with Amazon and it's open to exploring similar deals with other companies, but declined to comment on the finances of the deal.

Thomas Seal reports for Bloomberg News.

Amazon's billionaire founder Jeff Bezos has committed $10 billion to satellite subsidiary Kuiper Systems, which plans to launch 3,236 satellites into low-earth orbit to provide broadband internet access.

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CORPORATE COUNSEL

Is the Grass Really Greener? Former Law Firm Attorneys Weigh the Pros and Cons of Moving In-House

by Jessica Mach

Lawyers who made the jump from law firms to in-house say they've welcomed leaving behind billable hours and have embraced the opportunity to tackle problems from more of a business perspective. But they've also had to make do with fewer legal resources.

And the differences between the two work environments arent's as great as they once were, as budget constraints and remote work escalate stresses for in-house counsel, in some cases reducing work-life balance advantages.

"There are certainly pros and cons to both," said David Breland, general counsel and head of risk and compliance at Bloom Credit in New York City. Breland has held in-house roles since leaving Burr & Forman in Birmingham, Alabama, in 2012.

Whether an attorney will prefer a law firm role or one in-house is "largely kind of personality-driven" and depends on "the kind of legal work you'd like to do," he added.

The two roles became a topic of discussion on LinkedIn recently after Heather Stevenson, deputy general counsel at Boston Globe Media, asked attorneys who made the leap to an in-house role: "What surprised you?"

While Stevenson said one obvious change was moving away from the billable-hour model that law firms have long used, one response she received, from Moody's Corp. assistant general counsel Steve Snyder, suggested it is less obvious how impactful that switch can be.

At firms, Snyder wrote, "Your value is almost entirely tied to the number of hours that you put on the sheet in a given year's bill to clients.

"I never realized how much that weighed on me," he continued. "When it was going well it was waiting for the slowdown or doing the mental exercise of 'valuing' the day I just took off in terms of bonus money forgone. When it was slow, it was wondering what the impact would be on comp, how long would it last. ... Nothing else about the switch even remotely compares to removing that overarching stress."

Justin Doolittle, who in 2008 left Lowis & Gellen (now L&G Law Group) for tech start-up Goeken Group Corp., said in an interview that the pay-model switch was a big deal for him, too.

As he shifted from focusing on the billable hour to figuring out how he was going to juggle a potentially overwhelming list of in-house legal projects, Doolittle, now general counsel at Seattle-based tech company Qumulo, had to adopt a different approach to time management.

"I need to help push the business forward. So it's prioritizing those projects to say, 'Well what's the most impactful to the business, which ones can I put aside because they're a nice-to-have project or the deal's not going to be closed for three more months?' I had to create that framework," he said.

"So really, it's not a matter of getting work accomplished—it's prioritizing the business' needs. What should be done first, and then how much time can you really spend on it?"

Lisa Harrington held in-house roles for such firms as Cigna and NBCUniversal Media for 18 years before she joined Cooley in 2018, when the firm created a role for her that involved serving as outside general counsel to corporate clients. She returned to in-house in 2020 and now is chief legal officer at Viant Technology in Irvine, California.

Harrington said that, while she "really loved" her time at Cooley, she preferred being in-house where she is "providing a combination of both legal and business advice."

"At a law firm," she added, "It's mostly legal advice with some business advice."

Breland said he likes that in-house roles allow him to focus on one client, so that he understands every aspect of the business. He also appreciates that being in-house transformed his legal career into more of a business career and has helped him develop a reputation inside of the company as a trusted adviser.

"When you're in private practice, you have a group of clients, and you try your best to know all you can know about those clients and to learn their business. But there's a limit to how close you can get to the business, because the business model doesn't allow for that," he said.

Still, there are some things in-house roles are less likely to offer. While Harrington said she has learned a lot from working with colleagues who aren't attorneys, like those who specialize in finance or human resources, she misses the camaraderie and support of being in an entirely legal environment. At a firm, she said, "You speak each other's language. … You can bounce things off each other in a way that's more difficult in-house, unless you have a really big legal team."

Mariya Pivtoraiko, senior in-house counsel at DroneDeploy in Palo Alto, California, said that when she was overloaded with work at a law firm, she could ask a partner for help. But that's harder when you're in a small corporate legal department.

"There are certainly pros and cons to both," said David Breland, general counsel and head of risk and compliance at Bloom Credit in New York City. Breland has held in-house roles since leaving Burr & Forman in Birmingham, Alabama, in 2012.

"There is a way to do that in-house, but it costs the company money," said Pivtoraiko, who previously practiced at Wilson Sonsini Goodrich & Rosati and Crowell & Moring. "You have to go to outside counsel and spend money on that, so it's a harder argument than just to reallocate work to other associates of the firm, which you can generally always do."

Qumulo's Doolittle said his in-house role taught him that he was going to have to make do with far fewer resources.

"It was a real shock when I had no resources to pull on from a technology standpoint. I didn't have Westlaw. I didn't have a partner down the hallway to stop in and ask questions for many, many mundane topics," he said. "So it was really being resourceful, calling on the network you had."

Contact Jessica Mach at jmach@alm.com.

Improving Law Firm DEI: How General Counsel Should Evaluate and Coach Their Vendors

by Juliette Gillespie

For the legal industry, the last two years have not only impacted communications and fiscal objectives, but also laid bare long-standing racial injustices which have prompted corporations to step up the pressure on outside counsel to improve diversity, equity, and inclusion (DEI). In response to heightened client expectations for formalized DEI policies and metrics, many firms say they have programs in place; however, most are early in the journey.

SHINING A SPOTLIGHT ON DEI

From the client's point of view, diverse teams bring a rich set of perspectives that result in better-reasoned strategies and recommendations. Yet despite converging pressures from diminished personal tolerance, increased corporate responsibility, and more complex regulatory requirements, law firms overall are struggling to make meaningful progress on DEI. According to a recent Diversity Snapshot from Law360 Pulse, at every level of a typical law firm, the representation of minority attorneys increased by less than one percentage point in 2020 and made only incremental progress over the last seven years.

Because client organizations value the business benefits of diversity—and because corporations are combining environmental, sustainability, and governance (ESG) policies with AI initiatives—DEI data now rolls up into reporting protocols, which increases transparency and accountability.

To fulfill client expectations for diverse legal teams, firms are focused on staffing client-facing legal teams with women, people of color, veterans, persons with disabilities and LGBTQIA+ individuals. Applying this strategy, many firms have made progress on improving the optics for their DEI programs; however, law firm leadership and business management functions remain primarily staffed by white men. According to Law360's 2021 Glass Ceiling report, only 30% of law firm executive committee members in 2020 were women. Only 23% of equity partners were women and only 3% were women of color.

TRACKING DEI METRICS

Although it's a relatively straightforward exercise for firms to actively recruit and hire candidates of under-represented groups, building DEI policies and processes entails more than reporting on diversity statistics.

Firms tend to focus on metrics that are easy to calculate and explain both internally and externally—things like the percentage of female lawyers, distribution of minority-group representation, and pay rates. While these statistics tell a part of a firm's DEI story, they don't capture how a firm is performing on equity and inclusion.

Many firms are wrestling with defining what equity and inclusivity mean within the context of the organization—not to mention how to measure it. Client-driven expectations that legal teams are in alignment with the culture and diversity present in the client's own organization are pushing firms to figure this out and better educate their staff on DEI policies and goals.

ASSESSING A VENDOR'S TALENT POOL

As the importance of efficacious DEI programs increases with respect to vendor selection, clients have progressed from merely asking about DEI policies during the RFP process to requiring documented proof. For instance, clients are asking timekeepers that bill them to complete a personal profile form that captures relevant DEI data to keep on file.

Firms that are assessing DEI data in a broader, more accurate context are defining benchmarks and metrics that tell the real DEI story—like the ratio of hires to attrition. According to Law360 Pulse, more than 24% of lawyers who left their firm in 2020 were people of color, even though they represent just 18% of attorneys at law firms. While firms that are early in the DEI journey may be reporting progress on the number of new hires that are people of color, more sophisticated firms are monitoring and benchmarking things like attrition rates for people of color. Higher-than-average attrition rates for people of color would reflect poorly on a firm's performance on equity and inclusion.

Additional context that some firms and corporations are scrutinizing include the types of legal work as well as the individual tasks that lawyers work on. Being given exposure to higher-value practice areas as well as tasks that challenge and increase skills are indicators of greater equity and inclusion.

Perhaps the ultimate measure of equity is to evaluate the categories of attorneys, generally partners, who receive origination credit for the client revenue generated. More and more corporations are asking for this information to incorporate into their law firm DEI evaluations.

Although client organizations are placing increased weight on DEI metrics generally during the RFP process, we're not yet observing firms specifically losing significant existing business due to weak DEI results. We are, however, witnessing a continuous movement toward diversity being a deciding factor for new legal work when all other things—skill sets, results, expertise—are equal.

On the vendor side of the coin, continuous recruitment and influence of Millennial and Gen-Z legal talent is driving increasingly progressive DEI policies and programs as younger generations grow and mature in their careers.

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