



dbbr DAILY BUSINESS REVIEW

Stores Blame Mall of the Americas for 'Mass Exodus' of Small Tenants

by Raychel Lean

Eduardo Maura of Ayala Law in Miami has filed a putative class action lawsuit on behalf of a string of businesses that claim that landlords Sterling Retail Services Inc. and SC Mota Associates Partnership, which own the Miami Mall of the Americas, favored Costco's side of the retail center over theirs.

The named plaintiff is Ulises Ruiz, owner of Mota Pizza Rustica Corp., which opened in September 2015 with a \$200,000 investment.

It's a tale of two malls, according to the complaint.

There's the "Good Mall," where retail giants Costco and Home Depot have set up shop, and there's the "Bad Mall," on the other side of a recently erected wall, with a flurry of small businesses, which Maura claimed are suffering "unlivable" conditions. "The Bad-Mall tenants do not fare as awesome as the Good-Mall tenants—not at all," the complaint said.

According to Maura, "the sentiment is unanimous" among all tenants at the "Bad Mall."

The contrast between the two is allegedly "so stark, as to make it almost seem as if there are two, intentionally

SEE MALL, PAGE A6

PUBLIC NOTICES & THE COURTS

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How \$2M in Unpaid Legal Fees in South Florida, Brazil Nearly Landed a Dubai Businessman in Jail

by Zach Schlein



J. ALBERT DIAZ

Ronald P. Weil of Weil Snyder Schweikert & Ravindran was disappointed by an appellate order wiping out a contempt order against a Dubai entrepreneur.

The Third District Court of Appeal wiped out contempt charges against a Dubai businessman who failed to pay nearly \$2 million in legal fees to attorneys in South Florida and Brazil.

In an opinion authored by Judge Thomas Logue, the appellate court reversed orders of contempt and writs of bodily attachment issued against Azzan bin Abdulla Al Ghurair in Miami-Dade Circuit Court.

Al Ghurair, a Dubai entrepreneur and heir to a multibillion-dollar fortune, had hired Coral Gables-based litigator Hillary K. Rodriguez, Miami law firm Weil Quaranta — now Weil Snyder Schweikert & Ravindran — and Sao Paulo-based firm Moraes

Pitombo Advogados. The attorneys helped him negotiate a settlement in his suit against a Florida family he alleged had failed to repay a \$7 million loan.

"Although the settlement had two non-monetary components intended to secure payment — funding an escrow account and granting the lawyers mortgages on the properties in Brazil — the main provision was that Al Ghurair pay the law firms a legal fee in the amount of \$1,925,000," the appellate opinion read.

The settlement clarified the legal fees, and also articulated that Al Ghurair would take custody and assume the upkeep of 10 Sao Paulo villas owned by the defendants in his underlying suit.

SEE CONTEMPT, PAGE A2

Image Gatekeepers Blame Facebook, Boca Raton Contractor for Trauma

by Amanda Bronstad

A class action alleges Facebook Inc. fails to provide a safe workplace for content moderators hired by a Boca Raton-based contractor, claiming they were traumatized while weeding out graphic content depicting child abuse, suicide and other violent acts.

Filed in California's San Mateo Superior Court on Friday, the lawsuit seeks to represent thousands of California residents who deleted Facebook content over the past three years and allegedly suffered psychological trauma by viewing thousands of videos and images of "child abuse, rape, torture, bestiality, beheadings, suicide, murder and other forms of extreme violence."

The defendants are Facebook and Pro Unlimited Inc., the Boca Raton company that employed the content moderators. Plaintiffs seek injunctive relief and a medical monitoring fund to help pay for "baseline tests and diag-



JASON DOIY

Facebook's content moderators viewed images of "child abuse, rape, torture, bestiality, beheadings, suicide, murder" as part of their jobs.

nostic examinations" to help diagnose post-traumatic stress disorder and other health effects.

"It is well-documented that repeated exposure to such images can have a profoundly negative effect on the viewer," Corey Nelson, plaintiffs attorney from Burns Charest, said in a statement. "Facebook is ignoring its duty to provide a safe workplace and instead creating a revolving door of contractors who are irreparably traumatized by what they witnessed on the job."

SEE MODERATORS, PAGE A2

In Latin America, Firms' Focus Expands to Growing Economies

by Dan Packel

While Latin America's largest economies have attracted the attention of international law firms for more than two decades, the region's Pacific Rim is the newest prize, owing to growth and stability in Colombia, Peru and Chile.

Global firms rooted in the U.S. and Spain are looking to outcompete established local players, and they're eager to find the right partners to help them do so.

Those firms are aided in that pursuit by the fact that many local firms across Latin America trail behind their international counterparts' more structured businesses, according to Jaime Fernandez Moreno, a consultant who previously founded Bruchou, Fernández Madero & Lombardi, one of Argentina's top firms.

"Latin American firms are in the process of becoming more organized, more professional and more institutional," he says. "While they are doing that, international firms can take advantage of

SEE PACIFIC RIM, PAGE A2



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PACIFIC RIM

that lag and become more aggressive in these markets.”

The latest examples include Dentons' recent announcement of a combination with Chilean firm Larrain Rencoret Urzua, approved by its partners in September; DLA Piper's move into Argentina in August, after earlier tie-ups with firms in Colombia, Peru and Chile; Iberian powerhouse Cuatrecasas' 2016 alliance with Colombia's Posse Herrera Ruiz; and Spanish firm Garrigues' 2015 merger with Colombia's DLP. There's also the merger of a Chilean and a Colombian firm with two Peruvian firms into Philippi Prietocarrizosa Ferrero DU & Uría—which, thanks to an ownership stake from Spain's Uría Menéndez, now bills itself as the first major “Ibero-American” firm.

The peace agreement in Colombia after 50 years of civil war is driving interest in the country. Another spur is its membership alongside Chile, Peru and Mexico in the Pacific Alliance free trade block. Taken together, the zone is one of the 10 largest economies in the world. All this attention is leading to tough de-



DIEGO M. RADZINSCHI

Dentons announced a combination with Chilean law firm Larrain Rencoret Urzua was approved by its partners this month.

isions for established domestic firms, which must contend with the new reality of internationalization.

“The top players have had to decide whether to stay independent, pursue a regional model via alliances and merg-

ers, or seek a full-blown merger with an international firm,” says Antonio Holguin, a Colombian lawyer and director with Adam Smith Esq.

The dynamics are slightly different in the two largest economies in the region: Brazil and Mexico. While a number of top international firms have offices in Sao Paulo, there are sturdy regulatory limitations to what foreign lawyers and firms can do in Brazil, owing to a legal market that consolidated faster and earlier than others, creating a set of large firms that succeeded in pushing for regulations, according to Moreno.

“That will go away at some time,” he says.

In Mexico, meanwhile, consolidation has yet to occur, and small firms are predominant—at least for now. But two firms, Creel and Galicia, are modernizing the way they are structured, and others will likely soon get on board.

“In the next few years it's going to change a lot, and the international presence will also grow,” Moreno says. “It has to happen due to the size of the market and the fact they are across the border from the U.S.”

Dan Packel covers law firms' global strategy and economics. He is based in Philadelphia. Contact him at dpackel@alm.com. On twitter at @packeld

FROM PAGE A1

MODERATORS

Burns Charest filed the suit along with the Joseph Saveri Law Firm in San Francisco.

Facebook did not respond to a request for comment by deadline.

Selena Scola, the plaintiff in the lawsuit, claimed she worked as a public content contractor at Facebook in Menlo Park and Mountain View from June 2017 to March 2018. She is one of 7,500 content moderators worldwide that filter Facebook's site.

“From her cubicle in Facebook's Silicon Valley offices, Ms. Scola witnessed thousands of acts of extreme and graphic violence,” the complaint said. “As a result of constant and unmitigated exposure to highly toxic and extremely disturbing images at the workplace, Ms. Scola developed and suffers from significant psychological

trauma and post-traumatic stress disorder.”

Her complaint said Facebook receives more than 1 million user reports of objectionable content every day. Many reports are filed over images on Facebook Live, which has allowed people to livestream “murder, beheadings, torture, and even their own suicides,” the complaint said.

But Facebook has failed to follow industry safety standards, some of which it helped draft, such as altering the image so it's blurred, in black and white, smaller or without audio. Other internet service providers have mandatory psychological counseling for content moderators and psychological assessments for job applicants.

“Facebook does not provide its content moderators with sufficient training or implement the safety standards it helped develop,” the complaint said. “Moderators review thousands of trauma-inducing images each day, with little

training on how to handle the resulting distress.”

The complaint brings negligence and consumer fraud claims under California law.

Regarding the proposed medical monitoring fund, Steven Williams of the Joseph Saveri Law Firm in San Francisco said in a statement, “Facebook needs to mitigate the harm to content moderators today and also take care of the people that have already been traumatized.”

In a footnote, Scola said she planned to amend her complaint with “additional and known allegations” of her experience that were left out of the lawsuit “out of an abundance of caution” due to a nondisclosure agreement she signed with Facebook.

The complaint references a 2017 article in The Guardian, in which a former Facebook content moderator said: “You'd go to work at 9 a.m. every morning, turn on your computer and watch someone have their head cut off. Every

day, every minute, that's what you see. Heads being cut off.”

In that article, a company spokeswoman said Facebook provides training and assessment of moderators after two weeks.

“We recognize that this work can often be difficult,” she told The Guardian. “That is why every person reviewing Facebook content is offered psychological support and wellness resources. We have worked with psychologists to put a program in place that is specifically designed to support people in these roles. The program includes counseling, resiliency training and support programs.”

In 2016, two former workers at Microsoft who flagged child pornography, killings, bestiality and other videos at the software company sued for failing to provide adequate mental health support.

Amanda Bronstad is the ALM staff reporter covering class actions and mass torts nationwide. She writes the email dispatch Critical Mass. She is based in Los Angeles.

FROM PAGE A1

CONTEMPT

But the client appeared to renege on the deal.

“When Al Ghurair failed to comply with the terms of the agreement, the law firms began filing motions to compel compliance,” according to the appellate opinion.

The trial court ordered Al Ghurair to pay the firms, as well as to appear in court to justify why he should not be held in contempt for failing to abide by the settlement. Al Ghurair, whose primary residence is in Dubai, requested that he appear by telephone to explain why he had not paid the nearly \$2 million legal fees.

After his request was denied and he subsequently failed to appear in court, the trial judge entered a contempt order and a writ of bodily attachment against Al Ghurair on June 13, 2017. A second writ of bodily attachment followed shortly thereafter in August 2017.

According to the appeals court, this was a “reversible error” on the part of the trial court.

“The enforcement through contempt of debts not involving support violates Article I, Section 11 of the Florida Constitution, the provision prohibiting imprisonment for debt,” the panel ruled, citing precedent in the 2007 Third

District Court of Appeal case *Randall v. Randall*.

The court's reversal wipes out the orders of contempt issued in the trial court as well as the writs of bodily attachment.

Rodriguez, one of the attorneys suing to collect on the debt, declined to comment on the ruling. Ronald P. Weil, of Weil Snyder Schweikert & Ravindran, described the ruling as “disappointing.”

“We're still evaluating what we will do, if anything,” Weil told the Daily Business Review. He added that Al Ghurair had violated other, nonmonetary aspects of the settlement, which on their own would have justified a contempt finding.

“[Al Ghurair] had to fill out a disclosure of his assets, pursuant to a Florida rule that requires a judgment debtor to make a disclosure of their assets in order to further the collection of the debt,” Weil said, adding that Al Ghurair failed to do so.

According to Paul Morris, Al Ghurair's appellate attorney, it's difficult for his client to compensate his prior counsel because he never received the reward outlined in the settlement.

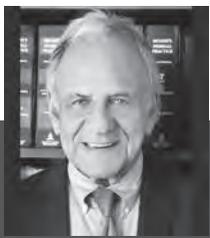
Morris told the Daily Business Review that Al Ghurair's prior counsel included a contingency fee in their retainer agreement that would entitle them to 35 percent of the recovery.

“My client said ... ‘I don't have the villas yet. All I have is a settlement agreement. If and when they're conveyed to me I'm happy to pay the contingency fee,’” Morris said. “To this day my client still does not have the villas.”

In light of the appellate court's ruling, Morris said he and Al Ghurair are “very pleased” with the outcome.

“My client has always wanted to do what's right, and ... he would be happy to pay the contingency fee out of that recovery,” Morris said. “That never happened and it should never have gotten to the point where he was facing time behind bars. We're not paying a fee that was never earned.”

Zach Schlein is a writer based in Miami. Originally from Montville, New Jersey, he holds a B.A. in political science from the University of Florida and is the litigation reporter for Daily Business Review. He can be reached at his email address, zschlein@alm.com



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FLORIDA LAW REVIEW

Class-Action Lawsuits Rejected by Federal Court on Insurance Costs

by Jim Saunders

A divided federal appeals court rejected class-action lawsuits filed by Florida homeowners who said they were charged too much for property insurance after leaving it to mortgage companies to buy coverage.

The ruling by a three-judge panel of the U.S. Court of Appeals for the Eleventh Circuit dealt with what is known as “force-placed insurance,” which occurs when people with mortgages do not buy property-insurance coverage. Lenders then buy coverage and pass along the costs to the borrowers.

Four Florida residents and a Pennsylvania resident filed class-action lawsuits in 2015 against two mortgage-servicing companies and American Security Insurance Co., alleging a scheme that led to inflated charges for force-placed insurance. At least in part, they alleged that Specialized Loan Servicing LLC and Caliber Home Loans Inc. received rebates from American Security, the force-placed insurer, but

didn't pass along those savings to the borrowers, according to Monday's ruling.

The lawsuits, which became consolidated, included a series of allegations, including breach of contract, racketeering, violation of the Federal Truth in Lending Act and violation of the Florida Deceptive and Unfair Trade Practices Act.

But the appeals court, in a 28-page majority opinion, upheld decisions by a U.S. district judge in South Florida to dismiss the cases. The opinion centered on state regulators approving the rates charged by American Security and a legal concept, known as the filed-rate doctrine, that seeks to keep courts out of rate-making decisions.

“The plain language of the complaints ... shows that the plaintiffs are challenging the reasonableness of ASIC's [American Security's] premiums; and since these premiums are based upon rates filed with state regulators, plaintiffs are directly attacking those rates as being unreasonable as well. ...



J. ALBERT DIAZ

In a dissent, Judge Adalberto Jordan said the federal appeals court should send the issue to the Florida and Pennsylvania supreme courts for guidance about how the states view the filed-rate doctrine.

Because the plaintiffs should be understood as meaning what they say, we find that they have challenged ASIC's filed rate. As such, there can be no doubt that their causes of action are barred by the filed-rate doctrine,” said the majority opinion, written by Judge Danny J. Boggs and joined by Judge Frank Hull.

But Judge Adalberto Jordan wrote a 36-page dissent that

said the federal appeals court should send the issue to the Florida Supreme Court and the Pennsylvania Supreme Court for guidance about how the states view the filed-rate doctrine. He also took issue with the majority's interpretation of the facts in the cases.

“ASIC and the lenders argue that the filed rate doctrine bars the homeowners' claims

because they amount to generalized grievances that ASIC's insurance rates are unreasonably high, and seek only to force the defendants to sell [in ASIC's case] or bill for [in the lenders' case] insurance at lower rates,” Jordan wrote. “But that argument misreads the homeowners' claims. The homeowners assert that, regardless of the insurance rate ASIC charged, the lenders are contractually obligated to charge only the amount of insurance they actually paid. By engaging in side agreements with ASIC for ‘commissions,’ ‘reinsurance,’ and other kickbacks — transactions that are, of course, unregulated — the lenders found a way to discount their insurance costs. Given that the mortgage contracts between the homeowners and the lenders required the lenders to charge the homeowners for only ‘the cost’ of insurance, the lenders breached those contracts by demanding more than the discounted cost they paid ASIC.”

Jim Saunders reports for the News Service of Florida.

Laws on PTSD Benefits, Animal Abuse Set to Take Effect

by Jim Turner and Tom Urban

Laws will take effect next week that will add benefits for first responders who suffer post-traumatic stress disorder and impose harsher penalties on people who abuse animals, along with 19 other measures signed by Gov. Rick Scott after the 2018 legislative session.

The laws taking effect Oct. 1 range from allowing credit cards to be used for background checks when firearms are purchased to doling out tougher punishment for people who steal bee colonies or trespass at airports.

Most laws crafted during the legislative session, including the state's \$88.7 billion budget, hit the books on July 1. But others had later “effective” dates.

The change for first responders (SB 376) would expand workers' compensation insurance benefits for firefighters, police officers, paramedics and emergency-medical technicians who suffer from PTSD.

The office of state Chief Financial Officer Jimmy Patronis, who has started running a campaign ad that highlights his support for the law, announced last week the launch of training materials for first responders on PTSD.

“We've heard terrible stories about the impact tragedies like Pulse, Parkland and most recently Jacksonville Landing have on our first responders and their families,” Patronis,



BIGSTOCK

First responders who have witnessed the death of a minor or witnessed a death that involved “grievous bodily harm of a nature that shocks the conscience” can now file workers' compensation claims for lost wages.

whose job includes serving as state fire marshal, said in a statement. “The training is an important step needed to help our first responders.”

According to a 2015 article published in the Journal of Emergency Medical Services, 6.6 percent of 4,000 first responders surveyed had attempted suicide, which is more than 10 times the rate in the general population.

Under the new law, first responders who have witnessed the death of a minor or witnessed a death that involved “grievous bodily harm of a nature that shocks the conscience” can file workers' compensation claims for lost wages.

The new law is expected to increase workers' compensation costs for cities and counties that employ first responders by upward of \$7 million, according to the National Council on Compensation Insurance.

Another new law (SB 1576) taking effect next week stems from the beating death last year of a 9-month-old Labrador retriever puppy in Volusia County.

The new law, named “Ponce's Law” after the puppy, will allow judges to bar people convicted of animal cruelty from owning pets. The legislation also increases the severity ranking of animal abuse-related crimes, making it more likely

that offenders would go to jail on conviction.

Kate MacFall with the Humane Society of the United States hopes the new law will allow judges to make sure people who mistreat animals are not allowed to repeat the cycle of abuse.

“It gives that judge discretion to say they can't have any contact with animals during their probation,” MacFall said. “It clarifies that and gives the judge the authority to have that as part of the sentencing, so that the criminal cannot have contact with animals during their probation.”

In addition to dealing with animal cruelty, the new law also creates policies and procedures

for animal shelters to use following natural disasters, such as hurricanes, to return lost pets to their owners.

“It puts more teeth into it. It stiffens the penalty for people who abuse animals,” MacFall said. “Who wouldn't support that? This all came from a dog named Ponce that was beaten to death last year. It was a horrific tragedy.”

Other new laws going into place on Oct. 1:

- HB 55, allows people buying guns to use credit cards to pay for background checks. They have been required in the past to pay with personal checks, money orders or cashier's checks.

- HB 135, allows deaf people to voluntarily identify themselves as hearing-impaired when they register vehicles. The idea, which came from a Tallahassee police officer whose son is deaf, is intended to prevent communications issues with deaf drivers that could inadvertently lead to confrontations.

- HB 523, increases penalties to a third-degree felony for people who trespass on airport property to injure other people, damage property or impede the operations of aircraft. The bill is in reaction to instances since 2014 of people getting on property at Florida airports, including Orlando International, Tampa International and Miami International.

Jim Turner and Tom Urban report for the News Service of Florida.

FROM THE COURTS

Awaiting a Ninth Justice, Supreme Court Tinkers With Its Docket

by Tony Mauro

The uncertainty surrounding U.S. Supreme Court nominee Brett Kavanaugh's confirmation may already be affecting the court's docket for the term that begins on Oct. 1.

Last week, the court pulled several high-profile cases off the list that the justices were scheduled to consider Monday at the court's so-called long conference. That is when the justices evaluate hundreds of petitions filed over the summer to decide whether grant review in the coming term.

Though the court does not explain why it reschedules or delays the consideration of pending petitions, it might be that the prospect of an eight-member court in the short or long term led the justices to shelve cases that might result in 4-4 ties. Justices traditionally try to avoid ties because they have the effect of allowing the lower court ruling to stand, without further resolution of the issue involved.

In the past, according to Vinson & Elkins Supreme Court specialist John Elwood, the justices "definitely appear to have rescheduled cases to push off consideration of them, and I could see them rescheduling cases to await the arrival of a new justice." But, he added, "There could be other explanations. Rescheduling is about the murkiest Supreme Court practice."

Elwood, a former clerk to Justice Anthony Kennedy, said his understanding is that any justice can have a case rescheduled. But, he said, "I suspect that the chief justice does most of the



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Sherwin-Williams' case challenging California's use of a public nuisance law to exact damages from companies with long-ago involvement in promoting the use of lead paint was pulled from the Supreme Court's list of cases.

rescheduling, since I think he keeps the closest eye on the docket of all the justices."

Among the cases that were scheduled to be discussed Monday but were recently rescheduled for a future unspecified date are:

- *ConAgra Grocery Products v. California* and *The Sherwin-Williams Company v. California*, key business cases challenging California's use of public nuisance law to exact damages from companies with long-ago involve-

ment in promoting the use of lead paint. They were taken off the conference list on Sept. 20.

- *Apodaca v. Raemisch* and *Lowe v. Raemisch*, testing the Eighth Amendment constitutionality of severe solitary confinement for prisoners. They were taken off the list and rescheduled on Sept. 18.

- *Altitude Express v. Zarda* and *Bostock v. Clayton County Georgia*, asking whether the federal ban on sex discrimination in the workplace includes sexual orientation bias. They were re-

scheduled on Sept. 11, four days after Kavanaugh's hearing ended.

- *Kennedy v. Bremerton School District*, a First Amendment dispute over a public school coach in Washington state who was fired for kneeling in prayer at a football game. The court rescheduled the case on Sept. 20.

Some of the rescheduled cases were ones that court-watchers hoped would spice up what was shaping up to be an otherwise lackluster term. Several death penalty cases also were delayed.

Just last Friday, U.S. Solicitor General Noel Francisco said at a Federalist Society event, "The docket thus far doesn't currently have the blockbuster cases before the court, but there are several big cases in the pipeline."

Some hot-button cases remained untouched on the conference list for Monday, including *Maryland-National Capital Park and Planning Commission v. American Humanist Association* and *The American Legion v. American Humanist Association*, a dispute over whether a war memorial in the shape of the cross on public land in Maryland violates the Establishment Clause of the First Amendment.

The court's decisions on whether to grant review in the cases discussed Monday will likely be announced Thursday, the same day Kavanaugh and his accuser Christine Blasey Ford are expected to testify before the Senate Judiciary Committee.

Tony Mauro covers the U.S. Supreme Court. Contact him at tmauro@alm.com. On Twitter: @Tonymauro.

SKANSKA

INVITATION TO BID

Notice is hereby given that bids will be received on **Friday, October 26th at 2:00pm** by Jackson Health System (for Skanska USA Building) for the following independent Jackson Memorial Hospital project:

Jackson Health System – Project "D" – Cath Labs 1 and 5

All bids must be delivered via courier or hand delivered in a sealed envelope to Jackson Memorial Hospital Facilities, Design and Construction Department trailer located at the corner of NW 12th Ave and NW 19th Street. Complete address is listed below:

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There is a mandatory pre-bid walk-thru scheduled on **October 2nd at 9:00am**. Bid requirements and bid forms, specifications, drawings and other construction documents will be available on www.skanskacloud.com (DocuPro). Bid packages include:

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- División 05 – Misc. Steel
- División 06 – Millwork
- Division 07 – Firestopping
- División 08 – Doors (SBE-C SET ASIDE)
- Division 09 – Framing and Drywall (SBE-C SET ASIDE)
- Division 09 – Ceilings (SBE-C SET ASIDE)
- Division 09 – Flooring
- Division 09 – Painting (SBE-C SET ASIDE)
- Division 09 – Finishes
- Division 10 – Specialties (SBE-C SET ASIDE)
- Division 21 – Fire Protection
- Division 22 – Plumbing
- Division 23 – HVAC
- Division 26 – Electrical

Skanska is committed to supporting the economic development of Miami-Dade County small businesses through the SBE –C program. Miami-Dade County certified "small" business entities are encouraged to submit bid proposals. All subs interested in bidding this project will need to have gone through Skanska's prequalification process. It can be initiated at <https://apps.skanska.com/prequalinquiry>.

All questions can be directed to Project Manager - Luis Mejia (luis.mejia@skanska.com), or Project Engineer - Blake Boswell (William.Boswell@skanska.com)

Skanska USA Building Inc. reserves the right to accept or reject any and all proposals in whole or part and to waive informalities and irregularities.

Each subcontractor is to identify their 1st, 2nd, 3rd, tier SBE participants as bid solicitation.

Each subcontractor is to provide a resume of prior health care experience with point of contact.

Please confirm that you have included the office of inspector general fee in your bid.

Please confirm that you have read and understand wage & classification requirements associated with the Miami Dade Responsible Wage Act 2018 and have made reasonable adjustments for 2019.

All non-SBE subcontractors are required to provide a minimum of 21.59% SBE contribution to their direct cost of work scope. This breakout must be identified and reflected in the Bid.

Georgia's Top Court Reverses Murder Conviction Over 'Miranda' Blunders

by Kathryn Tucker

The Georgia Supreme Court reversed a murder conviction and life sentence for a man interrogated by police after invoking his right to remain silent.

When police officers asked Michael Grant if he wanted to waive his Miranda rights and talk to them without an attorney present, he clearly said no, according to the unanimous opinion authored by Justice Keith Blackwell.

"I'm not waiving nothing," Grant answered, based on the transcript Blackwell quoted. But police wore him down, telling him they wanted to hear his side and explain why he'd been arrested, and eventually he talked. According to the court, it seemed he was trying to help his cousin, Matthew Goins—whom Grant said had nothing to do with the crime and was just trying to get a ride home when the third man in Grant's car, Richard Davidson, got out and fatally shot another man, Christopher Walker, while attempting to steal a gold chain.

But police and prosecutors used Grant's statement against him, and both Grant and Davidson were convicted of murder in separate Fulton County Superior Court trials. Goins was acquitted in a trial with Grant.

"We find no harmful error with respect to Davidson," Blackwell said. "We conclude, however, that the trial court erred when it admitted a statement

against Grant that law enforcement officers elicited from him in a custodial interrogation after he unequivocally invoked his right to remain silent, and the state has failed to show that this error was harmless beyond a reasonable doubt."

Defense attorney Ben Goldberg said Monday: "In this case, the prosecution argued for what would have been an unprecedented narrowing of one of our most important constitutional rights. We are thankful for the Georgia Supreme Court's careful consideration in forcefully rejecting that argument."

Fulton County District Attorney Paul Howard said Monday evening by email, "We will definitely retry this case again. It is a murder."

"As for as any comments about the court's decision, we can only add our general practice is to follow the facts and to leave the 'criticizing' and 'journalism' to others," Howard continued. "We have represented the State and Fulton County in hundreds of matters before this court, with overwhelming success. In fact, our decisions outnumber other jurisdictions by a wide margin. It is my hope that readers of the opinion will keep these facts in mind when considering what was said in this single case."

Kathryn Tucker is an Atlanta-based reporter covering legal news for the Daily Report, an ALM affiliate of the Daily Business Review. Contact her at ktucker@alm.com.

FROM THE COURTS

Disbarred Lawyer's 'Light' Sentence Outrages Former Clients

by R. Robin McDonald

Former Toronto Maple Leafs hockey enforcer Kurt Walker was on his deathbed when he took a parting shot at his former lawyer, Robert T. Thompson Jr.

"Make sure Thompson doesn't get away," Walker instructed Atlanta businessman Mick Barron. Like Walker, Barron said Thompson cheated him of legal fees he paid for work the lawyer never performed. The Buckhead real estate attorney's failure to follow through after being paid cost Walker his house, Barron said.

On Friday, Fulton County Superior Court Judge Constance Russell ordered Thompson to serve six months behind bars as part of a five-year prison term after the disbarred lawyer pleaded guilty to multiple thefts from former clients, a spokesman for Fulton County District Attorney Paul Howard said.

A Fulton County grand jury indicted Thompson last year on 30 counts of theft for stealing more than \$250,000 from his clients.

Thompson, who was disbarred by the state Supreme Court in 2015, and his counsel had sought a probated sentence in negotiations with county prosecutors, who pushed for prison time, the DA's spokesman said.

Russell also ordered Thompson to repay \$100,000 to a list of former clients who paid him for work he never did, but the judge gave him two years to pay the restitution. Russell also barred Thompson from practicing law and did not grant him status as a first offender. If a defendant receives first offender status in Georgia, his arrest and conviction will be scrubbed from the public record once the sentence is successfully completed.

Thompson must turn himself in to state prison authorities on Oct. 1.

Thompson's attorney, Joshua Schiffer of Atlanta's ChancoSchiffer, said in a statement that Thompson wished to thank "the many citizens and bar members who stood by him and is very pleased that Judge Russell exercised her good judgment in ending this difficult case."

Thompson served for years "as a leading member" of the State Bar of Georgia's Lawyers Assistance Program "and we appreciate the district attorney agreeing to punishment ranges that valued his contributions," Schiffer said.

The Lawyers Assistance Program offers confidential peer-to-peer help for lawyers suffering from stress, depression, addiction or other personal issues.

"Our concern in the matter focused on Mr. Thompson being allowed to care for his three teenage children, as well as his ill brother, and we now ask for his privacy as his public career has ended," Schiffer said.

Barron called Friday's sentencing "a bad day for justice."

"This sentence cannot be justice if Thompson pleaded guilty to [30] felony counts," of theft, he said. Thompson's victims, many of whom lost their homes after they turned to him for help in salvaging underwater mortgages during

the recession, "are outraged," Barron said.

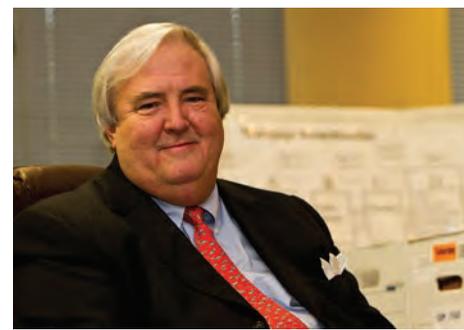
Others, like Walker, who founded the charity Dignity After Hockey to help former professional athletes with serious spine and brain injuries, died while waiting for Thompson to go to jail, Barron said.

Walker was one of those who turned to Thompson for help saving his house. The former hockey player had secured a home mortgage from Taylor, Bean & Whitaker, which collapsed in 2009 after federal authorities launched a criminal investigation that resulted in the company's suspension as a Federal Housing

Administration lender, Barron said. Walker ultimately lost his house and the legal fees he paid Thompson, Barron said.

"I have no hate for Thompson," said Barron, who embarked in 2012 on what became a mission to strip Thompson of his law license and have him prosecuted. "In the very beginning, I told him to ask our forgiveness, and let us collect on his malpractice insurance."

R. Robin McDonald reports for the Daily Report, an ALM affiliate of the Daily Business Review. Contact her at rmcdonald@alm.com.



JOHN DISNEY

Robert T. Thompson Jr. was sentenced to six months in prison for taking payments from clients facing foreclosure, then failing to follow through on the work.

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FROM THE COURTS

Ernst & Young Faces 2nd Sexual Harassment Complaint

by Alexandra Olson

Ernst & Young was slapped with a second sexual harassment complaint in less than a year describing a culture of discrimination and lewd behavior toward women at the accounting company.

Karen Ward, a former partner with EY, said her supervisor routinely commented on her breasts, suggested she should accompany him to strip clubs and texted her at 2 a.m. while on a work trip asking her to meet him for drinks. Ward said her supervisor and other men routinely met with clients at bars and strip clubs, excluding women from important business.

In a complaint filed Monday with the Equal Employment Opportunity Commission, Ward said she faced retaliation after complaining to senior executives, including one who warned her to "be careful." Ward, who worked in the North Carolina offices of EY, was fired this month after five years with the company.

EY, a U.K.-based company with 260,000 employees worldwide, called Ward's claims "unfounded and baseless."



DIEGO M. RADZINSCHI

The complaint comes four months after Ernst & Young reached a confidential agreement with a former partner who claimed that a fellow partner groped her in front of two male colleagues.

The firm said Ward was fired because of its decision to shut down the real estate investment banking advisory practice that she led for three years, calling it a "money-losing operation." The company said she failed to close any transactions while she led the practice.

Ward's complaint comes four months after EY reached a confidential agreement with another former partner, Jessica Casucci, who claimed that a fellow partner groped her in front of two male colleagues. Casucci, who also described harassment by other men at the company, said her career suffered as she avoided projects that

would force her to work with the partner who groped her. She said her complaints to the company's global diversity and inclusion officer went nowhere.

Michael Willemin, an attorney for Ward, disputed EY's contention that Ward was fired for her work performance, saying she brought in \$50 million in revenue during her time at the company and facilitated a deal that generated \$5 million in fees shortly before she was fired.

"EY's decision to try to trash Ms. Ward for exposing rampant discrimination and sexual harassment is appalling and just another example

of a big company trying to bully a woman who reports misconduct," Willemin said.

EY said Ward's allegations were raised after she was told of her dismissal, and an independent investigation conducted by Latham & Watkins found them to be unsubstantiated.

However, Ward details complaints that she made starting in 2014, citing emails to senior executives. She claims she and her team were moved to a different division of the company in 2015 where her work was systematically undermined until she was fired.

Ward's EEOC complaint says the supervisor who allegedly harassed her was fired in October 2015. EY did not immediately respond to questions about the circumstances surrounding his departure.

Willemin, who also represented Casucci, said the EEOC complaint is a precursor to filing a lawsuit against the company. He said Ward will demand that EY waive a requirement that sexual harassment complaints made by partners be settled through arbitration instead of the courts.

Alexandra Olson reports for the Associated Press.

FROM PAGE A1

MALL

and consciously separated malls within one," the complaint said.

"After the mall entered into a deal with Costco, they paved that area, they made it nice for them," Mauro said. "The mall pretty much lost interest in all the little stores."

The allegedly "unlivable conditions" include portable bathrooms outside the mall, exposed grease traps, unsightly scaffolding and a food court with no air conditioning.

"You eat there and you sweat," Maura said.

Counsel to the defense, Jeremy E. Slusher of Slusher and Rosenblum in West Palm Beach, did not wish to comment on specific allegations, but said the lawsuit seemed like "retaliation" against Mota Pizza's impending eviction.

"We have a previously filed claim against them for eviction and unpaid rent, and suspect that this lawsuit they

have filed is more of a defensive mechanism than anything else," Slusher said.

According to Slusher, the pizzeria owes \$24,000.

Maura said sales at Mota Pizza are one-fourth of what they used to be, and that tenant Ruiz can't pay the rent and will "likely soon be evicted."

Roughly one-third of the tenants at the mall have packed their bags since Costco was built, according to Maura, and foot traffic has taken a dive over the past year.

"These little businesses shouldn't be bullied by a bigger mall who just wants to cater to one big tenant that is more profitable for them," Maura said.

Maura said his investigation has taken him on seven or eight separate trips to the mall, where he took pictures and spoke with tenants.

"As a consequence of these crazy conditions, there's been a mass exodus," Maura said. "Most businesses, when they rent space in malls, do so because human beings walk in there and



Eduardo Maura claims a flurry of small businesses are suffering from "unlivable" conditions.

buy stuff. If that wasn't a factor, they wouldn't rent it."

Raychel Lean reports on South Florida litigation for the Daily Business Review. Send an email to rlean@alm.com, or follow her on Twitter via @raychellean.

IN BRIEF

FRANCISCO MADERAL RETURNS TO COLSON HICKS FROM US ATTORNEY'S OFFICE



Maderal

Francisco Maderal returned to Colson Hicks Eidson after six years as a Miami federal prosecutor. Maderal was an associate when he left for the U.S. attorney's office in 2012 and returns to the Coral Gables law firm as a partner.

As a federal prosecutor, he worked in the major crimes and international narcotics and money laundering sections. He was the lead prosecutor in a multibillion-dollar laundering case tied to

illegally mined and smuggled gold moved from South America to Miami and a \$1 billion case involving funds stolen from Venezuela's government-run oil company.

Law partner Dean Colson called Maderal "an extraordinary litigator" and "a tremendous asset in handling complex commercial litigation and class action matters."

Before joining Colson Hicks the first time, Maderal clerked for U.S. District Judge Ursula Ungaro in Miami.

Colson Hicks has about 20 attorneys, including former U.S. Attorney Roberto Martinez, who focuses on complex litigation and arbitration. **(Catherine Wilson)**

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FOCUS LATIN AMERICA

Brazilian President Temer Denies Graft, Defends His Legacy

by Jennifer Peltz
and Peter Prengaman

Brazilian President Michel Temer said that corruption charges against him were the result of his administration's attempts to reform the country's pension system, an explanation sure to raise eyebrows, if not hackles, in Latin America's largest nation.

Last year, Temer, a career politician known for his ability to whip votes in an often chaotic, multiparty system, was twice charged by Attorney General Rodrigo Janot in corruption cases involving alleged bribes and obstruction of justice. While as a sitting president Temer has been able to avoid trial, many political and legal observers believe those cases will be taken up after his term ends at the end of this year.

In an interview with The Associated Press, Temer denied wrongdoing and said his administration had suffered an "indignity" because it was attempting to take on the pension system, long one of the country's most thorny issues. As part of that, Janot used all the resources at his disposal, Temer said.

"On one hand, I was trying to combat privileges, and on the other hand this man was trying to protect those privileges," said Temer, speaking at the Four Seasons hotel. Temer was in New York to participate in this week's high-level meetings of the U.N. General Assembly.

In a statement to the AP late Monday, Janot, who stepped down as attorney general when his term ended late last year, said Temer's comments were an attempt to "divert attention and justify the unjustifiable."

"Federal police reports, videos, recordings and witness testimony make it impossible to miss the truth," he wrote.

As vice president, Temer came to power in 2016 after President Dilma Rousseff was impeached and removed from office for illegally managing the federal budget. While Rousseff accused Temer of being part of what she called a "coup" against her, he denied the accusations and promised to bring about reforms that would pull Latin America's largest economy from its worst recession in decades.



SHUTTERSTOCK

Brazilian President Michel Temer said that his reforms "were not popular measures" and that "people react negatively" to attempts at change.

His administration did pass a spending cap and a major reform to the labor code, and the economy returned to modest growth last year, just over 1 percent, after contracting nearly 4 percent in both 2015 and 2016.

"When I took office in 2016, we found the country in a state of economic disaster," he said in the interview. "... Obviously, there is a lot more to be done. However, we enjoy peace of mind inasmuch as we're leaving the government ready for the next administration."

However, several of Temer's Cabinet ministers, and Temer himself, have been at the center of many scandals.

According to Janot, Temer allegedly orchestrated a scheme in which he would get payouts totaling millions of dollars for help resolving a business issue for JBS, a giant meat-packing company. Federal police caught on camera and arrested a former aide who was carrying a suitcase with \$150,000 in cash, allegedly a payout for Temer.

Because Temer is a sitting president, however, only the country's supreme court can try him. And that can only happen if a supermajority in the lower Chamber of Deputies, considered the conduit of the people, vote to

allow for a trial to proceed. Both times Temer got enough votes to avoid trial, with many deputies saying they voted with the president simply to save the country from the political turmoil that another presidential removal would cause.

Temer's approval rating has consistently been in the single digits — at one point it was 3 percent — and presidential candidates, even onetime allies, have gone to great lengths to distance themselves from him.

Brazilians go to the polls Oct. 7, with a second round Oct. 28 if no candidate gets more than 50 percent of the vote. The new president will take office Jan. 1.

"Temer has few friends left and has been attacked by all the candidates," said David Fleischer, professor emeritus of political science at the University of Brasilia.

Fleischer said Temer's best prospect to avoid being tried for corruption — police have since begun investigating two more potential cases against him — would be if he can get appointed to an ambassadorship by the incoming administration, which would give him partial immunity.

"I'm not sure if any of the potential new presidents would take that initiative," said Fleischer.

In the interview, Temer said he believed his administration would be appreciated with time. He noted that his reforms "were not popular measures" and that "people react negatively" to attempts at change.

"History will recognize the achievements," said Temer, who earlier in the day said he would try to get Congress to vote on pension reform in the lame-duck session.

Prospects are slim, however, given Temer's approval rating combined with the reality that reforming the pension would take supermajorities in Congress, not easy even when a president is very popular.

In the interview, Temer lauded Brazil's response to a growing immigration crisis on its northern border. Tens of thousands of Venezuelans have crossed into Brazil, often famished and seeking medical attention, feeling economic and political turmoil at home.

Temer's administration and higher courts have beat back repeated attempts of the northern state of Roraima to close the border. In the border city of Pacaraima and Boa Vista, the state capital, thousands of Venezuelans are sleeping on the streets.

Roraima Gov. Suely Campos has said state resources have been pushed to the max, and can no longer attend to all the needs. Campos has accused the federal government of lying about providing millions of dollars to the state to help with Venezuelans.

Temer said a program to relocate Venezuelans to other states was helping to alleviate the problems. As of last week, just under 2,000 Venezuelans had been relocated, a fraction of the estimated 50,000 to 80,000 in the country, mostly in Roraima.

And what about the funds? "The governor, when she alleges the resources haven't arrived, surely has not been visiting all the shelters" and not considering other resources the government is providing in Roraima, said Temer.

Jennifer Peltz and Peter Prengaman report for the Associated Press.

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PRACTICE FOCUS / CIVIL PROCEDURE

When Is a Prevailing Party Not a Prevailing Party for Purposes of Awarding Fees?

Commentary by
Richard Bec

The court just entered judgment in favor of your client after prevailing on its breach of contract action.

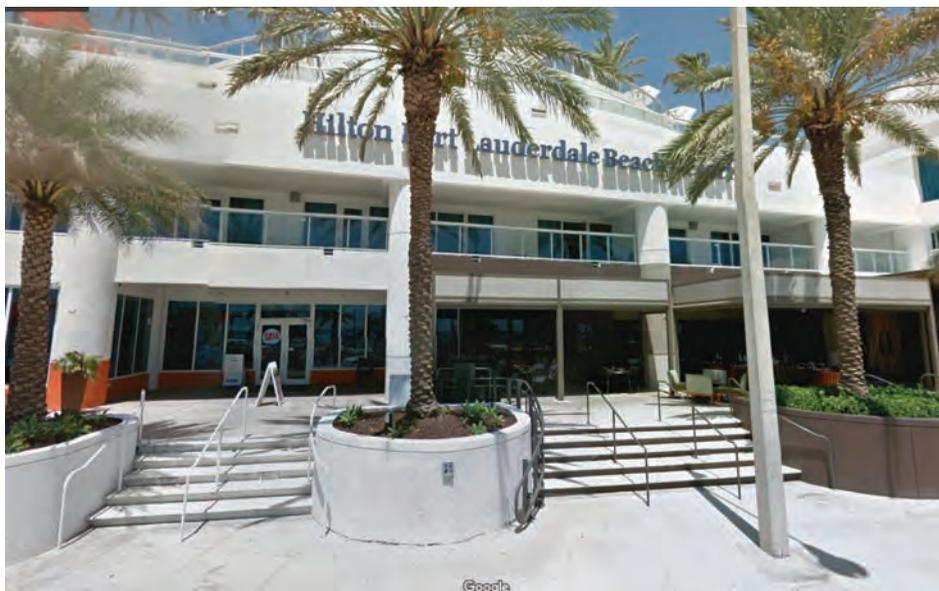


Bec

As you savor the victory, your lawyer brain begins outlining a motion for prevailing party attorney fees. You notice, however, that the judge has reduced the damages award due to a "diminution of value" defense raised by defendant. Following the reduction in the amount of damages, you question whether your client may still be the prevailing party for purposes of attorney fees under the subject agreement.

First thing first, look at the subject agreement. If a clear reading of the attorney fees provision applies to the context and type of contract claim of your case, then you are off to a good start. In *Dear v. Q Club Hotel, Ltd. Liability Co.*, No. 15-CV-60474, 2017 U.S. Dist. LEXIS 181905 (S.D. Fla. Nov. 1, 2017) the Southern District refused to grant prevailing party attorney fees to a defendant that could not show how the subject attorney fees provision "clearly" and "unambiguously" authorized an award of attorney fees and costs for the type of contract claim at issue.

Your next question should be whether the only significant issue is, without a doubt, the one in which your client prevailed. Does your case involve a clear-cut breach of contract by the defendant and nothing else, or was it more complicated? The Eleventh Circuit Court of Appeals construes the term "prevailing party" to



be the party that has prevailed on the "significant issues in the litigation."

It is important to remember that it is not mandatory for courts to decide on a prevailing party. The Florida Supreme Court has made clear that trial courts have the discretion to determine that there is no prevailing party and, thus, to decline to award attorney's fees to either party, see *Trytek v. Gale Industries*, 3 So. 3d 1194, 1196 (Fla. 2009). Rather, where one is determined to exist, "... the entitlement to attorneys' fees is mandatory."

Sometimes when parties win and lose on significant issues, the court will just pass on deciding who is the prevailing party. That is what happened in

Schoenlank v. Schoenlank, 128 So. 3d 118 (Fla. 3d DCA 2013). There, neither party had completely prevailed on either major issue of the case. The Third DCA stressed that an attorney fee award is not required whenever a contract provides for prevailing party fees and made clear that a trial court retains the discretion to deny fees to both parties when each has prevailed and lost on significant issues.

The same applies to federal courts applying Florida law. In *R.S.B. Ventures v. Federal Deposit Insurance*, 2014 U.S. Dist. LEXIS 188109, 2014 WL 11598000 (S.D. Fla. May 20, 2014), the federal court concluded that where one party had prevailed on some issues and another party

had prevailed on another issue, neither party should be deemed the prevailing party for purposes of fees, and it declined to make an award to either party.

More recently, in *Winn-Dixie Stores v. Big Lots Stores*, 2016 U.S. Dist. LEXIS 65508, 2016 WL 2918152 (S.D. Fla. May 18, 2016) (Middlebrooks, D.J.), the court concluded that because neither party had recovered on a claim or counterclaim and because neither party had been without fault, neither was a prevailing party and neither was entitled to an award of fees.

Returning to our hypothetical at the top of this article, assuming your client's win on the breach of contract claim is the only significant issue of the case, and your client has an applicable fee-shifting provision in the governing agreement, it is likely that your client is indeed the prevailing party. However, a very limited result in comparison to the scope of the litigation as a whole may affect the amount of attorney fees your client may ultimately be able to recover from the court in a subsequent motion for fees see *Rodriguez v. Super Shine & Detailing*, No. 09-23051-CIV, 2012 U.S. Dist. LEXIS 80214, at *22 (S.D. Fla. June 11, 2012). A setoff or reduction of damages is secondary to the significant issue of the case and generally will not affect your client's status as the prevailing party for purposes of recovery of attorney fees.

Richard Bec is an attorney with the Miami intellectual property boutique law firm of Espinosa Martinez. He focuses his practice on practice on intellectual property and commercial litigation, real estate law and bankruptcy matters. Contact him at rbec@etlaw.com.

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FROM THE COURTS

Video Game Companies in Federal Court Copyright Battle Royale

by Scott Graham

Big-name partners are breaking out metaphorical guns and frying pans as they wage a copyright battle over the look and feel of one of the world's most popular video games.

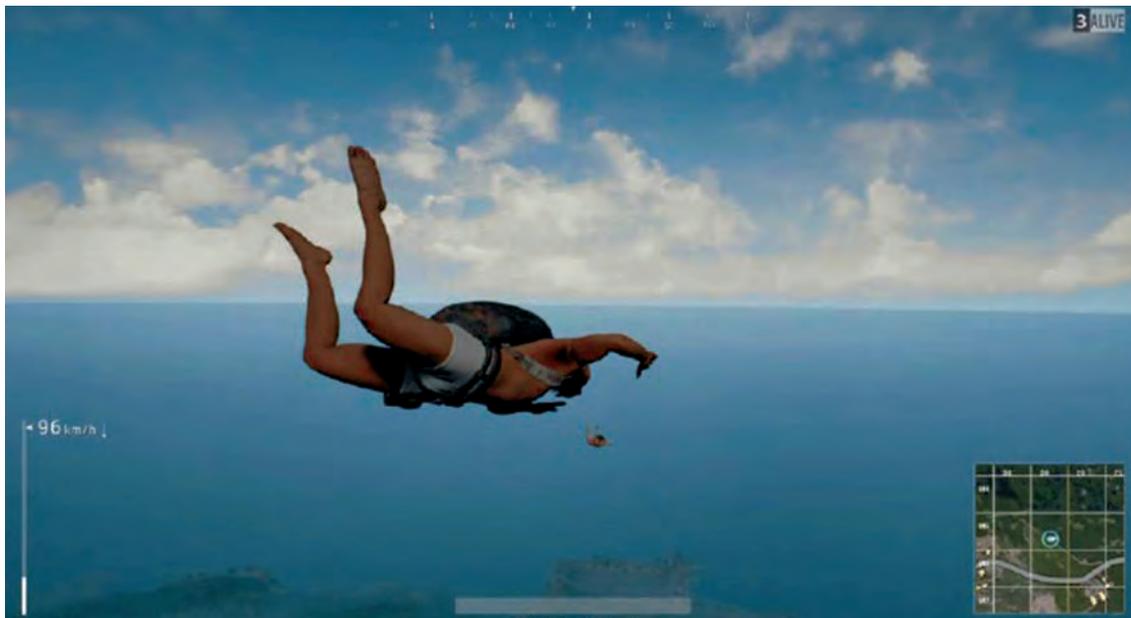
Sidley Austin partner Steven Baik and Quinn Emanuel Urquhart & Sullivan partner Claude Stern are scheduled to appear Friday before U.S. District Judge Jeffrey White of Oakland in a high-stakes case over blockbuster games inspired by the novel and movie "Battle Royale."

The maker of "PlayerUnknown's Battlegrounds" complains that "Rules of Survival" has copied weapons, vehicles, landscapes and what it describes as an iconic frying pan that can be used as a weapon or body armor. "Rules of Survival" accuses "Battlegrounds" of trying to copyright ideas and "monopolize the popular 'battle royale' genre of video games."

Lawyers who focus on the video game industry are watching closely. It's not that video game "cloning" disputes are new. "We've seen cloning cases before," says Fenwick & West associate Nicholas Plassaras, who works with gaming clients and presented last month at Gamescon Congress in Germany.

But most cloning disputes involve mobile games, where both the financial stakes and the quality of the gaming are lower, Plassaras says. "Battlegrounds," also known as "PUBG," and "Rules of Survival" are Triple-A titles painstakingly developed for PCs and consoles at high cost, and have likely generated hundreds of millions of dollars in revenue, if not a billion.

PUBG v. NetEase therefore presents a new suite of copyright issues, such as whether the detailed rendering of a real-world product such as an



Law firms Sidley Austin and Quinn Emanuel Urquhart & Sullivan are squaring off in a high-stakes fight that could make new law on the look and feel of video games.

assault rifle is copyrightable. "That is not a straightforward issue," Plassaras says. "It'll be very interesting to see if the court touches on it."

Depending on how the case comes out — and there are good arguments on both sides, Plassaras says — it could help set a tone across the industry for what is acceptable copying and what isn't.

It took only a year for "PlayerUnknown's Battlegrounds" to become one of the most popular video games of all-time. Brendan Greene, widely known by his screen name, PlayerUnknown, supervised a team of 70 developers for Korea-based PUBG Corp. to realize his vision of the game.

Up to 100 players at a time parachute onto an island and start scavenging for weapons, vehicles and clothing. As the game's map size shrinks, players are forced to confront each other and kill or be killed. The last player standing is rewarded with a whimsical salute: "Winner Winner Chicken Dinner!"

"Battlegrounds" sold 28 million copies of the PC version within a year of its March 2017 beta release, plus another 4 million for Xbox. At one point last December, a record 3 million people were playing the game concurrently on Steam, according to PUBG Corp.

The success of "Battlegrounds" didn't go unnoticed. Last fall, China-based NetEase Inc. released its own game, "Rules of Survival." As with "Battlegrounds," "Rules of Survival" players can socialize together in an online waiting room before parachuting onto a similar-looking island. Players fire similarly authentic-looking assault weapons, wear similar helmets and even wield frying pans. And the winner is greeted with the same cheer: "Winner Winner Chicken Dinner!"

PUBG, which is a subsidiary of Bluehole Ginno Games Inc., also sued the makers of the "Fortnite" video game in South Korea last January, but withdrew the suit in June without public explanation.

In the *NetEase* case, PUBG and its Sidley Austin attorneys allege that "Rules of Survival" has copied "Battlegrounds"'s entire look and feel, and some 22 different creative flourishes. One example is each individual player's ability to choose when to jump from the aircraft and parachute onto the island. That provides "a dynamic and interactive game-starting and location-selecting experience," unlike other shooter games where characters "spawn in pre-determined or random locations," Baik writes in the complaint.

Players then scavenge for weapons — rifles, shotguns, machetes, grenades, frying pans and more. Each weapon features realistic action, such as recoil, and sounds. "PUBG created a realistic combat environment, including realistic weapons," Baik writes. But, he adds, "each weapon has been stylized to make it distinct from actual real life weapons."

The frying pan armor, he notes, has inspired "Battlegrounds" parodies and memes, underscoring its dis-

tingtiveness. "Previous shooter games did not include the use of a frying pan," Baik writes.

When "Rules of Survival" and another NetEase title, "Knives Out," were launched, some industry commentators described them as "Battlegrounds" knockoffs. VG24/7 "described a UI that's nearly identical to Battlegrounds" and various other features. "The idea wasn't that these features were lifted, it's that everything else also was," reviewer Sherif Saed wrote.

But as Fenwick's Plassaras notes, "copying in and of itself is not necessarily illegal. There's nothing that stops you from copying the same idea behind a game."

That's the primary argument Stern makes for China-based NetEase, maker of "Rules of Survival." PUBG can't copyright the "ideas, rules or expression that flows from the game itself," Quinn Emanuel's Stern writes in a motion to dismiss. He quotes the U.S. Copyright Office: "Once a game has been made public, nothing in the copyright law prevents others from developing another game based on similar principles."

Stern argues that the court must "filter out" all unprotectable expression, such as weapons and vehicles that were copied from real-world products, or that are inherent in a game of survival.

Stern points to *Capcom v. MKR*, a 2008 decision of U.S. District Judge Richard Seeborg that dismissed a copyright complaint by owners of the movie "Dawn of the Dead" over the video game "Dead Rising." Both works depicted similar-looking characters trying to survive a zombie outbreak in rural, two-story malls.

Scott Graham focuses on intellectual property and the U.S. Court of Appeals for the Federal Circuit. Contact him at sgraham@alm.com.

Jury Deadlocks in Sixth Mesothelioma Trial Against J&J

by Amanda Bronstad

After a week of deliberations, a jury in Los Angeles has failed to render a verdict in the sixth trial over whether Johnson & Johnson's baby powder caused mesothelioma.

Los Angeles Superior Court Judge Margaret Oldendorf, who sits in Pasadena, declared a mistrial on Monday.

According to Courtroom View Network's coverage of the trial, Oldendorf polled each juror, then said "I did not hear any of you indicate that there was any confusion or misunderstanding on a particular point of law, and if there were, I would certainly attempt to address that with clarification of a jury instruction, things of that nature. I believe that the evidence is in and, regrettably, I'm going to declare

that the jury is deadlocked and declare a mistrial in the case."

The foreperson of the 12-member jury, which began deliberating on Sept. 17 after a month of trial, told the judge they were deadlocked 8-4. About a day after deliberations began, the jury said it was deadlocked 7-5, after which Oldendorf ordered additional arguments from the lawyers and brought in an alternate juror.

Based on their comments, jurors had different interpretations of the same evidence, according to CVN's coverage.

The trial comes in a case brought by California resident Carolyn Weirick, diagnosed in 2017 with mesothelioma, a type of lung cancer. Weirick, 59, claims her illness was due to her prolonged use of Johnson & Johnson's baby powder, which she says contained asbestos.

Weirick's lawyer, Jay Stuemke, is a shareholder at Simon Greenstone & Panatier in Dallas. A spokesman for the plaintiff's attorneys did not respond to a request for comment.

Orrick, Herrington & Sutcliffe's Christopher Vejnaska, a partner in San Francisco, represented Johnson & Johnson.

"We are grateful to the jury and the court for their time and careful consideration of this case," Johnson & Johnson spokeswoman Kim Montagnino said in an email statement. "We look forward to a new trial to present our defense — which rests on decades of independent, scientific testing confirming that J&J baby powder and Shower to Shower do not contain asbestos. Johnson & Johnson stands by our talc products, which have been on the market and used safely for more than 130 years."

The first trial alleging Johnson & Johnson's baby powder caused mesothelioma ended with a defense verdict on Nov. 16 in Los Angeles Superior Court.

This year, another Los Angeles Superior Court jury awarded \$25.75 million, and a jury in Middlesex County, New Jersey, awarded \$117 million, to plaintiffs in mesothelioma cases against Johnson & Johnson and Imerys. Two other cases in Los Angeles Superior Court and Darlington County Circuit Court in South Carolina ended in mistrials.

Similar trials began last month in Los Angeles Superior Court and last week in Middlesex County Superior Court in New Jersey.

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

COMMERCIAL REAL ESTATE

SOUTH FLORIDA TRANSACTIONS

DEAL OF THE DAY

Fort Lauderdale Warehouse Trades for \$1.5 Million

Address: 201 SW 33rd St. in Fort Lauderdale

Property type: This is a 9,860-square-foot distribution terminal and warehouse property building in the 1950s on a 19,744-square-foot lot.

Price: \$1,500,000

Seller: Donald T. Govan, individually and as trustee of The Donald T. Govan Revocable Trust No. 1

Buyer: Mirum Holdings LLC

Past sale: \$450,000 in November 1993



GOOGLE

These reports are based on public records filed with the clerks of courts. Building area is cited in gross square footage, the total area of a property as computed for assessment purposes by the county appraiser.

Reinvention as a Tool for Success in the Workplace

by John Salustri

There are few things in life that are more daunting than change—especially for those who are unprepared. That's where Ryan Estis steps in. Estis, who will be keynoting the upcoming Global Summit of the Institute of Real Estate Management (IREM), Sept. 26 through 29, in Hollywood, brings a message of hope for all business managers who dare to look change in the face and adapt.

What is the message you're bringing to IREM Global Summit attendees?

I'm going to talk about leadership that makes a difference in the lives of the tenants, the residents and the communities we serve—and perhaps most important, in the lives of our team members. I'll be talking not just about property managers, but all managers of people, and about how to lead with impact and engage all of those groups in what is an incredible period of work transformation. Leadership isn't a job, after all, it's a responsibility. And it's not about us, those who lead. It's about being in the service of others. That requires an incredible amount of humility and sacrifice and adaptation. All of that will be deeply embedded in my message.

It's an odd fact of business that managers aren't made managers because they know how to manage. That's why there's so much about disengaged millennials, yes?

I agree. We do a lot of work with sales organizations, and we see that it's usually the best producers who are promoted to management-level positions. But management and leadership are fundamentally different functions. The skill, the competency and the perspective required to lead doesn't come from individual production. It comes from a

whole host of other things. As a result, people aren't provided adequate training, and our research shows that 70 percent of the North American workforce is classified as under-engaged. And it's not just millennials.

The message here is that managers are leaving a ton of human potential and contribution on the table, and that's important because client expectations are changing faster than most organizations are prepared to address. We need people showing up for work and operating at their full potential, and that's simply not happening.

What is it that most business managers—note that I didn't say leaders—fail to get about a) engagement and b) the future of work?

Let me give you three critical drivers where managers fall short. One is confidence in the future of the organization. If a manager lacks a compelling vision of the future, or fails to communicate that vision consistently and fails to connect an individual's work to that vision, she or he is missing an opportunity to drive a deeper level of engagement.

Second is the lack of confidence in management. If I don't have confidence in the capability of my individual managers or team, that immediately erodes engagement.

Finally, there's the lack of investment. I want to work for an organization that's invested in developing my future. That's so mission critical. Am I getting frequent and adequate feedback on my performance? Annual performance reviews are antiquated. Rather, we have to check in and have future-directed conversations with our direct reports at least every 30 days.

Those are three critical drivers that are so often missed, or at least under-focused on, by management.

And what do most managers not get about the future of work?

How fast it's changing. The erosion of the traditional corporate hierarchy is part of that. Some 43 percent of workers are going to be working part-time, flexible or multiple jobs by 2021. The way we organize ourselves to accomplish work is being fundamentally transformed from what it was 20 years ago. There's a new attitude and opinion about what people expect from their work experience.

What we're talking about here is the consumerization of work. Businesses today need to have an employment value proposition if they want to attract and retain top talent, because employees are seeing three or four moves ahead. The average person will have 12 different jobs in their career. They're building a collection of life experiences, and work is just a part of it.

It seems that there are so many studies that treat millennials as though they're specimens under glass, different than anything we've ever seen.

You're right. The differences have been highly exaggerated. We're not all that different, but there are nuances of difference. We all want a lot of the same things, but your definition of feedback or collaboration might be slightly more nuanced than those of a millennial. We all still want good relationships and collaboration and the opportunity to work with people you trust in an organization that has meaning and integrity.

As we talk, I'm sitting here, in a co-working space, in jeans and a T-shirt. My dog is in the corner and my earbuds are in. And I'm about to bail and get a haircut. I'm in my 40s, but who do I sound like? We're seeing the "youth-ification" of the work culture and the destruction of the traditional hierarchy. I don't need permissions; I can choose to create



Ryan Estis will be keynoting the upcoming Global Summit of the Institute of Real Estate Management in Hollywood,

my own opportunity. This is a dynamic that's permeating all generations now, not just millennials. My mom is 80 years old, and she has completely reinvented herself. She's creating a second career as an artist. It's beautiful to see.

It's a perfect storm—to use an over-worked phrase—of culture and technology.

That's exactly right. There are influencers well beyond pure age and demographics.

Of course, accommodating the changing nature of work, and such things as changes in hierarchy and autonomy, can be tough. It's hard to let go, yes?

In my keynote we'll be talking about resistance to change, because it's a fundamental leadership challenge, it's a recipe for disruption, especially given how fast markets are changing. Change is never easy, but that's where the growth and the opportunity exist.

John Salustri reports for GlobeSt.com.

BANKING/ FINANCE

Curious Case of Citigroup's Highly Recommended Lagging Stock

by Jenny Surane

Investors haven't exactly embraced Citigroup Inc. in 2018, leaving its stock behind competitors. But analysts have been falling in love.

Shares of the New York bank, known for its vast overseas operations, have stagnated this year on concerns it could get burned by a rout in emerging markets and a looming trade war. Yet a growing number of analysts are suggesting it's primed for brighter days after building cash-management relationships with global companies and shaking up senior management.

Citigroup's stock is now both a laggard among large U.S. commercial banks and one of the most-recommended, with pickers making the case it's undervalued.

"What's exciting from an investor standpoint is that there's a new set of eyes that will be taking a fresh look at Citigroup," said Mike Mayo, an analyst at Wells Fargo & Co., who suggests a new management team could help double the stock's price over the next four years. "But this is not an 'I love you' letter, this is more like 'Hey, there's enormous potential that Citi is not realizing.'"

"And we think there could be some catalysts for doing so," he said.

Once the most valuable bank in the country, Citigroup tumbled especially hard during the financial crisis, recording more than \$140 billion in losses and asset write-downs. It drew a bigger bailout than any other U.S. bank and then spent much of the past decade repairing itself, selling \$800 billion of subprime assets and exiting more than 20 businesses.

"Our restructuring is over," Chief Executive Officer Mike Corbat declared last year at the company's first investor day since 2008. "We aren't going to take outsized risks. We aren't going to get into hobbies or into new businesses which are tangential to our strategy. We don't need to. We like the hand we're playing in today's environment."

Despite such pledges, Citigroup's history is hard to forget. An investor who bought shares of the four largest U.S. banks the day Lehman Brothers Holdings Inc. filed for bankruptcy in 2008 would still be nursing a 50 percent loss on Citigroup. The other three bets would be profitable, in some cases doubling or even quadrupling in that time. This year, Citigroup is trailing the modest 2 percent advance in the KBW Bank Index.



SHUTTERSTOCK

A growing number of analysts are suggesting Citigroup is primed for brighter days after building cash-management relationships with global companies and shaking up senior management.

Citigroup is pointing to some of its traditional banking businesses for future growth as it seeks to pay out more capital to shareholders. Lending via credit cards, for example, is supposed to contribute to growth in its consumer business.

And within the institutional clients group — housing investment bankers and traders — Corbat has tried calling attention to what he calls its backbone: the much less flashy treasury and trade solutions business. The unit helps corporations handle their cash at home and around the world. The idea is those same companies will eventually hire the bank to meet other needs, such as advising on mergers and acquisitions, underwriting securities or making big foreign-exchange trades.

This year, the activist fund ValueAct Capital Management amassed a \$1.7 billion stake in Citigroup, making the bank its biggest holding. ValueAct has said it was drawn to the treasury and trade solutions unit, noting the busi-

ness serves 80 percent of Fortune 500 companies.

"Some of our most successful investments have been made in situations where other investors cannot seem to shed their past perceptions of a company's prospects," ValueAct wrote in a letter to investors. "This was the case with Microsoft and we believe it is also the case with Citigroup, which has long been regarded as the laggard of the large universal banks."

The fund's stake also keeps pressure on managers not to become complacent, Mayo said.

This month, several analysts have welcomed Citigroup's efforts to refresh leadership under Corbat. The biggest announcement was the promotion of Mark Mason to succeed longtime Chief Financial Officer John Gerspach in March. The firm has also disclosed shake-ups in investment banking, consumer operations and regional oversight.

The next generation of managers will have to hit targets for profitability and cost cuts that analysts have previ-

ously said may be too lofty. This month, the firm confronted remaining skeptics, maintaining a target for efficiency, promising to eliminate even more expenses than previously forecast and raising its target for profitability.

"We feel confident we'll continue to strengthen our performance and deliver the returns our shareholders expect and deserve," Citigroup said in a statement for this article.

Still, doubts are hard to stamp out. Vern McKinley, a financial services consultant who recently published "Borrowed Time," a history of Citigroup and the bailouts it received, said he suspects the firm's reassuring focus on traditional banking won't prevent future stumbles.

"Throughout their history, they've gotten in trouble with just bread-and-butter-lending and credit issues," McKinley said. "It's not been the real exotic instruments all the time. It's just been basic credit that got them into trouble."

Jenny Surane reports for Bloomberg News.

Deutsche Bank CEO Opens Door to Deals After Profit Gain

by Birgit Jennen and Steven Arons

Deutsche Bank AG is open to a merger once the lender has boosted its profitability over the next 18 months, Chief Executive Officer Christian Sewing said.

"We have a very clear plan to remain a global bank, but we have to work on profitability now," Sewing said Monday at an event in Berlin. "If that happens, we can talk about other things," he said in response to a question about a possible deal with Commerzbank AG. Italy's Il Sole 24 Ore newspa-

per said Tuesday the bank may study a large capital increase for such a deal, without citing anybody. A spokesman for the bank declined to comment.

Combining Germany's two largest banks has won the backing of government officials who are keen on creating a financial heavyweight to support the country's exporters before a downturn strikes. But with both lenders struggling to show they can grow profitably, a merger wouldn't come without issues.

Deutsche Bank Chairman Paul Achleitner has also

discussed the option with German officials, though the lender is wary of a deal because it's still seeking to show that it can thrive on its own, people familiar with the matter have said.

A key obstacle to a transaction is Deutsche Bank's depressed share price, with investors previously telling Achleitner that they don't want a tie-up at the moment because it would dilute the value of the stock and potentially trigger a capital increase, people familiar with the matter have said.

A domestic solution has gained favor in Germany as the European Union struggles to agree on a banking and capital markets union. Many bank CEOs and regulators say the continent needs the reforms to encourage companies to carry out more cross-border deals.

Deutsche Bank ran through various merger scenarios at a strategy meeting in mid-September and decided the time wasn't yet right, people familiar with the matter have said. The company is also aware that a Commerzbank tie-up would lead

to more staff cuts, while joining forces with a lender in another European country might open up bigger strategic possibilities, one of the people said.

Deutsche Bank is seeking to navigate its fourth strategic overhaul in three years, cutting thousands of jobs and paring back businesses in the U.S. and Asia. Its shares have fallen 34 percent this year.

"For the time being, we at Deutsche Bank want to do our homework," Sewing said.

Birgit Jennen and Steven Arons report for Bloomberg News.

BANKING/ FINANCE

Fed to Spurn Rate Pause and Stick With Quarterly Hikes: Survey

by Christopher Condon
and Catarina Saraiva

The Federal Reserve will raise interest rates this week and continue its quarterly drumbeat of 25-basis-point increases straight through to June 2019, according to economists surveyed by Bloomberg.

That's a more aggressive pace for hikes over the coming months than Fed watchers anticipated in June, when they predicted the Federal Open Market Committee would skip a move at its December meeting. Such a pause won't come until next September, economists now say.

In a poll conducted Sept. 18-20, economists expected the upper boundary of the Fed's target range for the federal funds rate to hit 3 percent in June 2019 and stay there until the fourth quarter, when they saw a third hike for the year. That's a slight step up in pace from the previous survey three months ago when the median estimate was for 2.75 percent in June. The target range for the policy rate currently is 1.75 percent to 2 percent.

"Most folks on the committee have laid out a pretty clear strategy that we need to get to neutral, and probably the sooner the better," said Stephen Stanley, chief economist at Amherst Pierpont Securities LLC. Neutral refers to the level at which the Fed's benchmark rate is neither hitting the economy's gas pedal nor touching the brakes. Economists estimated neutral at around 3 percent.

That shift from respondents in their projected rate paths went only so far. Not a single economist predicted a fed funds rate higher than 3 percent in June next year. And from there, they predicted just one more hike before it peaks at 3.25 percent in the fourth quarter of 2019.

The responses signal confidence that, in the near term, firming inflation, the tightening U.S. labor market, and stimulus provided by tax cuts and higher government spending will outweigh concerns among Fed officials over an escalating trade war with China and emerging market stresses.



SHUTTERSTOCK

Economists expected the upper boundary of the Federal Reserve's target range for the federal funds rate to hit 3 percent in June 2019 and stay there until the fourth quarter, when they saw a third hike for the year.

Economists continued to expect, however, that Fed officials will forecast a slowdown for the economy in 2020. They expect the Fed's median estimates for growth to be 2.9 percent in 2018 and 2.5 percent in 2019, before dropping to 2 percent in 2020.

Asked what is most likely to cause the next recession, just six respondents, or 15 percent, said a trade war represented the biggest risk.

"Economists have a lot of hope that trade will get resolved," said James Orlando, senior economist at TD Bank in Toronto. "But when you do the math on the impact on the U.S. economy, even with the worst case happening with China — 25 percent tariffs on \$200 bil-

lion in goods — you're looking at a 0.5 percent hit to real GDP."

More economists thought the next recession would be triggered by the Fed raising rates too quickly (12 respondents), by an external nontrade shock (11) or by the bursting of a financial bubble (10).

"In the past, cycles have ended when the Fed kills them," said Ryan Sweet, head of monetary policy research at Moody's Analytics Inc. "This Fed isn't going to be overly reckless, so there's a chance this cycle could be different, but history is against the Fed."

In the post-meeting statement, economist overwhelmingly predicted the

FOMC would stick by its assessment that risks to monetary policy were "roughly balanced."

The economists, themselves, saw risks to growth and inflation as balanced or tilted to the upside, with 16 percent viewing risks as tilted to the downside, compared with 3 percent in June.

Year-on-year inflation in the U.S. has recently firmed. The Fed's preferred measure has surpassed the central bank's 2 percent target for five straight months. Still, a majority of respondents didn't expect the Fed to react more aggressively to inflation unless it reached at least 3 percent.

Christopher Condon and Catarina Saraiva report for Bloomberg News.

It's a Man's World Managing Money for World's Richest Families

by Simone Foxman

Men dominate the largest financial institutions globally even as their executives say they're trying to make Wall Street more welcoming for women.

The situation is even worse at family offices, outfits which manage money for the world's richest people. Women account for 9.1 percent of chief executive officers and just 8.6 percent of chief investment officers, according to a report Tuesday by UBS Group AG and researcher Campden Wealth. By comparison, 19 percent of C-suite executives in the asset-management and wholesale-banking industry are women, according to McKinsey & Co.

"A lot of the professionals that you can hire as your CEOs

and CIOs of a family office come from the financial-services industry, where women are underrepresented," said Sara Ferrari, head of global family office at Zurich-based UBS. What's more, some families have a traditional view "of women's involvement in certain investment activities as opposed to more philanthropic activities," she said.

The situation could improve as a generational shift takes place and younger family members get to decide on who looks after the finances.

"Women across regions, but in particular in Asia, are having an increasing role in generating their own wealth and managing wealth in subsequent generations," Ferrari said.

Only 14 percent of family offices in the study say they have diversity targets, a level that's

below efforts by Wall Street. More than four in 10 offices that participated in impact investing said they were supporting companies that favor "women's empowerment."

Within family offices, the CEO and CIO roles are typically the most lucrative, with base salaries of \$333,000 and \$312,000 respectively. The positions also receive the highest bonuses, according to the report. Women account for 39 percent of chief operations officers and 38 percent of chief financial officers, positions that pay about a third less.

UBS and Campden surveyed 311 single- and multi-family offices with an average of \$808 million. Nearly one in five families had their roots in manufacturing.

Simone Foxman reports for Bloomberg News.



SHUTTERSTOCK

The situation could improve as a generational shift takes place and younger family members get to decide on who looks after the finances.

BANKING/ FINANCE

Instagram Founders Exit Facebook as Zuckerberg Tension Grows

by Sarah Frier

The founders of Instagram are leaving Facebook Inc. after growing tensions with Chief Executive Officer Mark Zuckerberg over the direction of the photo-sharing app, people familiar with the matter said.

Kevin Systrom and Mike Krieger, who have been at the company since Instagram's acquisition by Facebook in 2012, had been able to keep the brand and product independent while relying on Facebook's infrastructure and resources to grow. Lately, they were frustrated with an uptick in day-to-day involvement by Zuckerberg, who has become more reliant on Instagram in planning for Facebook's future, said the people, who asked not to be identified sharing internal details.

Without the founders around, Instagram is likely to become more tightly integrated with Facebook, making it more of a product division within the larger company than an independent operation, the people said.

For years, Systrom and Krieger were able to amicably resist certain Facebook product initiatives that they felt went against their vision, while leaning on Facebook for resources, infrastructure and engineering talent. A new leader may not be able to keep the same balance, or may be more willing to make changes that help the overall company at the expense of some of Instagram's unique qualities.

The New York Times earlier reported Systrom and Krieger's departure. The founders confirmed their decision in a blog post, although Facebook didn't have a comment on the tension.

"Kevin and Mike are extraordinary product leaders and Instagram reflects their combined creative talents,"



DIEGO M. RADZINSCHI

Chief Executive Officer Mark Zuckerberg has become more reliant on Instagram in planning for Facebook's future, people familiar with the matter said.

Zuckerberg said in a statement. "I've learned a lot working with them for the past six years and have really enjoyed it."

Krieger and Systrom built Instagram and sold it to Facebook for \$715 million six years ago. When the deal was announced, the company had only 13 employees and 30 million registered users. Now more than 1 billion people use the app monthly, and it is the main source of advertising revenue for Facebook outside the social network's main news feed. A Bloomberg Intelligence analysis in June said Instagram is worth more than \$100 billion.

"We're planning on taking some time off to explore our curiosity and creativity again," Systrom said in a statement on the Instagram blog. "Building

new things requires that we step back, understand what inspires us and match that with what the world needs; that's what we plan to do."

While Facebook has weathered scandals on privacy, fake news and election interference, Instagram's brand has remained mostly untarnished, and continued to quickly add users. With more than 2.2 billion users, Facebook is running out of people in the world to sign up for its social network, and can only push so many advertisements into its news feed. That means it has become increasingly dependent on the stand-alone photo-sharing app for its future.

Instagram attracts a younger cohort of users who are critical to Facebook's growth. Facebook users also have

been flocking to Instagram as an escape, tired of the political bickering and privacy scandals that plague the parent company. Users averaged 53 minutes a day on Instagram in June, just five minutes less than on Facebook, according to Android data from analytics company SimilarWeb.

Instagram is on track to provide Facebook with \$20 billion in revenue by 2020, about a quarter of Facebook's total, Ken Sena, an analyst at Wells Fargo Securities, wrote to investors earlier this year.

The company recently launched Facebook Watch, a television-like platform that it's spent hundreds of millions of dollars on, mostly for content. That was followed by the rollout of Instagram's IGTV, an app that allows anyone to produce

and post longer-form videos. Instagram has a more natural relationship with influencers, who have built up huge followings on the platform, so it hasn't had to pay for them to use the new feature.

In a July earnings call, company executives explained that revenue growth would slow in the coming years, and that Facebook would have to spend more to expand. That announcement caused the biggest one-day stock market wipeout in American history. Menlo Park, California-based Facebook is still a drag on technology stocks, which overall have propelled the U.S. stock market to record highs. FAANG shares — for Facebook, Apple, Amazon, Netflix and Google — soared about 58 percent last year.

Facebook shares are down more than 6 percent this year after rising in every one of the previous five years. The Instagram departures may put further pressure on the stock.

The company has started mentioning Instagram more frequently on its earnings calls and taking credit for its success. In the most recent call, Zuckerberg explained that Instagram grew twice as fast being part of Facebook as it could have on its own, a statement that many Instagram insiders felt was unnecessary and unprovable.

The departure of Instagram's founders comes just weeks after Facebook decided to bring the photo app's chief operating officer, Marne Levine, back to Facebook to become its global head of business development. While at Instagram, Levine had helped maintain a harmonious relationship with the parent company. Nicole Jackson Colaco, Instagram's head of public policy, also left earlier this year.

Sarah Frier reports for Bloomberg News.

EU, Iran Set Financial "Vehicle" to Ease Trade Between Them

by Edith M. Lederer

Five world powers and Iran agreed to establish a financial facility in the European Union to facilitate payments for Iranian imports and exports, including oil, a key move sought by Tehran following the U.S. pullout from the 2015 nuclear deal and its re-imposition of sanctions.

Foreign ministers from Britain, France, Germany, Russia, China and Iran said in a joint statement that the so-called Special Purpose Vehicle will "assist and reassure economic operators pursuing legitimate business with Iran."

The nuclear agreement is meant to prevent Tehran from developing nuclear weapons, but U.S. President Donald Trump announced in May he was uni-

laterally pulling out because he felt it wasn't strong enough and didn't cover other issues of concern to the U.S. and its allies, such as Iran's military influence in the Middle East and ballistic missile program. The U.S. has also accused Iran of promoting international terrorism, which Tehran vehemently denies.

Iran's economy is already suffering from the sanctions that Washington re-imposed after walking away from the nuclear agreement, and the U.S. has threatened to punish companies from other nations that continue doing business with Iran.

In sharp contrast, the five other world powers who signed the nuclear deal remain strongly committed to it, and the new financial facility is almost certain to anger the Trump administration.

European Union foreign policy chief Federica Mogherini told reporters after the closed-door ministerial meeting that the financial facility is also aimed at preserving the nuclear agreement. The EU and Iran say the deal is working, and the joint statement notes that the International Atomic Energy Agency has now certified 12 times that Iran is in compliance with its obligations.

"In practical terms," Mogherini said, "this will mean that EU member states will set up a legal entity to facilitate legitimate financial transactions with Iran and this will allow European companies to continue to trade with Iran in accordance with European Union law and could be open to other partners in the world."

She said the agreement follows extensive exchanges and announced that

a meeting of technical experts will be held to "operationalize" the new financial facility.

The joint statement said the six countries that signed the 2015 nuclear agreement "reconfirmed their commitment to its full and effective implementation in good faith and in a constructive atmosphere." They called the agreement "a key element of the global non-proliferation architecture and a significant achievement of multilateral diplomacy."

The participants reaffirmed their joint statement on July 6, "in particular to pursue concrete and effective measures to secure payment channels with Iran."

Edith M. Lederer reports for the Associated Press.

BANKING/ FINANCE

Sirius Enters Lion's Den of Silicon Valley With Pandora Deal

by Lucas Shaw

Sirius XM Holdings Inc. is so eager to reach listeners outside the car that it's stepping into the ring with some of the world's largest technology companies.

Sirius, controlled by cable TV billionaire John Malone, announced an all-stock deal to buy Pandora Media Inc. on Monday, uniting the largest satellite radio service in the U.S. with the largest online radio company. Sirius was already a minority shareholder in Pandora, which it tried to acquire at least twice before.

The marriage immediately would give Sirius a large customer base outside the car, a priority for a company that uses satellites to deliver its programming. Pandora, for all its struggles, has more than 70 million customers. The combined sales of the two should surpass \$7 billion this year, eclipsing even Spotify Technology SA, the world's largest paid online music service.

But the deal also pits Sirius against technology's fiercest competitors: Apple, Spotify, Amazon.com Inc. and Alphabet Inc.'s YouTube. They're all racing to grab a bigger piece of the resurgent music market, which is growing again after years of declines as more consumers pay for music services they can access on their phones and via internet-connected speakers.

Spotify has signed up more than 180 million users, including 83 million paying subscribers, with a service that blends a library of more than 35,000 songs with play-



JOHN DISNEY

The marriage immediately would give Sirius a large customer base outside the car, a priority for a company that uses satellites to deliver its programming.

ists and videos. Investors like what they see, boosting its market value past \$30 billion. But even Spotify hasn't managed to stave off competition. Apple Music has already eclipsed Spotify in some markets, and Amazon and YouTube are investing heavily in their own services.

Pandora was struggling to keep up, and now Sirius is betting it can do better. Investors are less certain. Sirius stock fell 10 percent Monday, cutting the value of the all-stock deal to less than \$2.5 billion for Pandora shareholders.

COMPETITION RISES

"Competitive intensity is rising," said Mark Mahaney, an analyst with RBC Capital Markets. For Pandora, "It may be better to sell now while you can."

Analysts at Wedbush, meanwhile, said the slide in Sirius

shares means Pandora investors probably will vote against the transaction. Sirius recovered some ground in early trading on Tuesday, rising 2.2 percent to \$6.40.

Pandora was once an internet darling. The company promised to bring the anachronistic radio industry online, delivering stations personalized to the taste of every user. Founded by former musician Tim Westergren, Pandora said it would help expose undiscovered musicians to millions of new fans using software the company dubbed the music genome project.

The company attracted millions of customers, slowly lured advertisers online, and its market value approached \$8 billion in 2014. Yet what was once a fast-rising startup, and then an early online media success story, is now a company in decline.

ON DEMAND

Advertisers remained stubbornly loyal to conventional radio, and Pandora's leaders missed the next revolution in online audio: on-demand streaming. First YouTube, and then Spotify began offering users catalogs of all the music in the world, delivered not just on radio stations but via playlists, videos and full albums.

Pandora's management resisted a sale for a couple years and shuffled through a couple of chief executive officers, including Westergren twice. In his second go-round, Westergren tried to compete with Spotify and Apple Music head-to-head, building an on-demand product to complement Pandora's radio service. But the company was six months late in launching the system and royalty payments to the record industry led to continued losses.

"There was the expectation the company would launch the premium services earlier than it did," CEO Roger Lynch said in an interview a couple weeks ago, while denying the company was in sale talks. Pandora is in the process of negotiating new record company deals now and expects to reduce its losses, he said.

SLING TV

Lynch took over after Pandora agreed finally gave in to Sirius's entreaties, selling a minority stake and handing over three seats on the board. Lynch came to Pandora from Sling TV, the online video service from satellite TV provider Dish Network Corp.

Neither Lynch nor Sirius provided much detail about how the companies would complement one another, except to say they plan to share programming and marketing opportunities. Sirius said the two services would remain the same for the time being, but analysts are already speculating about how the combined companies could work together.

Pandora has been expanding into non-music programming such as podcasts and could add popular shock jock Howard Stern and sports talk from Sirius. Pandora, meanwhile, could use Sirius's relationships with automakers to get better placement in cars.

It all depends on Sirius executing, Macquarie Capital analyst Amy Yong said in a note. "If successful, the long-term growth profile is attractive."

Lucas Shaw reports for Bloomberg News.

Comcast Races to Scoop Up Sky Stock to Clear \$39B Bid

by Thomas Pfeiffer

Comcast Corp. boosted its ownership of Sky Plc above 30 percent as it rushes to buy up shares after trouncing rival 21st Century Fox Inc. with a \$39 billion bid for the British satellite television company.

Comcast made the market purchases at 17.28 pounds per share, the price of its knockout offer in a weekend auction for Sky, and is seeking to buy more, the company said Tuesday.

The purchases show the largest U.S. cable carrier is wasting no time in trying to secure the more than 50 percent of Sky it needs to take control. Sky shareholders have until an Oct. 11 deadline to tender their stock to Comcast.

Sky, based in London, offers Comcast 23 million customers in Europe, a slate of popular shows and rights to the world's most valuable soccer league. It also brings Comcast scale, reach and technological expertise to better compete with digital rivals such as Netflix Inc. and Amazon.com Inc.

Moving above the 30 percent ownership threshold makes it manda-



CHRIS RATCLIFFE/BLOOMBERG NEWS

Sky, based in London, offers Comcast 23 million customers in Europe, a slate of popular shows and rights to the world's most valuable soccer league.

tory for Comcast to offer the same price to any Sky shareholder interested in selling, under U.K. takeover rules.

While Comcast Chief Executive Officer Brian Roberts bets big on a European expansion, the cable carrier's shareholders aren't fully convinced. The Philadelphia-based company's shares fell 6 percent in New York on Monday, amid concerns about the cost of the takeover. But the company's top shareholder on Monday said the stock plunge is a buying opportunity.

Sky was the last piece of billionaire Rupert Murdoch's media empire in play after Comcast lost a separate takeover battle for Fox to Walt Disney Co. Fox, which has an existing 39 percent stake in Sky, is considering whether to tender its shares to Comcast if Disney supports the move, people familiar with the matter said on Saturday. Fox has said that it's weighing its options regarding the holding.

Independent directors at Sky have recommended accepting Comcast's offer, which was 9 percent above Sky's share price going into the auction.

Thomas Pfeiffer reports for Bloomberg News.

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The Matchmaker: RARE CRE's Jamie Zambrana Brings Seller, Buyer Together

by Lidia Dinkova

Jamie Zambrana, the co-head of a commercial real estate company, had one client looking to expand and another with the right space.

This was a client, "who had a specific need, looking for a certain asset in a certain area, and I had a client that owned something that matched exactly that description. Therefore, just made the introduction and facilitated the sale between the two parties," said Zambrana, managing partner of Boca Raton-based RARE CRE.

Polyglass U.S.A. Inc., a roofing and waterproofing systems company, bought the 62,343-square-foot office at 1350 E. Newport Center Drive in Deerfield Beach for \$6.9 million from an affiliate of IMC Equity Group, a commercial real estate holding company.

The cash transaction that closed Sept. 4 breaks down to \$110 per square foot.

Polyglass is a subsidiary of Mapei Corp., a manufacturer of building supplies such as chemicals, adhesives and sealants. The headquarters of Polyglass and Mapei's U.S. operations are less than a mile from the purchased property southwest of Interstate 95 and Southwest 10th Street.

Polyglass' new building is about 74 percent occupied. Some of the corporate offices are for Youfit Health Clubs and driving safety company Driver's Alert Inc.

Polyglass will keep the tenants and plans to open a laboratory for its roofing business in the vacant space, Zambrana said.

"In the end of the day it was really relationship-driven," Zambrana said of the off-market deal.

IMC Equity, which sold the building through its affiliate Rainbow Warehouse LLC, initially wasn't looking to sell.

"They got a good offer," Zambrana said. "They got a lower cost basis, so they took advantage of the value-add that they brought and then market appreciation since their purchase."

IMC bought this and the building next door at 1400 E. Newport Center Drive for \$10 million in October 2015, according to the Broward County property appraiser's office.

Zambrana and Nelson Garcia, who also is RARE CRE managing partner, started the company in 2014.



Zambrana

X Miami \$106M Loan was 'David Versus Goliath' Battle for Developer's Attorneys



Saul Ewing Arnstein & Lehr partners Luis Flores, Rebecca Abrams Sarelson and Louis Archambault obtained the loan for developer PMG's 464-unit X Miami apartment building at 230 NE Fourth St. in downtown Miami.

by Lidia Dinkova

Three Miami attorneys were pitted against two big institutions — a New York investor and a Los Angeles bank — plus their legal teams in financing negotiations to secure a \$106 million loan.

Saul Ewing Arnstein & Lehr partners Luis Flores, Rebecca Abrams Sarelson and Louis Archambault obtained the loan for developer PMG's 464-unit X Miami apartment building at 230 NE Fourth St. in downtown Miami in a deal that closed Sept. 19.

X Miami is part of PMG's X Social Communities multifamily division. The New York-based developer is known for its luxury condominiums such as the 180-unit Echo Brickell at 1451 Brickell Ave. But it's made a sharp turn to urban apartment construction with trendy tech features like apps that allow renters to lock and unlock their apartments without keys.

The financing was a complex deal for the attorneys.

"It's like David versus Goliath sometimes on these transactions," Flores said. "You are going up against institutions. We are representing the developer, and we are negotiating with two major institutions. We were negotiating with a major lender, Pacific Western Bank. We were negotiating with a very sophisticated fund out of New York called Square Mile. They have major law firms, national law firms representing them."

The Los Angeles lender, Pacific Western Bank, was represented by Cox Castle Nicholson partners Caroline Dreyfus and Adam Weissburg and associate Ryan Nolan, all based in LA.

Square Mile Capital Management LLC in New York is PMG's X Miami preferred equity partner and was represented by Greenberg Traurig shareholders Kristen Lonergan in New York

and Christina Rogers in Atlanta as well as associates Roger Cappucci and Max Liporace, both in New York.

"You try to get as many wins as you can for your client, but you also try to be fair to each of those participants, the lender and your equity partner," Flores said. "They need to feel comfortable in the transaction as well."

The funds were used to pay off an \$80 million construction loan, finish details on X Miami and restructure the Square Mile equity deal. X Miami was structured in records as a two-unit commercial condominium with apartment and retail segments.

"We had a lot of moving pieces on this transaction," Flores said.

That left Flores, Sarelson and Archambault to lead different pieces of the deal.

"In different instances I am the quarterback, Louis is the quarterback, Rebecca is a quarterback. We are like a three-headed monster," Flores said.

Sarelson arranged to pay down Square Mile's equity investment as it reinvested in the project.

"The preferred equity partner is obviously a priority piece so they needed to be repaid. In this particular case, similar to the replacement of the senior financing, we replaced the preferred equity with Square Mile, but they swapped out their original piece for a brand new equity partner," Sarelson said.

Archambault focused on the condo documentation to allow the retail portion to be sold. Two tenants are in place: the Jaguar Sun cocktail bar and eatery and the Mockingbird Cafe coffee bar.

The team closed the deal in two months. Why the rush? The quicker it closed, the quicker it could swap the construction loan with a loan with more favorable terms.

"Pretty much as soon as they opened for business, they were like, 'OK, it's time

for me to take out my construction lender because construction financing is a little more expensive than a refinance of an operating income-producing asset like an apartment building," Flores said.

Saul Ewing declined to disclose the interest rate and terms for the \$106 million loan.

But the Centennial Bank construction loan likely had higher rates than the new loan because it was a riskier investment.

Finished in July, X Miami is the first XSC project to open in South Florida, and it's 60 percent occupied.

Other XSC projects include the 650-unit first phase of X Las Olas in downtown Fort Lauderdale to be finished in winter 2020 and the 690-unit building to rise at 400 Biscayne Blvd. in place of the First United Methodist Church of Miami Inc. The church will be rebuilt in the apartment building.

XSC strives to create a community lifestyle by providing out-of-the-box amenities often sought by young professionals. At X Miami, there is an 18th-floor dog park, a two-level co-working lab, screening lounge and gym.

The units have floor-to-ceiling windows and large balconies. X Miami also gives tenants the opportunity to rent a bedroom and a bathroom inside a bigger unit for at least \$1,300 a month. Advertised rates are \$1,310 for a studio to \$2,905 for a two-bedroom unit.

"That may be new to the Miami marketplace, but it's not out of the ordinary for other major urban cores like New York, Boston and San Francisco to have units of this size," Flores said. "Lenders are familiar with this type of model because of their experiences in the marketplaces."

Lidia Dinkova covers South Florida real estate for the Daily Business Review. Contact her at LDinkova@alm.com or 305-347-6665. On Twitter @LidiaDinkova.