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DAILY BUSINESS REVIEW

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Attorney Eric Friday

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Ice Rolling Out Innovative Legal Representation Option

by Samantha Joseph
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If Thomas Ice has his way, lay people with limited budgets and no knowledge of Latin could soon find Florida courtrooms a lot less intimidating.

So much so, they'll be comfortable enough to face off against seasoned attorneys without fear of being outmaneuvered, Ice hopes.

"The profession generally has a vested interest in having the public believe that law and court procedure are so complex and arcane that years of education and training are required to be proficient," the Royal Palm Beach attorney said. "To whatever extent that's true, that's what the court system needs to change. … But in many situations, that is not

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MELANIE BELL
Wellington homeowner Dale Dangremond said attorney Thomas Ice's unbundling option for legal services is "almost like full representation."

'Defiant and Contemptuous' Attorney Contests Disbarment

by Celia Ampel
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Disbarred Pompano Beach attorney Jeff Norkin vows to fight tooth and nail against the Florida Supreme Court's revocation of his law license.

"This is a case of a high court acting as an administrative agency, defrauding the public and violating the Constitution in countless ways," Norkin said.


Disbarred attorney Jeff Norkin said that while he made enemies on the bench, he is "probably the most honest lawyer you will ever talk to."

He was disbarred Thursday for practicing law after a two-year suspension took effect in December 2013.

The court also found Norkin did not properly notify all opposing counsel and judges in his cases that he was suspended, and he "knowingly or through callous indifference disparaged, threatened and humiliated [Florida Bar] counsel." The justices found him guilty of unprofessional conduct.

Norkin contends he never should have been suspended in the first place and the court violated the First Amendment by punishing him for expressing himself "bluntly."

He was suspended after 21 years

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Retired Broward Judge Andrews Dies at Age 74

by Julie Kay
jkay@alm.com

Robert Lance Andrews, a Broward judge for 30 years who was known for his wit, colorful rulings and bushy mustache, died at 74.

Andrews retired from the bench in 2008 after suffering a stroke following the death of his wife, Carole Lee Andrews, a Broward School Board member. He moved to Texas soon after and later Georgia, where he lived with a son.

The former Miami federal prosecutor and Secret Service agent was appointed a county judge by Gov. Reubin Askew in 1978 and elevated to the circuit bench by Gov. Bob Graham in 1982.

Andrews was known for his outspokenness in and out of the courtroom, which sometimes got him into trouble. He was once hauled before

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ANDREWS

the Florida Supreme Court and admonished for speaking to a reporter about a pending case. He was represented by Fort Lauderdale lawyer William Scherer of Conrad & Scherer.

"He was contrite," Scherer recalled. "He never made that mistake again."

Andrews presided over a 14-year litigation battle between supporters of downtown Fort Lauderdale's historic Stranahan House and a developer who wants to build a condominium next door. The city approved the project in 2004, but Stranahan House continued to challenge development. An appeals court finally dismissed the museum's case in 2011.

Ron Gunzburger, general counsel for the Broward Sheriff's Office, recalled a classic Andrews comment about the Broward County Bar Association's judicial poll: "In the years I do well, I think it is pretty accurate. In the years I don't, I don't think it means anything."

Andrews also was known for his knowledge of the law and colorful interpretations, Scherer said.

"Young lawyers would go and sit in his motion calendars because he knew so much and they were always interesting," he said. "He was prepared, he would read the cases, and that doesn't always happen with every judge. He was outspoken as hell. He was from a bygone era."

Former Broward Judge Robert Lance Andrews was called "a unique character who did things in unusual ways."

Scherer once had Andrews recused from a case because he talked about it privately and was worried Andrews might hold it against him. He never did.

"You had to like the guy," he said. "He was full of enthusiasm."

Broward Circuit Judge Thomas Lynch IV called Andrews "a unique character who did things in unusual ways." He recalled Andrews getting irritated about a class action settlement by a cruise line that produced $25 coupons for future cruises for plaintiffs and hundreds of thousands of dollars in attorney fees. Andrews ruled the lawyers should get their attorney fees in cruise coupons rather than money. He was reversed by an appellate court.

"He was a likable guy but unpredictable," Lynch said. "Almost everyone loved Lance."

Fort Lauderdale lawyer Charles Lichtman of Berger Singerman said: "I always viewed Judge Andrews as a lawyer's kind of judge. He was able to cut right through the baloney and get to the issue. He had a great sense of humor, was wise and smart and always kept control of his courtroom."

Andrews was also known for his love of the University of Georgia, where he attended law school. His chambers were filled with Bulldogs memorabilia.

Andrews, who died Friday, was survived by two sons. Funeral arrangements are pending.

Julie Kay can be reached at 305-347-6685.

FROM PAGE A1

LAWYER

of practice for making "threatening and disparaging statements" to a senior judge as well as yelling insults at opposing counsel in the hallway of a courthouse, according to the Supreme Court.

"I made a lot of enemies on the bench," he said. "I am probably the most honest lawyer you will ever talk to."

Norkin said the disbarment order did not address the points he made in his appellate brief, such as his claim he was confused about when the deadline was to notify others of his suspension. He argues he didn't know whether he could wait until after his motion for rehearing was heard, he asked the court and filed the required affidavit with the Bar immediately when he found out.

"Norkin's argument that his motion for rehearing tolled the time for him to submit the required affidavit is disingenuous, and we reject it," Florida Supreme Court Chief Justice Jorge Labarga wrote on behalf of the court in the disbarment order.

The justices also found Norkin admitted responding to an email from opposing counsel in a Miami-Dade Circuit Court case after his suspension and preparing a draft motion for a client who filed it pro se.

Jeff Norkin said the Florida Supreme Court's disbarment order did not address the points he made in his appellate brief, such as his claim he was confused about when the deadline was to notify others of his suspension.

Norkin argues he had a right to practice during his suspension because he was representing his own interests, a pursuit he claims is protected by the Rules of Civil Procedure and the Florida Constitution.

He had done $500,000 worth of unpaid work for his client David Beem, who is also a friend, he said. When opposing counsel won an award for $420,000 in attorney fees, Norkin said he felt compelled to help Beem fight it to protect himself and his client financially.

The judgment was later vacated by Miami-Dade Circuit Judge Victoria Sigler, who recently retired. Norkin maintains the fee award was a fraud on the court.

'DEFIANT AND CONTEMPTUOUS'

Norkin's conduct in Beem's case also was what led to his original suspension. Beem said he saw his former lawyer be admonished in court for being too brash, but Norkin apologized to the judge each time.

"For a guy to get disbarred for raising his voice and being argumentative in court, I think that's what lawyers do, isn't it?" he asked.

Kluger Kaplan attorney Ronald Dresnick, who was the judge on the case that got Norkin suspended, called the disbarment "a terrible situation" for Norkin.

"There were several attorneys on the other side, and all of them had to deal with a lot of unnecessary behavior which was not called for. Now should somebody get disbarred because of that? That's above my pay grade," Dresnick said Monday. "Is Mr. Norkin being held up as an example? It seems that way to me, and lawyers are told they'd better conform their behavior and act professionally. But I certainly feel for him, for anybody who gets disbarred."

Addressing Norkin's tone, the Florida Supreme Court agreed with the Florida Bar that Norkin should be sanctioned for his emails to a Bar lawyer, which called her conduct "evil" and "despicable" and said, "I'm preparing the lawsuit against you. Keep an eye out."

The court also noted Norkin's behavior during his public reprimand when he "intentionally smirked and stared down each justice one by one."

"Given Norkin's continuation of his egregious behavior following his suspension and during the administration of the public reprimand, we conclude that he will not change his pattern of misconduct," Labarga wrote. "Indeed, his filings in the instant case continue to demonstrate his disregard for this court, his unrepentant attitude and his intent to continue his defiant and contemptuous conduct that is demeaning to this court, the court's processes and the profession of attorneys as a whole. Such misconduct cannot and will not be tolerated as it sullies the dignity of judicial proceedings and debases the constitutional republic we serve."

Norkin said the past two years have made him desperate. He has been denied work as a paralegal and insurance agent, and he is struggling to support his children.

If the decision to disbar him is not vacated, Norkin plans to bring a federal lawsuit alleging fraud against the public.

"I swear to you, people will know," he said. "I don't even care if it costs me my life, people will know what they did to me. Because my life is worthless now."

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FLORIDA **LAW REVIEW**

Lawmakers Seek to Shield Seniors From Shady Guardians

by Margie Menzel
News Service of Florida

A Southwest Florida lawmaker is renewing a push to better protect elderly Floridians from unscrupulous guardians who take control of seniors' assets.

The Senate Children, Families and Elder Affairs Committee last week approved a bill (SB 232), filed by Sen. Nancy Detert, R-Venice, that would charge the Department of Elder Affairs with certifying and overseeing professional guardians, and disciplining those who abuse their trust.

Detert told the committee that professional guardians are a growth business in Florida but are lightly regulated.

She cited a series in the Sarasota Herald-Tribune, which reported in December 2014 that the number of registered professional guardians statewide had grown 1,800 percent in 11 years.

"There are predators," Detert said. "They have kind of crawled through a crack in the law."

Private professional guardians come into play, for example, in circumstances where families have disputes between seniors' children. The guardians can earn $100 an hour to open mail, make appointments and pay bills, even to be present when the children came to visit.

"When you think of the power you are giving to a guardian," Detert said. "The power to make your medical decisions, to put you on drugs, to spend your money [and] sign your checkbook."

Private guardians often serve wealthy people, Detert said. The state also has a more heavily regulated system of public guardians who serve incapacitated people who don't have anybody willing and able to serve as guardians.

Detert's bill has support from the office of Palm Beach County Clerk and Comptroller Sharon Bock, who was represented at the Senate committee meeting by Deputy Clerk Anthony Palmieri.

Since 2011, Palmieri said, the office has investigated more than 800 elder-guardianship cases, identifying "more than $4 million in unsubstantiated disbursements, missing assets and fraud" in Palm Beach County. There have been two arrests.

"Many clerks' offices throughout the state are auditing and investigating guardianships because of this very important legislation," Palmieri said.

Also in 2011, Palm Beach County started Florida's—and possibly the nation's—first hotline for elder-guardianship fraud.

Bock said in an interview that she'd gotten the idea to review private guardianships after seeing an uptick in their numbers during the economic recession. She had also noted that guardianship laws had been largely unchanged for decades at that point.

"It wasn't on anyone's radar screen, even though Florida has the fastest-growing elderly population per capita of any state in the United States," Bock said.

Last spring, however, Gov. Rick Scott signed a measure by Rep. Kathleen Passidomo, R-Naples, requiring advance notice before hearings on the appointment of emergency temporary guardians. It would also allow the mediation of guardianship disputes among family members and require the reporting of incidents of abuse, neglect and exploitation of wards by guardians.

Detert's new bill will be considered during the 2016 legislative session, which starts in January. A similar bill unanimously cleared the Senate during the 2015 session, but died when the House adjourned three days early. House leaders had objected to the initial $3 million cost of the measure, which Detert got down to less than $1 million.

The analysis of her new bill notes that approximately 456 guardians would be regulated, but it does not show a projected cost.

Detert said she'd recruited House Appropriations Chairman Richard Corcoran, R-Land O' Lakes, to her cause, while Rep. Larry Ahern, R-Seminole, will return as the House sponsor.

"I've spoken to Chair Corcoran, and he is supportive," she said. "Rep. Ahern is doing the bill in the House, and we expect a happy conclusion this year."

MEREDITH HILL

Sen. Nancy Detert, R-Venice, told a Senate committee that professional guardians are a growth business in Florida but are lightly regulated.

DCF, Senators Eye Ways to Bolster Child Protection Program

by Margie Menzel
News Service of Florida

The chief of the Florida Department of Children and Families told lawmakers his agency is making progress at carrying out reforms but still has a long way to go.

A total of 369 child deaths have been called in to the state abuse hotline so far in 2015, DCF Secretary Mike Carroll told the Senate Children, Families and Elder Affairs Committee.

That means Florida is on track to have roughly as many child deaths this year as it did before passing a sweeping child-welfare reform law in 2014.

Since 2007, Carroll said, the state has averaged 438 child deaths a year, ranging from a low of 409 in 2012 to a high of 470 in 2010, and the death rate "has stubbornly stayed in that range."

Eighteen of this year's deaths were due to maltreatment, while most were due to drowning and what is called "co-sleeping," in which a child, usually an infant, is suffocated while sleeping with an adult.

In 25 percent of the deaths, Carroll said, DCF had prior contact with the families.

The news was disappointing to the panel, which played a key role in developing the 2014 law.

"We know what the problem is," said Chairwoman Eleanor Sobel, D-Hollywood. "What is the solution?"

In the past, DCF has conducted public-awareness campaigns about the dangers to children of co-sleeping and drowning. Now, Carroll said, he's working with the Department of Health and the Healthy Families program, which helps at-risk families, to educate parents more directly.

"It really is a public health issue," he said. "If we can get somebody in a home-visiting role, particularly with parents who have marginal parenting skills, we think it keeps kids alive, particularly for the unsafe sleep [cases]."

As to child deaths from inflicted trauma, Carroll said the department was more likely to have had prior contact with the families in those cases.

"It doesn't usually start off with the death," he said. "It usually starts off with a domestic-violence incident."

The secretary talked to lawmakers this week about the upcoming legislative session, explaining what his agency has done to implement the 2014 law and describing gaps that remain.

On Jan. 1, for instance, as part of the law, DCF began sending teams of experts to immediately investigate child deaths in which the families had prior histories with the department. The teams are known as "CIRRT" teams, for Critical Incident Rapid Response Teams.

Of the 30 CIRRT reports gathered so far, Carroll said, half involve a parent with a significant substance-abuse problem, while one-third involve domestic violence.

"We don't track mental health as a maltreatment," he added. "But I can tell you, in almost every high-profile death case we've had this year, mental health was a significant, driving factor in that case."

Carroll's agenda for the 2016 legislative session includes making more services, such as substance-abuse and mental-health treatment, available to high-risk families. To develop adequate service networks, he said, he also wants to change the way DCF monitors service providers.

Carroll praised Florida's privatized community-based care system, which provides case-management, adoption and foster-care services with considerable autonomy. However, he said, the state should make sure that a minimum menu of services is available in each region of Florida.

"Serving kids in-home is less traumatic to kids, and, frankly, more effective," he said.

Additionally, Carroll wants to push the CIRRT process further, by requiring public and private agencies to make better use of recommendations in those reports.

FLORIDA CHANNEL

Since 2007, DCF Secretary Mike Carroll said the state has averaged 438 child deaths a year, ranging from a low of 409 in 2012 to a high of 470 in 2010.

"We want to make sure that each one of these jurisdictions reacts to the CIRRT findings appropriately, because some of the jurisdictions react much more appropriately and in a collaborative way to take action to address some of the issues," he said.

THE FIRM

Report: 2015 Could Set Record for Number of Law Firm Mergers

by Nell Gluckman
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ISTOCK

Legal consultancy Altman Weil said the pace of law firms consolidations reflects overall optimism about the economy and financial stability within many firms.

It's not only the clients of Am Law 200 firms that are on track to break records for the number of mergers announced in 2015, but also the firms themselves, according to a recently released report by legal consultancy Altman Weil.

Though the third quarter of 2015, which ended on Sept. 30, 68 law firm mergers have been reported, the most ever counted at that time of year since the Newtown Square, Pennsylvania-based firm began tracking such deals nine years ago.

In the third quarter of 2015 alone, 20 law firm mergers were announced.

Altman Weil principal Eric Seeger said the pace at which law firms are consolidating is a reflection of overall optimism about the economy and financial stability within many firms. He added that some firms are finding that lateral hiring is too slow and expensive as a growth strategy, while tacking on a boutique can be a quick way to grow a particular practice area or establish a foothold in a new city.

"They're looking to do acquisition, which allows them to take bigger bites," Seeger said. Acquiring a boutique has the added benefit of making it more likely that all the new lawyer's work and clients come to the firm, added Seeger. When a firm makes a lateral hire, there's always the chance that the new lawyer's clients will choose to remain with his or her former firm.

Seeger noted that IP boutiques, especially those with a litigation focus, were frequent acquisition targets for larger firms.

The Am Law Daily reported in September on a spate of boutiques—particularly in the IP area—being absorbed by Am Law 200 firms such as Brownstein Hyatt Farber Schreck, Dickinson Wright and Dinsmore & Shohl. Schwabe Williamson & Wyatt, a 146-lawyer firm based in Portland, Oregon, acquired another IP shop in the city in September, while in August, Haynes and Boone bolted on the Mavrakakis Law Group, an IP boutique in Silicon Valley.

Not all the IP activity this quarter came in the form of mergers, however. Duane Morris, for example, took on the founders of San Francisco-based IP shop Tabarrok & Zahrt, one week after hiring lawyers from dissolving New York litigation boutique Kornstein Veisz Wexler & Pollard. The New York Law Journal, a sibling publication, recently reported on how many IP boutiques are struggling with new patent law changes.

Seeger said some of the largest mergers of the most recent quarter were among regional firms, with the Midwest seeing the most activity. (The American Lawyer reported in June on the flood of big-firm combinations in Chicago.)

"I think some firms look around and see similarly situated competitors where both firms would benefit by combining their practice in the same regional footprint," Seeger said. "It does give them the ability to handle larger assignments."

The largest law firm acquisition of the third quarter was in New York. Partners at Bond Schoeneck & King, a firm with roots in Syracuse, voted last week to acquire 35-lawyer Buffalo shop Jaeckle Fleischmann & Mugel on Jan. 1. The tie-up will give Bond Schoeneck a full-service, 51-lawyer office in Buffalo, a city that in June spawned another merger that could create a new member of the Am Law 200. (In August, yet another Buffalo firm, 46-lawyer Lippes Mathias Wexler Friedman, announced that it would combine with a smaller firm in Albany, New York.)

Altman Weil has been tracking law firm combinations since the 2008 global financial crisis. Since then, the record number of mergers was in 2013, when the consulting firm counted 88 mergers.

Seeger said there's a good chance that Altman Weil will be reporting a new merger record at the end of 2015, especially given that the fourth quarter is often the most active time for combinations.

On Oct. 5, two Am Law 200 firms announced combinations abroad. Labor and employment giant Littler Mendelson expanded outside the Americas by absorbing German firm Vangard into its global Swiss verein network, while Nixon Peabody unveiled a tie-up in Hong Kong with local firm CWL Partners, with which it has had an alliance since 2010.

Though the firms will remain legal separate entities, Nixon Peabody and CWL will unite their local operations and marketing, both said, creating a Hong Kong entity called Nixon Peabody CWL. (The firm, which earlier this year merged with 100-lawyer Chicago shop Ungaretti & Harris, will remain Nixon Peabody in the U.S. and Europe.)

On the horizon is another potential union between Pillsbury Winthrop Shaw Pittman and Chadbourne & Parke. The Am Law Daily reported two weeks ago that the two firms are in merger talks about creating a combined entity that would have roughly 1,000 lawyers in 25 offices around the world.

Nell Gluckman reports for the American Lawyer, an ALM affiliate of the Daily Business Review.

Wolf Block Loses Coverage Suit Over Partner Severance Payments

by Gina Passarella
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The insurance company for defunct law firm Wolf Block does not have to indemnify the firm over its failure to pay a former partner severance payments, a Pennsylvania judge has ruled.

Philadelphia Court of Common Pleas Judge Ramy I. Djerassi granted summary judgment to Federal Insurance Co. and denied the same to Wolf Block in a dispute over whether the defunct firm should be covered in the suit brought against it by former partner Michael A. Budin.

Budin, who left the firm in 2003 under a separation agreement that provided he receive annual payments of $26,646 until 2017, sued Wolf Block in March 2010 after the firm missed the first annual severance payment due since Wolf Block had voted to dissolve March 23, 2009. That case settled in November 2013, nearly six months after Wolf Block sued Federal Insurance over their coverage dispute.

Federal Insurance had denied coverage to Wolf Block, arguing the separation agreement and memorandum of understanding between Budin and Wolf Block did not constitute an employee benefit plan that would trigger coverage. The insurer instead likened the agreements to contracts for consideration, Djerassi said. Federal Insurance also claimed Wolf Block's decision to place Budin's rights below those of other unsecured third-party creditors was outside of the policy's definition of a covered "wrongful act."

The insurance policy at issue covered Wolf Block for "wrongful acts" it committed in relation to a "sponsored plan," such as employee benefits, pension or welfare benefits plans. A "wrongful act" was defined as any breach of the responsibilities the firm owed under those plans.

"The clear and unambiguous language of the afore-cited separation agreement leaves no doubt: the separation agreement was a mere contract executed by Budin and Wolf Block for the purpose of terminating Budin's interest in Wolf Block, fixing the amount of severance payments owed to Budin and releasing Wolf Block from any claims that Budin may have had against the firm," Djerassi said in determining nothing in the agreements Budin signed suggested the severance payments were a form of an employee benefit plan.

And because the definition of "wrongful act" only included an act that breached the firm's duties under such employee benefit plans, the firm did not commit a covered wrongful act, Djerassi ruled.

The judge also addressed the parties' dispute over whether the decision not to pay Budin occurred within the policy's coverage period.

Federal Insurance argued the policy in question expired Feb. 9, 2010. The insurer said Budin's severance payments were due by Feb. 28 of each year, meaning the law firm had not yet committed any wrongful act as of Feb. 9, 2010, because it had a few more weeks to still make the payment to Budin.

Wolf Block, on the other hand, argued that it was its decision to classify Budin in a second class of creditors that was the wrongful act. The firm said that occurred well before Feb. 28, 2010, as evidenced by letters written in 2009 between Budin and Wolf Block about his concerns he would receive his severance payments.

But Djerassi said Budin's breach-of-contract action against Wolf Block, which would trigger the need for coverage, was not ripe until Feb. 28, 2010.

"In conclusion, even if the separation agreement could be classified as a 'sponsored plan,' and even if Wolf Block's decision to downgrade Budin's rights could be defined as a 'wrongful act,' such act could only have occurred after the policy had expired," Djerassi said.

Jodi Murland represented Wolf Block and declined to comment. Stanley Lehman of Sherrard, German & Kelly represented Federal Insurance and did not return a call seeking comment.

Djerassi issued his opinion last month in *Wolf Block v. Federal Insurance*, which was recently published by the court.

Gina Passarella reports for the Legal Intelligencer, an ALM affiliate of the Daily Business Review.

FROM THE COURTS

Opponents of $225M Exxon Accord Can't Intervene in Case

by Charles Toutant
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A Superior Court judge has rejected a bid by environmental groups to intervene and block New Jersey's controversial $225 million settlement with Exxon Mobil Corp. over contamination claims.

Judge Michael Hogan, who has been hearing the case between the state Department of Environmental Protection and Exxon Mobil, denied a motion to intervene by five groups that object to the settlement. Hogan also denied a motion for reconsideration of his prior order denying state Sen. Raymond Lesniak, D-Union, leave to intervene.

Hogan said Lesniak and the five groups—New Jersey Sierra Club, Clean Water Action, Delaware Riverkeeper, Delaware Riverkeeper Network and Environment New Jersey—could not intervene because they lacked standing to bring suit under either the Spill Compensation and Control Act or the Environmental Rights Act. And even if the senator and the environmental groups did have standing, they are not entitled to intervene because the DEP adequately represents their interests, Hogan said. And Lesniak cannot intervene due to the separation-of-powers provision of the New Jersey Constitution, Hogan said.

The groups sought permission to intervene so they could appeal the settlement, which Hogan approved Aug. 25, to the Appellate Division. Opponents to the settlement have argued that damages in the case were estimated as high as $8.9 billion, although lawyers for the state and for Exxon Mobil have disputed that figure and said that the $225 million, which includes about $44 million in attorney fees, was appropriate. The $225 million figure represents the damages caused at the company's refinery facility in Bayonne and at the Bayway Refinery in Linden, as well as at all of its service stations and several other facilities in the state.

The environmental groups and Lesniak said that instead of appealing the settlement, they will appeal the decision denying their motion to intervene in the case.

Hogan said in his Oct. 9 ruling that only the DEP can bring a suit under the Spill Act. He also said private parties can bring some suits under the ERA but the moving parties could not bring the underlying complaint in the Exxon Mobil case.

Alternatively, Hogan said, if the moving parties did have standing, private parties that want to bring concurrent cases are ousted from standing when a trial court determines the DEP has "properly and adequately acted to enforce environmental statutes," a condition met in the present case, Hogan said.

In addition, allowing Lesniak to intervene would "implicate significant separation of powers concerns," Hogan said.

CARMEN NATALE

Environmental groups opposing the settlement have argued that damages in the case were estimated as high as $8.9 billion.

"The DEP has decided that, in this particular case, enforcement of the Spill Act is best served through settlement rather than the uncertainties of continued litigation and prolonged appeals," Hogan said. "To allow Senator Lesniak, or any other legislator, to intervene to oppose the proposed consent judgment would set a precedent whereby individual legislators could intervene to oppose any agency settlement, thereby potentially nullifying virtually every litigation decision that the executive branch makes."

Lesniak said that, in addition to appealing the ruling denying him the right to intervene, he would file a separate suit under his own name "that will blow the settlement to smithereens."

"Judge Hogan has denied the public its right to appeal the biggest environmental contamination case in the history of the state," Lesniak said in a statement. "This miscarriage of justice will not stand."

Jeff Tittel, director of the New Jersey Sierra Club, said his group was not surprised by Hogan's ruling.

"Very rarely does a judge let you intervene to try to overturn one of his decisions. We expected that," Tittel said.

The Attorney General's Office declined to comment on the ruling.

Exxon Mobil spokesman Todd Spitler issued a statement on behalf of the company, which said, "We agree with the court's decision approving the $225 million settlement between the New Jersey Department of Environmental Protection and Exxon Mobil for natural resource damages. This settlement has brought this case to a fair and reasonable conclusion. Both parties will now have the benefit of the certainty and finality that comes from this settlement."

Charles Toutant reports for the New Jersey Law Journal, an ALM affiliate of the Daily Business Review.

$100M Pelvic Mesh Verdict Shocks the Conscience, Judge Finds

by Amanda Bronstad
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A Delaware judge has slashed as "grossly disproportionate" a $100 million award against Boston Scientific Corp. down to $10 million in a case over one of the company's pelvic mesh devices.

While upholding the verdict against Boston Scientific, Delaware Superior Court Judge Mary Johnston found on Oct. 9 that the amount of the award was "sufficiently out of proportion to the injury so as to shock the court's conscience and sense of justice."

A jury on May 28 awarded $25 million in compensatory and $75 million in punitive damages to Deborah Barba, who alleged that Boston Scientific's Pinnacle device and Advantage Fit sling caused her pain and subsequent surgeries to remove the mesh, plus $45,260 in medical expenses.

Fred Thompson, who represents Barba, said he wasn't surprised or shocked about the award reduction, especially given previous verdicts upheld in Delaware on appeal.

"But we're gratified that she kept the jury's intent on the punitive award—that exact proportion—and in essence took it down a power of 10," said Thompson, a member of Motley Rice in Mount Pleasant, South Carolina.

MNGINTERACTIVE.COM

Boston Scientific won a court order reducing a "grossly disproportionate" $100 million award to $10 million in a pelvic mesh case.

Johnston also rejected Boston Scientific's request for judgment in its favor, or a new trial, based on arguments that it shouldn't be subject to Barba's fraud claims over the actions of her doctor and that evidence should not have been allowed at trial attempting to show that U.S. Federal Drug Administration approval of its device was based on fraud.

Boston Scientific spokesman Tom Keppeler said the company planned to appeal.

"We appreciate that the trial court reduced the verdict by 90 percent; however, we believe there were factual and legal errors underlying the verdict," he wrote in an email.

In reducing the award, Johnston looked to other pelvic mesh verdicts, which ranged from $250,000 to $6.7 million in compensatory damages and, in cases in which they were awarded, $1.75 million to $7.76 million in punitive damages.

She reduced Barba's compensatory damages to $2.5 million and punitive damages to $7.5 million, the same 3:1 ratio that the jury found.

"Punitive damages are warranted in this case in order to punish Boston Scientific and deter it from permitting other products to enter the market without first taking steps to ensure the product's safety and efficacy," Johnston wrote.

The award is one of four against Boston Scientific over its pelvic mesh devices. Last year, a Texas state court jury awarded $73.4 million, and federal juries in Florida and West Virginia awarded $26.7 million and $18.5 million, respectively. Boston Scientific also won two verdicts in Massachusetts state court.

Amanda Bronstad reports for the National Law Journal, an ALM affiliate of the Daily Business Review.

FROM THE COURTS

Is DOJ Focus on Chinese Espionage Racial Profiling?

by Ross Todd and P.J. D'Annunzio
rtodd@alm.com; pdannunzio@alm.com

This spring federal prosecutors in Pennsylvania charged a Temple University physics professor with relaying U.S. defense technology information to China.

Across the country, prosecutors in California unsealed an indictment against another Chinese professor who they charged with funneling trade secrets from U.S. wireless technology companies to China.

In August, an ex-employee of a Silicon Valley video game company was arrested on charges of trade secrets theft just before boarding a flight from San Francisco to China.

As the Obama administration has made protecting American intellectual property from threats abroad a priority for the Department of Justice, it has sent clear signals that it sees China as Enemy No. 1.

For prosecutors, the new indictments fulfill the strategic, and some would say imperative, mission of protecting U.S. security. But the spate of cases has left some in the defense bar asking whether the government is relying on racial profiling when it comes to prosecuting individuals with Chinese ties.

Three high-profile cases targeting naturalized U.S. citizens originally from China, including the case against Temple professor Xiaoxing Xi, have been dismissed in the past year.

Defense lawyer Peter Zeidenberg, who helped persuade federal prosecutors in Pennsylvania to drop charges against Xi in September, said federal authorities have a powerful fear of external hacking, and use enforcement actions as deterrence and retaliation.

"I'm not saying there isn't a reality in which economic espionage is occurring," Zeidenberg said, "but what I am saying is that there has been an overreaction to it."

According to a recent survey of the DOJ's trade secrets prosecutions by defense lawyers at San Jose's Nolan Barton Bradford & Olmos, nearly 30 percent of the 137 cases filed by federal prosecutors since the federal trade secrets law was enacted in 1996 have involved secrets allegedly routed to China. The 39 cases with ties to China vastly outnumber those related to other foreign powers. In fact, no other country has been involved in more than a few cases, with India, South Korea and Japan each tallying three.

The defense firm's report also found that defendants with China surnames received far more severe punishments: 32 months on average, compared with 15 months for all others.

Federal prosecutors clearly are "paying attention to companies that claim someone has taken their trade secrets," said Nolan Barton name partner Thomas Nolan. "It seems like they focus their attention on Asian names and people who are starting businesses in China."

Calls to the U.S. Attorney's Office for the Northern District of California were not returned, while the U.S. Attorney's Office for the Eastern District of Pennsylvania forwarded a request for comment to Main Justice. A representative in DOJ's National Security Division pointed to comments President Barack Obama made last month after his meeting with Chinese President Xi Jinping.

The Obama administration hasn't been shy about blaming China for cyberattacks and hacking incidents targeting the intellectual property of U.S. companies. The topic was a focus of Xi's recent visit, where the leaders pledged not to conduct or support cyberattacks aimed at stealing trade secrets.

Ross Todd reports for The Recorder and P.J. D'Annunzio for the Legal Intelligencer, both ALM affiliates of the Daily Business Review.

FROM PAGE A1

OPTION

true. Not every hearing in every case requires a veteran lawyer, just like not every repair job around the house requires a professional builder."

The outspoken foreclosure defense attorney, who charges flat fees for some cases, is disrupting the status quo with an innovation that could change the delivery of legal services.

It comes at a time when the legal industry in Florida is grappling with the idea of reciprocity and advertising rule changes that could mean stiffer competition and smaller revenue streams.

Ice's LegalYou program is set to launch online in December with dozens of educational videos, legal forms, tutorials, discussion forums and other tools designed to help users navigate courthouses, understand legal procedure and lay the groundwork to represent themselves with guidance from attorneys.

Unlike competitor sites like LegalZoom offering nonlitigation documents and stopping short of offering legal advice, LegalYou would provide both litigation and nonlitigation forms plus attorney guidance. It would also allow unbundling—a concept already popular in family court and one that Ice believes will soon become prevalent across most practice areas.

Instead of clients hiring attorneys to represent them for entire cases, they'd ask for input and guidance at major crossroads in the litigation and pay only on an as-needed basis.

Services would range from the basic—instruction on how to dress for court or address a judge—to more complicated tasks like preparing responses.

A similar New York program, called Court Navigator, assists unrepresented litigants in landlord-tenant and consumer-debt cases by providing general information, written materials, help completing court forms and other guidance.

"While the case itself may have a lot at stake, very few hearings and motions have the entire case hanging in the balance," Ice said. "With unbundling, if you do have a hearing that is complex or has a lot at stake, such as a summary judgment hearing, you can bring in the attorney for that one piece."

VIABLE ALTERNATIVE?

Some lawyers see potential pitfalls, including the prospect of getting paid for one aspect of a case and being pulled into the wider litigation. While case law makes it clear that an attorney can accompany a client being questioned at a deposition without making an appearance in the case, the lines are blurred when it comes to taking depositions.

"Unbundling is fine, but giving advice in a vacuum is a bad thing," said Glen Waldman, managing partner of Heller Waldman in Miami. "The good lawyers in this world, the ones that are really good, usually make practical decisions based on a thorough understanding of what's going on in the case. If you're looking at something in one area—which is what unbundling is—you usually don't have a broad understanding of the issue."

But supporters say the plan offers a viable alternative to clients whose only option would likely have been appearing without any professional assistance.

Under the proposed program, they would use free and low-cost services intended for litigants who earn too much to qualify for legal aid but too little to afford traditional private attorneys.

The target market—which Ice calls "the big middle" because he says it represents about 80 percent of all litigants—typically ends up abandoning litigation or going into lawsuits unprepared and unrepresented.

"You get inundated with mailings," said Dale Dangremond, a health consultant who said a sudden loss of a longtime public contract with Pennsylvania left her struggling to make payments on her million-dollar Wellington home.

Dangremond picked up smaller jobs but none remotely close to the major state contract she'd held for about five years while also serving as the primary caregiver for her ailing mother. With her income dwindling, she tried to sell the house in February, but buyers looking to scoop up distressed property weren't in the market for a plush equestrian estate with a $1 million price tag.

By May, Dangremond was facing foreclosure on two mortgages from Bank of America N.A. and NASA Federal Credit Union.

"When we got hit with the foreclosure actions being stepped up, it was challenging," she said. "What I appreciate about Ice Legal is I went in with the mindset, 'I can't deal with this right now. Just do the full representation.' "

But Dangremond said she got a surprising response from the law firm. Instead of the $1,000 retainer and hefty hourly rates she'd been charged by other firms, she said an Ice Legal consulting attorney presented a plan to pay a $125 retainer and $75 monthly fee on each case for guidance through the early stages with the option to augment services at additional cost as the case progressed.

Dangremond estimated she paid about $1,225 to date for advice on the two lawsuits—fees that covered monitoring dockets, drafting motions to dismiss the foreclosures, responding to discovery requests and preparation for hearings.

"As far as I'm concerned, it's almost like full representation at this point," she said. "Compared to potentially what would have been other costs here, it's a tremendous value for the services we're getting."

Samantha Joseph can be reached at 954-468-2614.

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FOCUS LATIN AMERICA

$2M Bail Set for Dominican Diplomat Charged in UN Bribery Case

by Larry Neumeister
Associated Press

Over a prosecutor's objection, bail was set at $2 million for a Dominican Republic diplomat arrested in a bribe-related criminal case that also landed a former president of the United Nations General Assembly behind bars.

U.S. Magistrate Judge Henry B. Pitman noted Friday that charges against Francis Lorenzo, though serious, did not involve violence, and he agreed Lorenzo could stay at his mother's Bronx home with electronic monitoring after agreeing to waive diplomatic immunity before trial. Lorenzo was unlikely to be released for several days yet.

Lorenzo was arrested Oct. 6 along with three others, including John Ashe, a former U.N. ambassador from Antigua and Barbuda who served in the largely ceremonial role of U.N. Assembly president for a year starting in September 2013. Ashe's lawyer has said Ashe expects to be vindicated on tax charges.

Prosecutors said the 48-year-old Lorenzo accepted and paid bribes to help a billionaire Chinese real estate mogul influence the United Nations to support construction of a multibillion-dollar U.N. conference center in Macau.

The billionaire, Ng Lap Seng, 67, and his chief assistant remain jailed after their arrest two weeks ago. Ng's lawyer has said Ng was the victim of a misunderstanding.

Assistant U.S. Attorney Daniel Richenthal argued unsuccessfully Friday that Lorenzo, a U.S. citizen, was too powerful and well connected worldwide to trust he wouldn't make a run for it.

Richenthal also repeatedly said Lorenzo might use diplomatic immunity to dodge prosecution.

"There are significant ways he may frustrate the prosecution," Richenthal said. The prosecutor called diplomatic immunity a "complicated area of law" and a "knotty issue."

Richenthal said Ng has financed a $3.6 million luxury Manhattan apartment that Lorenzo has listed as his address and had helped fund a revenue stream that provided Lorenzo $30,000 monthly, enabling him to send hundreds of thousands of dollars to an account in the Dominican Republic.

Lorenzo's lawyer, Brian Bieber, offered testimony from three character witnesses, including Carlos Garcia of Union, New Jersey, a former ambassador to the United Nations from El Salvador who was a diplomat for nearly two decades.

"For me, he's a leader, promoting United Nations' status in the world," Garcia said.

Bieber said his client worked in the travel industry when he was invited in 2000 to a U.N. event, where he dined with actor Michael Douglas, boxer Muhammad Ali and then-U.N. Secretary General Kofi Annan. The conversations inspired him to pursue a $6,000-a-month job as a Dominican Republic diplomat.

Since his arrest, Lorenzo has been suspended for six months as one of several ambassadors from the Central American nation, the lawyer said.

Outside court, Bieber said: "I am confident that when you see all of the evidence, it will be clear Mr. Lorenzo did not commit a federal crime."

Regardless, he added: "Diplomatic immunity very well may apply to some or all of Mr. Lorenzo's actions."

Prosecutors charge Francis Lorenzo accepted and paid bribes to help a billionaire Chinese real estate mogul influence the United Nations to support construction of a multibillion-dollar U.N. conference center in Macau.

Cuba Submits Latest Draft UN Resolution Against US Embargo

by Cara Anna
Associated Press

The latest draft U.N. resolution urging the United States to end its economic embargo on Cuba has appeared—and it points out President Barack Obama's commitment to end the policy.

The draft has been posted online, and a vote in the General Assembly is expected Oct. 27.

The draft also welcomes the re-establishment of U.S.-Cuba diplomatic ties this year.

Cuba has introduced draft resolutions against the embargo for the past 23 years, and they've been adopted with increasingly overwhelming and embarrassing margins. Last year's vote was 188-2, with only Israel siding with the U.S.

This year, Obama administration officials have indicated that the U.S. might take the unprecedented step of abstaining instead. But spokesmen have declined to comment until the text was final. There was no immediate comment Oct. 9.

Obama has said the 54-year-old restrictions have failed to spur democratic change and have left the U.S. isolated among its Latin American neighbors.

The Republican-led U.S. House and Senate have refused to repeal the embargo.

General Assembly resolutions are unenforceable, but the annual vote has underscored the sense internationally that the U.S. restrictions are illegitimate.

The vote comes amid increasing contact between top U.S. and Cuban officials. Late last month, Obama held talks with Cuban President Raul Castro, the second time the leaders of the once-estranged nations have met this year.

U.S. Commerce Secretary Penny Pritzker wrapped up a visit to Cuba on Oct. 7 by noting Obama's interest in seeing the embargo lifted but warning that it won't happen quickly.

A report issued by Cuba last month in support of this year's U.N. resolution says the embargo has cost the Cuban people $833.7 billion. Washington says the communist government has used the embargo as an excuse for its own economic failures.

WIKIPEDIA

Obama administration officials have indicated the U.S. might take the unprecedented step of abstaining from an anti-embargo vote.

PRACTICE FOCUS / IMMIGRATION

Visas For Latin American Professionals Available at U.S. Consulates Overseas

Commentary by Maria Mejia-Opaciuch

Economies of 26 Latin American countries show signs of weakness and political unrest and diminished opportunities for investment and growth make it easier for American companies to find educated, skilled workers from this region. With planning and solid counsel, Latin Americans can be working in the United States faster than some local hires.

Mejia-Opaciuch

Companies can use certain non-immigrant visa options available to Latin Americans to hire them expediently, cost-effectively and sometimes without having to first apply through immigration authorities in the U.S. Temporary work visa applications can be presented directly at a U.S. consulate abroad to return to the U.S. for employment.

Consider these work visa options:

• TN for Mexican professionals: A list of 61 designated professions and the minimum education, experience or both required to qualify for the TN visa are found in the North American Free Trade Agreement. Only Mexican nationals can take advantage of the TN visa. They can present their application at a U.S. consulate in Mexico and will obtain a one-, two- or three-year TN visa stamp to enter the U.S.

• H-1B1s for Chilean professionals: Under the U.S.-Chile Free Trade Agreement, Chilean professionals can apply for the H-1B1 visa at the U.S. consulate overseas and enter the U.S. to work. The H-1B1 visa has an annual cap that has never run out since 2004, when the agreement took effect. The H-1B1 position must be a specialty occupation requiring theoretical and practical application of a body of specialized knowledge in engineering, mathematics, physical sciences, computer sciences, medicine, education, among others. Applicants must have a post-secondary degree with at least four years of study in their field or a foreign equivalent. In some instances, a combination of specialized training and experience can constitute alternative credentials. Neither the TN nor H-1B1 applicant can be self-employed or an independent contractor.

BOARD OF CONTRIBUTORS

• E-1 or E-2 investor or treaty trader visas can be processed directly by U.S. consulate officials overseas for certain nationalities without formal work visa petition approval. Rules govern these visas, which can save startups money, time and effort. These visas are available to nationals of countries with treaties of friendship, commerce and navigation, bilateral investment treaties or free trade agreements with the U.S. The following countries benefit from the treaties: Argentina, Bolivia Chile, Colombia, Costa Rica, Ecuador, Honduras, Mexico, Panama, Paraguay and Suriname. These nationals can come to the U.S. and work for either a company majority-owned by nationals of one of these countries in a managerial, executive or essential skill position or they can start a U.S. company and, as long as they are majority owners, apply for the E visa to work in any one of these three capacities: E-1 is for a company with significant trade (more than 50 percent) between the U.S. and the treaty country; E-2 is for those making a substantial investment at risk in a company that they will own and manage or operate; and E-1 or E-2 visas are also available to employees who hold the nationality of the owners of the U.S. company, but not necessarily owners of the company.

• L-1 visas for L-1 blanket companies can be processed directly at a U.S. consulate once an American company has been issued a blanket L-1 approval by immigration officials in the U.S. The L-1 visa is reserved for intracompany transferees from overseas seeking to enter America to work for an affiliated company in a managerial or executive capacity. By filing a blanket petition, U.S. companies may establish the intracompany relationship (parent, subsidiary, affiliate or branch office) before filing an individual L-1 nonimmigrant petition in the U.S. Eligibility may be established if the U.S. company and each of the qualifying organizations (i.e. parent, subsidiary or affiliate overseas) engage in commercial trade or services; the company has an office in the U.S. doing business for one year or more; the company has three or more domestic and foreign branches, subsidiaries and affiliates; and the company, along with the other qualifying organizations (the foreign companies) has obtained at least 10 L-1 individual approvals during the previous 12 months, U.S. subsidiaries or affiliates have combined annual sales of at least $25 million or a U.S. workforce of at least 1,000 employees.

The TN, H-1B1 and L-1 visas can take two to three weeks to organize, prepare and submit. The E-1 or E-2 can take up to 90 days to organize and document. All four visas allow spouses and children under 21 to enter the U.S., with permission to study in the U.S. legally. Spouses of an L-1, E-1 or E-2 visa recipients can apply for employment authorization once they arrive in America.

Maria Mejia-Opaciuch is senior counsel at Carlton Fields Jorden Burt's Miami office. She advises on corporate immigration and employer compliance law. She may be reached at mmejia-opaciuch@cfjblaw.com.

COMMERCIAL REAL ESTATE

SOUTH FLORIDA TRANSACTIONS

DEAL OF THE DAY

Pinecrest Office Building Sells for $3 Million

Address: 9627 S. Dixie Highway, Pinecrest
Property type: Two-story, 6,840-square-foot office building built in 1957
Price: $3 million, or $438.60 per square foot
Seller: Young Stovall Building LLC
Buyer: JHCH Investments LLC
Past sale: $609,462 on Dec. 7, 2011

GOOGLE

West Palm Beach Bank Building Purchased

Address: 316 Banyan Blvd., West Palm Beach
Property type: 5,126-square-foot office/commercial building built in 1926 on 0.68 of an acre
Price: $6.37 million, or $1,242.68 per square foot
Seller: SRE Properties II LLC
Buyer: 48 MacDougal Street Realty LLC

Multifamily Duplex Sale Tops $1.06 Million

Address: 169 NE 43rd St., Miami
Property type: 2,399-square-foot duplex built in 1925
Price: $1.06 million, or $441.85 per square foot
Seller: SDW NE 43rd Street LLC
Buyer: Hammy Inc.

Deerfield Warehouse Sells Acquired for $1.15 Million

Address: 109 SE Third Court, Deerfield Beach
Property type: 15,610-square-foot warehouse built in 1986
Price: $1.15 million, or $73.67 per square foot
Seller: Sunshine Warehouse
Buyer: Corby's Warehouse LLC
Past sale: $1.05 million on Feb. 20, 2006

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.

Panama Condo Owners Tell Trump: You're Fired!

by Jeff Horwitz
Associated Press

The directors of a massive Trump-branded luxury condominium development in Panama fired Donald Trump's company in the summer over allegations of mismanagement, overspending and undisclosed bonuses executives paid themselves, according to an Associated Press examination.

The coup at Central America's largest building, Panama City Trump Ocean Club, offers a glimpse into the workings of the Republican presidential frontrunner's business empire — and the style of management that might be expected from a Trump White House. Transparency and close attention to expenses are not strengths. Squeezing the most from contractual language is. Whether wheeling and dealing with Wall Street bankers, debating Republican presidential rivals or running a condo association, Trump has forwarded his interests by leveraging his outsized reputation, canniness and aggression.

TRUMPHOTELCOLLECTION.COM

Eric Trump dismissed the allegations of mismanagement at the Panama City Trump Ocean Club and called it "an amazing icon and, frankly, a great testament to America."

In an interview, Trump's son Eric dismissed the allegations of mismanagement as an orchestrated attempt to sully the Trumps' reputation. He called the project "an amazing icon and, frankly, a great testament to America."

Built in the shape of an arcing, wind-filled sail, the development is recognized as among the finest building in Panama. Visitors can sip drinks next to a 65th-floor, edgeless pool that seems to float above the ocean.

"I am proud to develop this extraordinary high rise," Trump said in one 2007 promotional brochure, promising to build a "landmark in Latin America and the Caribbean."

It turns out Trump wasn't a developer on the project. He merely licensed his brand, though even that imprimatur came at a high price. A 2007 bond prospectus for the project estimated his cumulative licensing payout would total $75.4 million, roughly two-thirds the amount raised.

Burdened by cost overruns and the global recession, the actual developer stopped making debt payments within a few months of the ribbon cutting in 2011. Trump earned an estimated $20 million of concessions in a subsequent bankruptcy deal, and he is probably the only participant in the original deal to come out ahead.

Along with his branding and hotel management deals, Trump held a third contract to manage the overall building. A patchwork of contractual language gave Trump's company the right to vote at owners meetings on behalf of hundreds of hotel and condo units. Buyers learned they were abdicating their voting rights only if they read the fine print of their sales agreements, said Al Monstavicius, a retired Nevada doctor who bought a penthouse condo.

"I shouldn't have signed that," Monstavicius said. "But there was nothing I could do because my money was committed."

Some owners feared that Trump's management might be disproportionately spending the building's budget in ways that benefited the hotel instead of the building's other components. But despite repeated requests, Trump's managers never provided a detailed breakdown of the costs generated by each of part of the building, and never established the separate bank accounts stipulated in their management contract.

HFF Team Handles $74 Million Sale in Downtown Naples

Review staff

HFF represented the seller in the $74.35 million sale of a seven-building, mixed-use portfolio in downtown Naples.

HFF was assisted by Courtelis Co., which provided leasing and management services for the seller, Naples Fifth Avenue Holdings LLC, whose principals include Jose Hevia, former president of Coral Gables-based Flagler Development Co., and Miami-based investor Trish Blasi, who has other nearby Naples holdings.

St. Louis-based Hoffman Commercial Real Estate, a real estate holding company, purchased the asset debt-free. Most of its holdings are in the Midwest, but the company quickly updated its website to feature the Naples acquisition.

The 122,276-square-foot portfolio on an affluent corridor consists of 73,523 square feet of street-level retail space, 48,753 square feet of office space and a 1.1-acre parking lot and potential development site on the corner of Fourth Avenue South and Fourth Street.

The buildings are 86 percent leased to tenants including Wells Fargo Bank, TD Bank, TD Ameritrade, Berkshire Hathaway Real Estate, PNC Bank, SunTrust Bank, Starbucks, Tervis Tumbler and Provident Jewelry.

The HFF team was led by executive managing director Manuel De Zarraga, senior managing director Daniel Finkle, managing director Luis Castillo and associate director Nat Scarmazzi.

Rod Castan, president of Courtelis Leasing and Management, also assisted in representing the seller.

BANKING/ FINANCE

What Scandal? Fantasy Sports Sites Have Their Biggest Weekend Ever

by Joshua Brustein
Bloomberg News

Allegations of cheating within the two biggest fantasy sports companies, DraftKings and FanDuel, haven't scared off their customers.

A record number of people entered tournaments for Sunday's NFL's games, according to an analysis from SuperLobby, an industry research firm based in the U.K. Together, the top two sites received 7.1 million entries to their guaranteed prize pool tournaments, generating a whopping $43.6 million in entry fees.

The weekend offered the first real chance to quantify the impact of a brewing controversy on the bottom line of daily fantasy sports. The sites give players the chance to draft a team of real-life players; how well those players do on the field on a particular day determines the outcomes of the fantasy contests. Many tournaments offer cash prizes that stretch into the millions of dollars.

SuperLobby tracks how many people play the multi-player tournaments known as guaranteed prize pools, information that the sites make public to people as they enter these tournaments when they sign up. DraftKings and FanDuel aggressively advertise the guaranteed prize pool games, and Copeland estimates they account for some 70 percent of the overall prize pool. A spokeswoman for FanDuel disputed this, but provided no additional information. DraftKings didn't respond to requests for comment.

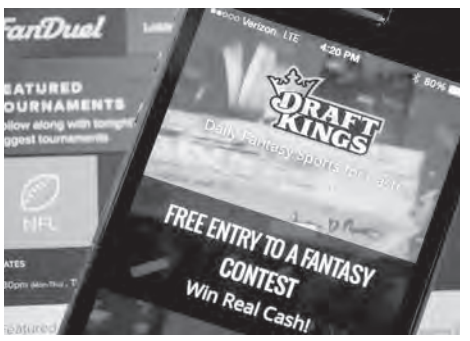
The New York Times reported a DraftKings employee had been winning hundreds of thousands of dollars on FanDuel. While there was no direct evidence the employee had used proprietary information for personal profit, it raised the possibility of an unfair advantage for employees of the sites. People who work at daily fantasy companies are barred from playing on the sites that employ them, but it has been common for them to enter contests on competing sites. Both FanDuel and DraftKings went on the defensive, trying reassure customers and counter the reports of government investigations and a class-action lawsuit.

The reports rattled many daily fantasy players. Some of the biggest players privately drew parallels to what is known in online gambling circles as Black Friday, the 2011 crackdown on online poker companies that left many people unable to access the money in their accounts.

So far, the biggest money is sticking around. Saahil Sud, the top-ranked daily fantasy player in the world, said the controversy wasn't a "code red" for him. "I don't think that anyone feels directly cheated, but there's a concern that someone could do it," he said. He also noted that he had a financial interest in keeping things running smoothly. If top players pulled their money off the sites and caused a crisis of confidence, they'd be putting their own livelihoods at risk.

CATCH THOSE ADS?

Smaller customers may feel differently. Bryan McWethy, a 25-year old from Michigan who plays in small-money games, said the specter of cheating prompted him to close his account. He thinks less sophisticated players like himself have already been feeling overmatched. "They shouldn't have to feel that they are going against the house when they deposit money on these sites," he said. "They should feel like they have a realistic chance to win."



ANDREW HARRE/BLOOMBERG NEWS

The skeptics didn't carry the day. FanDuel and DraftKings each had their most profitable week of the season, according to SuperLobby. Because the prize pools are required by law to be set in advance, the profitability of any particular game depends on how many people play. When tournaments aren't filled completely, the sites lose money; if they're particularly crowded they become more lucrative for the host sites.

FanDuel earned an gross profit of almost 16 percent this week, its best of the season, according to Copeland's analysis. DraftKings's gross profit of 10.4 percent was its second-best week of the year.

Executives for both companies, which are closely held and valued at more than $1 billion each, have said they are not yet turning an overall profit. Their contest grosses don't take into account one of the biggest expenses for the sites: advertising.

Daily fantasy ads have been inescapable since just before the NFL season began. DraftKings has been steadily pulling back on advertising since the NFL season started, but didn't accelerate that process over the last week, according to data from ispot.tv. FanDuel's advertising stayed steady: the company was the second-highest spender on US television ads over the last week, according to ispot.tv.

The lack of an immediate impact on the sites' businesses hardly means they're out of the woods. Investigations and hearings could lead to additional revelations. For now, daily fantasy sites operate with practically no oversight in the states where they operate (several states ban playing fantasy sports for money.) Now new state or federal regulation seems like a distinct possibility.

Daniel Wallach, a sports and gaming attorney with the firm Becker & Poliakoff in Fort Lauderdale, said he also expects to see about a dozen more class action lawsuits. "You will see a groundswell of litigation activity. More tomorrow, more Tuesday. This is going to be a daily occurrence throughout the week," he said. "We're at the beginning of a fascinating roller coaster ride."

BANKING/ FINANCE

Amazon Wants to Know How Its Employees Feel Every Day

by Spencer Soper
Bloomberg News

MARTIN DIVISEK/BLOOMBERG NEWS

Amazon has drawn criticism for its treatment of warehouse employees, including many temporary workers under pressure to move quickly to get customer orders out the door.

Amazon.com Inc. wants to know how its white-collar workers are feeling.

Over the past few months, the online retailer has been ramping up efforts to get regular feedback from corporate staffers about their work environments. The effort is being expanded two months after a scathing newspaper report portrayed the online retailer as a pressure cooker where worker hardships are ignored and back-stabbing is encouraged.

Dubbed Amazon Connections, the internal system poses questions daily to employees to collect responses on topics such as job satisfaction, leadership and training opportunities, people with knowledge of the initiative said. The company started the program at its fulfillment centers staffed mostly with blue-collar workers last year and has been rolling it out to other departments since then, first hitting the corporate ranks this summer.

The confidential feedback is assessed by a team in Seattle and Prague that compiles the answers in daily reports shared with the company, said one of the people, who asked not be identified discussing internal company communications. Some employees will be encouraged to speak in further detail with members of the Connections team. Individual employee responses aren't anonymous, but are shared only with members of the Connections team and the reports will contain only aggregated data.

CORPORATE ENVIRONMENT

Amazon has drawn criticism for its treatment of warehouse workers, many of them on temporary assignments, who are under pressure to move quickly to get customer orders out the door. A New York Times report in August shed light on dissatisfaction within its white-collar workforce as well, highlighting the challenge of balancing a fast-growing global business that is changing the way people shop with maintaining a healthy work environment.

The New York Times story, based on interviews with more than 100 Amazon employees, described it as a place where "workers are encouraged to tear apart one another's ideas in meetings, toil long and late," and are "held to standards that the company boasts are 'unreasonably high.'"

The article prompted an email from Amazon founder and CEO Jeff Bezos to his employees, encouraging them to read the story as well as a rebuttal posted by an Amazon employee to the professional-networking website LinkedIn.

"I don't recognize this Amazon and I very much hope you don't, either," Bezos wrote to employees in August. "More broadly, I don't think any company adopting the approach portrayed could survive, much less thrive, in today's highly competitive tech hiring market."

Goldman: Three Hurdles the Market Faces in the Fourth Quarter

by Julie Verhage
Bloomberg News

STEPHEN O'BYRNE/ FLICKRVISION

Goldman Sachs analysts highlight three hurdles the market faces as we approach what's turning out to be a bumpy year: disappointing earnings season results, debt ceiling negotiations in Washington and a Federal Reserve interest rate hike.

The S&P 500 may have rallied close to 5 percent last week, but that doesn't mean it's going to be smooth sailing for the rest of 2015.

In its most recent U.S. Weekly Kickstart, Goldman Sachs analysts highlight three hurdles the market faces as we approach what's turning out to be a bumpy year.

The team, led by David Kostin, starts off by pointing to possibly disappointing results during the current earnings season. The firm recently cut its forecasts for both earnings and the S&P 500.

"We expect a combination of disappointing sales growth and weak margins coupled with negative fourth-quarter guidance and reduced prospects for 2016," the analysts said.

Next, Kostin and team say that struggles in Washington to find a resolution to the fast-approaching debt ceiling deadline could cause issues in November.

"Politics suggests the new speaker will need to demonstrate his or her conservative bonafides to establish credibility. Negotiations to lift the debt ceiling may be contentious and may not be resolved until the last moment," they said.

Third, the firm still believes we will have a rate hike from the Federal Reserve in December, and that such a move could lead to turbulence given continued market uncertainty over the timing over the first increase:

"December will witness the countdown to the Fed liftoff. Our U.S. economics research team forecasts the first tightening in nine years will take place on December 16. However, the minutes of the September FOMC meeting were more dovish than many had expected. The market now assigns a probability of only 39 percent that the Fed will raise rates by year-end," the analysts said.

Given all of this, Kostin's team reiterates its earlier call for an essentially flat S&P 500 through year-end. (The firm is forecasting 2,000 and the index closed at 2,014 last week.)

Unfortunately, it doesn't get too much better in 2016 either, with Goldman calling for the index to end next year at 2100, which would be a mere 5 percent gain.

BANKING/ FINANCE

Sprint's Cost Structure Is 'Bloated,' New CFO Robbiati Says

by Scott Moritz
Bloomberg News

Sprint Corp. Chief Financial Officer Tarek Robbiati, who joined about a month ago to help turn around the unprofitable carrier, said he will cut about 10 percent of operating costs to save $2 billion, and identified an additional $500 million of reductions in equipment spending.

Robbiati outlined some of the details of a cost-cutting plan announced last week in an interview late Wednesday. Capital expenditures at Sprint, the smallest of the top four U.S. wireless companies, are disproportionately large by industry standards, said the CFO, who didn't specify how many jobs may be eliminated.

"Our cost structure is bloated," Robbiati said by phone from Tokyo, where he was meeting with executives from Sprint's controlling shareholder, SoftBank Group Corp.

The plan to save $2 billion to $2.5 billion over the next six months is the second round of cuts in about a year, highlighting the urgency for Chief Executive Officer Marcelo Claure to improve the cash-strapped company's finances. The pressure has been mounting over the past three weeks after Moody's Investors Service downgraded Sprint's junk-rated credit ratings. The carrier has since practically given away new iPhones to try to grab market share and decided to skip an important auction of airwaves that could have improved the quality of the service.

Wall Street is skeptical about Sprint's ability to return to profit: Analysts predict losses every quarter until the end of 2018, data compiled by Bloomberg show. By trying to simultaneously cut costs, improve the network and gain subscribers, Sprint is attempting a feat no carrier has ever achieved, said Cowen & Co. analyst Colby Synesael.

"We've seen companies do one or two of these things at once but never all three. I'm not saying it's impossible, but they are going somewhere no other company has gone before," said Synesael, who rates the shares market perform.

Sprint has about $20 billion in operating expenses, and Robbiati said he will find $2 billion to cut. The company is still looking at different areas to save money, and isn't planning on a 10 percent cost reduction across the board, said David Tovar, a Sprint spokesman.

The $7.1 billion in capital expenditures, which include investment in network equipment, was more than 20 percent of revenue last year, while the industry is closer to 17 percent, Robbiati said.

Sprint's bonds and shares, which slumped after Moody's cut its credit ratings Sept. 15, have recovered some of their losses in the past week. Still, the $1.5 billion of notes due in February 2025 are down more than 9 percent since the days before the downgrade, while the stock has lost 6.5 percent even as SoftBank resumed buying shares.

The company is in its eighth straight year of losses and hasn't set a target for when it will return to profitability. CEO Claure, who was hired in August 2014 by SoftBank CEO Masayoshi Son, made his first round of cost savings in November last year. He's been using low prices to lure customers, including the recent $1-a-month iPhone leasing that undercut an offer by rival T-Mobile US Inc. Last month, he said Sprint's "will be one of the greatest turnarounds in history."

After abandoning plans to combine Sprint with T-Mobile early this year, SoftBank lost faith in Sprint and even explored a possible sale of the company. SoftBank has since rekindled its commitment to Sprint and has bought shares to increase its holding to 83 percent.

With cash reserves dropping by $2 billion last quarter, Sprint opted out of taking part in an airwave auction next year. It means Sprint won't need to spend an estimated $9 billion in spectrum purchases, but will miss out on coveted low-frequency spectrum that can send signals through walls and deep into buildings.

Cutting spending and lowering costs makes Sprint look like its treading water, said Craig Moffett, an analyst at MoffettNathanson LLC, who recommends selling the stock.

"It draws a picture of a company that is playing for time, and trying to conserve cash to make it until a new administration when they can try again to find a merger partner," Moffett said. "There doesn't seem to be a plan B any more."

CFO Robbiati says it will be a challenge to increase revenue while reducing expenses, but difficult steps are necessary at this point if Sprint is going to have a shot at long-term success or consider any merger.

"We understand that there first has to be an improvement in operating performance before we can even begin to explore options in M&A," Robbiati said.

THOMAS LEE/BLOOMBERG NEWS

Sprint CFO Tarek Robbiati says it will be a challenge to increase revenue while reducing expenses, but difficult steps are necessary at this point if Sprint is going to have a shot at long-term success.

Dell's Ambitions Headed for Debt-Market Reality Check

by Sridhar Natarajan and Cordell Eddings
Bloomberg News

Dell Inc. is trying to create a computing behemoth just as cracks are appearing in the debt markets that it would need to finance the deal.

The personal-computer maker is talking to banks about raising at least $40 billion to finance the purchase of EMC Corp., as the two companies battle flagging demand, according to people with knowledge of the matter. That could be tricky for junk-rated Dell because investors who gorged on $4 trillion of high-yield debt in the past five years are becoming increasingly wary.

"The idea of $40 billion in financing will put Wall Street's creativity to the test," said Margie Patel, a fixed-income money manager for Wells Capital Management in Boston, which oversees $351 billion.

Debt markets are showing strains amid concerns that global growth is slowing just as the Federal Reserve is preparing to draw the curtains on its easy-money policies. At least seven borrowers were forced to pull debt deals in the past week.

A Dell-EMC merger may push total debt to about 5 times a measure of its earnings, which would put it more in line with a single-B-rated company, according to a Bloomberg Intelligence report. That compares with the double-B rating that Dell commands and single-A for EMC, the larger of the two companies.

"There's a collective 'oh no, here we go again' in the market, given the potential size, when we've already seen a ton of these huge deals this year," said Jack Flaherty, a money manager in New York at GAM Holdings AG. "They will have to do some work to get it done."

EMC bonds have plummeted amid concern that new debt raised to fund any deal could hurt existing bondholders. The company's $1 billion of 3.375 percent notes maturing in June 2023 tumbled about 9 cents in the past two days to 89.7 cents on the dollar at one point Friday in New York, according to Trace, the bond-price reporting system of the Financial Industry Regulatory Authority.

Even if Dell and EMC agree to a merger in the coming days, the combined company may not need to tap debt investors for some time.

David Frink, a spokesman for Round Rock, Texas-based Dell, declined to comment.

The high-yield market, which just recorded its worst quarter in four years, has shown an aversion to risk as trouble in the pharmaceuticals industry, the downgrade of Sprint Corp. and the Volkswagen emissions scandal unnerved investors. Even in Europe, Goldman Sachs Group Inc. is telling companies that now isn't the right time to sell junk bonds because there's "a lot of risk in the world," according to Denis Coleman, the bank's head of credit finance for Europe, the Middle East and Africa.

Only one high-yield bond deal has priced in the past two weeks, and those unable to wait have tried and failed as rattled investors tread with caution. Canadian organic food company SunOpta Inc. and machine-parts maker NN Inc. of Johnson City, Tennessee, may be forced to lean on their banks to provide backup financing after failing to muster enough investor interest in their debt offerings.

"If credits have any sort of hair on them, there might not be a price to clear the market in this environment," said Peter Toal, the head of leveraged finance syndicate at Barclays Plc. "Investors are being very selective in terms of what they want to buy."

He said while it's not unusual that borrowers who come to market after a bout of volatility are forced to pay large concessions to lure lenders, not many issuers are willing to be the test case.

Creditors are increasingly focused on "the outlook for new-issuance markets" and the extent to which "potential downside shocks trigger the closure—temporarily or more structurally—of companies' access to capital markets," Matthew Mish, a senior credit strategist at UBS Group AG in New York, wrote in a Oct. 7 report.

Scotts Miracle-Gro, a maker of garden products, sold $400 million of notes Wednesday, ending the seven-day drought in junk-debt sales, according to data compiled by Bloomberg.

Investors' reluctance to commit money to new deals has spilled over to the leveraged-loan market as well, where at least five deals have been pulled in the past week.

"The high-yield market is still very focused on macro events—global growth, China, price of oil," Toal said. "There have been idiosyncratic and credit-specific events that have hurt specific names. Investors are asking themselves 'what's the next shoe to drop?'"

BANKING/ FINANCE

Ferrari Scion, Steered Away From Racing, Ends Up a Billionaire

by Tom Metcalf and Tommaso Ebhardt
Bloomberg News

Enzo Ferrari was so determined to protect his young son from the dangers of motor sport, that he ordered his workers not to let the boy sit in team cars so he wouldn't ever dream of becoming a racing driver.

More than five decades later, the Ferrari legacy is about to make the son a billionaire as the world's most iconic maker of supercars completes an initial public offering. The now 70-year-old Piero Ferrari will have a fortune of $1.3 billion, mainly derived from his 10 percent stake in the Italian company, according to the Bloomberg Billionaires Index.

Ferrari and its prancing horse logo transcend the current tumult in the industry, plagued by the emissions-cheating scandal at Volkswagen AG. Famous owners over the years have included Elvis Presley and Ralph Lauren. Nine of the 10 most valuable cars ever sold at public auction carry the company's name.

"The market is valuing it as a luxury-goods maker," said David Haigh, founder of brand valuation and strategy consultancy Brand Finance. "There are very few companies this successful with that scale and capacity to become truly global luxury brands."

Ferrari plans to offer 17.2 million shares, or 9 percent of the company, for $48 to $52 each, according to a regulatory filing with the U.S. Securities and Exchange Commission. That price range values the sports-car producer as high as $9.82 billion despite the VW emissions scandal that's seen shares in mass-market automakers yo-yo in recent weeks, including parent company Fiat Chrysler Automobiles NV.

Piero Ferrari's stake is valued at the middle of the range in the Bloomberg analysis. He also received $320 million in cash as part of the reorganization of Ferrari before the listing. He declined to comment on his net worth when contacted via Ferrari's press office.

"It will be interesting to see what happens to the valuation over the longer term," said Sascha Gommel, head of automotive research at Commerzbank AG. "Yes, it is a very strong brand, but I think it might be overestimated a bit. But I guess the market is just too excited."

Fiat Chairman Sergio Marchionne is spinning off Ferrari as part of his strategy to help fund an investment program that focuses on expanding the Jeep, Alfa Romeo and Maserati brands globally.

MOTORINONLINE.COM

Piero Ferrari will have a fortune of $1.3 billion, mainly derived from his 10 percent stake in the Italian company, according to the Bloomberg Billionaires Index.

Piero Ferrari won't be the only billionaire on the shareholder register. Italy's Agnelli clan, which controls Fiat Chrysler, is set to become Ferrari's largest shareholder with a 24 percent stake through the family's holding company, Exor Spa. Thanks to a loyalty voting program, Exor will control more than 30 percent of the voting power and Piero about 15 percent, according to the IPO prospectus.

Piero inherited his stake from Enzo, a racing driver for Alfa Romeo who founded his own racing team, Scuderia Ferrari, in 1929. The marque's first racing car was produced in 1947, with a road car following a year later. In 1950 Ferrari began to race in Formula One, where its 225 Grand Prix wins and 16 world championships make it the most successful team in the series. The most successful driver in the history of the sport, Germany's Michael Schumacher, won the bulk of his races for Ferrari.

That history attracts loyalty among car buyers as well as racing fans. Of the 7,255 Ferraris that rolled off the sports-car maker's Maranello production line in 2014, about 60 percent were bought by existing owners.

Fiat first acquired a stake in 1969, buying half the company and ratcheting up production of road rather than track cars, although Enzo ensured he would continue to supervise the racing team until his death in 1988.

His second and only surviving son, Piero, inherited 10 percent of Ferrari and became vice chairman of the group. At the same time Fiat exercised an option to raise its stake to 90 percent.

Piero told reporters in February that he doesn't "have any plans" to sell the stake. Though a regular presence in the pit lane and a fervent advocate of all things Ferrari, he's happy to have followed his father's advice and avoided the driving seat.

"My father was right, I don't think his prohibition ever left me without something important," Ferrari wrote in the book "My Father Enzo." "I wouldn't have had a great career as a race driver. I would never have managed to become a Formula 1 driver."

Debt Spat Thorny Issue for Argentine Presidential Candidates

by Peter Prengaman
Associated Press

Like a dark cloud, the bitter fight between Argentina and a group of holdout creditors in the U.S. has hung over South America's second-largest economy for years, preventing the country from accessing international credit markets.

The dispute pits creditors led by U.S. billionaire Paul Singer against Argentine President Cristina Fernandez, who has refused to pay the $1.5 billion owed to hedge funds she refers to as "vultures." A U.S. district judge's rulings in favor of the hedge funds have put Argentina in default, scaring off would-be investors and forcing the country to search for money in unorthodox places.

For Fernandez, who along with her late husband and predecessor Nestor Kirchner helped lead the country after a devastating financial crash in 2001, the issue has been a deeply personal fight and she has taken a tough approach, including a refusal to even engage in talks over the last year.

But many people think her successor being chosen in the Oct. 25 presidential election will feel compelled to resolve the standoff.

"There are big incentives for the next president to resolve this because the government needs foreign funding," said Gabriel Torres, a senior credit officer for Moody's Investor Services in New York. "For years, it's been clear that deep down the current administration didn't care about this."

A cash crunch would be the biggest prod for clearing up the conflict, analysts say. Argentina has about $27 billion in foreign reserves, relatively low for such a large economy in which the government offers generous subsidies.

The governing party's presidential candidate, Daniel Scioli, governor of Buenos Aires province who leads in the polls, has taken up Fernandez's hard line, yet he is also promising to find a solution. Economists on his team have made clear that Argentina will have problems raising money until the dispute is settled. His main opponent, outgoing Buenos Aires Mayor Mauricio Macri, has vowed to negotiate a resolution.

While the candidates remain vague, there are several ways the spat could be resolved. As part of a deal, Argentina could get loans on preferential terms to pay creditors off in lump sums. The country could also simply reissue the debt with new bonds at higher rates.

Still, many Argentines believe the country has been unfairly picked on, which means candidates have to talk tough when it comes to the holdouts, notes Roberto Bacman, director of the South American research firm Center for Public Opinion Studies.

The dispute goes back to Argentina's $100 billion default on its debts in late 2001. In 2005, and then again in 2010, most of the country's creditors accepted lower-yield bond swaps. But a group led by Elliot Management refused and sued Argentina in New York federal court. Elliot officials declined to comment on the conflict.

A familiar pattern has subsequently emerged: U.S. District Judge Thomas P. Griesa rules against Argentina, often raising the stakes, such as recently opening the door for Argentine assets in the U.S. to be seized. Economy Minister Axel Kiciloff accuses Griesa of overstepping, and Argentina ignores the rulings.

Largely cut off from international loans, Argentina has turned to countries such as China for backdoor ways to get desperately needed financing. In the last two years, Argentina has signed several agreements with the Asian powerhouse, including multibillion-dollar infrastructure projects and a currency swap.

Fernandez has touted the deals, but the terms have never been made public, and analysts have little doubt China exacts a price far more than the roughly 3 percent interest rate currently available in international loan markets.

"It's the equivalent of somebody going for a payday loan," said Brett House, a former IMF economist who is chief economist at Alignvest Investment Management, a Toronto-based investment firm. "Argentina is mortgaging the future" with such deals.

From the outside, the solution seems obvious: negotiate a deal and move beyond the stalemate. But inside Argentina, a country rich in natural resources with a long history of booms and spectacular busts, it's a political land mine.

Macri learned that the hard way. In June 2014, long before becoming a presidential candidate, he said: "We must go, sit down with Judge Griesa and do what he says."

Macri was roundly criticized, and now rarely talks about the matter on the campaign trail. When he does, he promises to be a tough negotiator who will not simply pay an "unjustified" sum.

There are other considerations, such as the "me, too" holders of about $5.4 billion in defaulted debt, a second group that has taken Argentina to court. In June, Griesa ruled Argentina also must pay them before paying its majority creditors, a decision that an appeals court threw out in August. Still, they and other holdout creditors will probably have to be included in an eventual deal.

Torres, at Moody's Investor Services, says that Argentina's outstanding debt is relatively small for an economy estimated at $600 billion and that the country is capable of paying it. Until it's paid off, Argentina won't be able to get loans on good terms and will struggle to attract foreign investors.

"Reaching an agreement with the holdouts has some costs, but not doing so has huge costs," Torres said.

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Florida Supreme Court Wades Into Open-Carry Gun Battle

by Noreen Marcus
Special to the Review

When the U.S. Supreme Court said in a pair of opinions that gun ownership is a right — not a privilege — states must honor, the rulings energized Second Amendment absolutists.

"Today's decision in *McDonald v. City of Chicago* … should leave little doubt that our individual right to keep and bear arms applies everywhere and is a right for everyone," Sarah Palin, the former Alaska governor and vice presidential candidate, told the Daily Caller. Palin commented on June 28, 2010, two years after the high court delighted gun enthusiasts with the landmark *District of Columbia v. Heller*.

Now the Florida Supreme Court has accepted for review *Norman v. State*, a case that tests the Second Amendment here for the first time since *McDonald* and *Heller* wrought a fundamental change in the way the judicial system treats firearms possession.


Klingensmith

The two cases "further eroded the abilities of cities and states to protect their residents from firearms," Brian Levin wrote in The Huffington Post soon after the 2012 massacre at Sandy Hook Elementary School in Newtown, Connecticut. "Rather than helping make our country safer, our courts are making us more vulnerable."

As events have shown, the gun rights-gun control issue is polarized — so polarized it's hard to glean an objective account of the facts in the case.

Dale Lee Norman is "a law-abiding, concealed-carry licensee who was arrested and prosecuted in Fort Pierce for violating Florida's nearly complete ban on open carry after his otherwise lawfully carried handgun unknowingly became unconcealed while walking down the street," according to the website of Florida Carry, which calls itself the state's largest pro-Second Amendment organization.

The group's lead counsel Eric Friday represents Norman. Friday, an NRA referral attorney and registered lobbyist, actively promotes gun rights in Florida courtrooms and legislative corridors.

DALE LEE NORMAN V. STATE OF FLORIDA
Case no.: SC15-650
Date certiorari accepted: Oct. 6, 2015
Case type: Second Amendment
Court: Florida Supreme Court
Lawyers for petitioner: Eric J. Friday, Fletcher & Phillips, Jacksonville, and Ashley N. Minton, Minton Law P.A., Fort Pierce
Lawyers for respondent: Attorney General Pamela Jo Bondi, Tallahassee, and West Palm Beach Chief Assistant Attorney General Celia A. Terenzio
Originating court: Fourth District Court of Appeal
Author of opinion below: Judge Mark W. Klingensmith
Panel below: Klingensmith and Judges Cory J. Ciklin and Melanie G. May

REVEALING A .38

Another scenario is squarely before the Florida Supreme Court. Passersby who saw Norman striding along Federal Highway wearing a tight tank top, shorts and a holster on his hip called 911, the Fourth District Court of Appeal recounted in its Feb. 18 opinion. Police caught Norman on video and arrested him.

Jurors saw the video and rejected Norman's defense that his holster was only briefly visible because the weight of his .38 caliber pistol caused his shorts to sag. They convicted him of violating the open-carry law, a misdemeanor, and he was fined $300, according to Miami Herald columnist Fred Grimm.

"Somehow, Florida has remained one of six states that prohibit knuckleheads from traipsing around with their pistols on display like they were living in Tombstone, Arizona, circa 1881," Grimm wrote.

Perhaps Florida's status as a no-open-carry holdout is about to change.

Judge Mark Klingensmith knew what the Fourth District was taking on in reviewing Norman's conviction. It was entering a " 'vast terra incognita' of Second Amendment jurisprudence to answer a question of first impression, specifically, whether the Second Amendment forbids the State of Florida from prohibiting the open carry of firearms while permitting the concealed carry of weapons under a licensing scheme," he wrote.

Answering the question, first Klingensmith bowed to Heller and McDonald. Following those decisions "it is clear that a total ban on the public carrying of ready-to-use handguns outside the home [for self-defense] cannot survive a constitutional challenge under any level of scrutiny," he wrote.

Many pages later he concluded Florida's statutory licensing procedure doesn't infringe on rights guaranteed by the U.S. and Florida constitutions. The option of getting a concealed-carry license "leaves available a viable carry mode" that saves the regulation, Klingensmith wrote.

"Florida's licensing scheme is not unduly restrictive, and is consistent with the valid use of its police powers and the dictates of the Constitution to promote safety for both the firearm carrier and the community at large," he wrote. Judges Melanie May and Cory Ciklin concurred.

NO CONFLICT HERE

One hint that the Supreme Court doesn't intend to give Florida Carry the unfettered right it seeks in the *Norman* case is its unusual statement rejecting one possible basis for jurisdiction.

A standard reason for Supreme Court discretionary review is that the lower court passed on a state law's validity and/or construed a constitutional provision.

The Oct. 6 order accepting certiorari says that's exactly why the high court is taking up the *Norman* case. It goes on to note that Norman's lawyer offered express and direct conflict as another door-opener.


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Attorney Eric Friday, who represents Dale Lee Norman, is an NRA referral attorney and registered lobbyist who actively promotes gun rights in Florida courtrooms.

"The court has determined that it should decline to accept jurisdiction on that alternative basis, and thus hereby denies the petition for review as to that alternative basis. No motion for rehearing will be entertained by the court in this regard," the order states.

Where's the purported conflict?

In 1989 the Third District Court of Appeal decided *Crane v. Department of State*. The court upheld the agency's licensing division when it revoked private investigator Jeffrey Crane's concealed-weapon permit because he'd been charged with two felonies.

Adjudication of guilt was withheld in Crane's case and the law cited to yank his license was being applied retroactively but none of that mattered, the court concluded. It adopted the department's position that "a license to carry a concealed weapon is merely a privilege and not a vested right."

Eric Friday's brief for Supreme Court jurisdiction says the Fourth District opted to characterize a carry license as a vested right, in conflict with the Third District's determination that it's a privilege.

But the Supreme Court doesn't want to go there.