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Trailblazing Miami-Dade Judge Has Died: 'His Memory Will Continue to Pave the Way for Others'

by Michael A. Mora

Florida Gov. Ron DeSantis directed the U.S. and the Sunshine State flags to be flown at half-staff Wednesday at the Miami-Dade Courthouse and Miami City Hall, along with the State Capitol in Tallahassee.

DeSantis said the order is a mark of respect for former Third District Court of Appeal and Miami-Dade Circuit Judge Mario P. Goderich, a pioneering Cuban American jurist who died at age 89.

Third DCA Judge Kevin Emas said Goderich's death is a reminder for young lawyers that they can be the strongest advocate for the client, but still be kind to the people close to them and all the people they meet.

"People may not remember what you said to them when you met them or what you did, but they always remember what they felt after they met you," Emas said. "He gave that feeling to every single person he met. When they walked away, they remembered how good he made them feel, because he was just a kind soul and a true gentleman."

Born in Santiago de Cuba, Goderich went to high school at Massanutten Military Academy in Virginia and

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'Fast Burn': Understaffed South Florida Courts Are Denying Continuances, Rocketing Through Dockets

Kenyatta Alexander said the courts are understaffed, as circuits do not have the full amount of judges provided for by the Legislature.

by Jasmine Floyd

Some South Florida attorneys say they are experiencing judges not allowing continuances or time out, as courts feel pressure to expedite cases on crowded dockets after shutting down during the coronavirus pandemic.

Hinshaw & Culbertson partner Paul Gamm in Fort Lauderdale, for instance, said things changed after everything came to a stop during the pandemic.

"Trials resumed last summer, and we are definitely now on a fast burn," Gamm said. "If your case is anywhere on a docket, you have a very high likelihood of being called. Previously, judges would have more discretion to grant a continuance. Now, since COVID-19, and pursuant to a recent Florida Supreme Court administrative order, there are very limited reasons to obtain a continuance."

Gamm said he had an experience recently where he was on a calendar call

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Greenberg, Greenspoon and Carlton Fields Raid Los Angeles Firms

by Dan Roe

Three Florida-based Am Law firms expanded their Los Angeles offices over the past week by hiring partners away from Big Law offices and specialized regional firms. Two Am Law 200 firms cited bicoastal clients and competitive pricing as drivers of their growth in Southern California.

Carlton Fields recently announced the hires of former Norton Rose Fulbright partner and trial lawyer Jan Dodd as well as real estate of counsel Scott Page of the Encino, California, boutique Webster Kaplan Sprunger. Dodd and Page are among eight attorneys hired to the office since December, bringing its attorney headcount to 20.

In an interview, Carlton Fields Los Angeles office managing shareholder Mark Neubauer said the firm saw an opportunity to compete with more expensive, West Coast-native firms on pricing, particularly as California entrepreneurs expand businesses in Florida or use the state to avoid California's heavy tax liability.

"Florida, frankly, has a lower cost structure than places like New York or

Seizing opportunities to compete with West Coast-based firms, several Florida law firms have expanded their Los Angeles offices with new hires this week.

Chicago or Los Angeles," Neubauer said. "As a result, we can deliver more efficient legal services because we're less bound to tradition. Clients are looking for that."

Greenspoon Marder added commercial litigator Glen Rothstein to its Los Angeles office last week. Rothstein previously ran his own firm for five

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My Paralegal Tried to Kill Me: Lawyer Claims 'Ride-or-Die' Employee Poisoned Him, Stole From Firm

by Adolfo Pesquera

A San Marcos attorney, who believes his "right-hand" paralegal ruined his practice and tried to kill him, prevailed at the Third Court of Appeals, which ruled his case should not be dismissed.

As described in the Szymonek v. Guzman opinion released Feb. 10, Ashley Szymonek was Arturo Guzman's sole employee for 10 years and had his total trust. He described her as his "right-hand person" in the practice and his "ride-or-die" in personal matters.

She was the firm's primary contact for bankers, accountants and others. Her personal email handled most of the firm's correspondence, Guzman claimed in a civil action.

Szymonek's attorney is Carlos Soltero of the Austin firm Soltero Sapire Murrell.

Soltero said he was respectfully disappointed with the court's ruling, and is evaluating all options. He added the case is at a preliminary stage, and the opinion was "based on Guzman's pleadings and what he attached to them."

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returned to the island nation for law school at the University of Havana. Following his graduation in 1957, Goderich practiced at the law firm, Castellanos & Goderich.

After dictator Fidel Castro took control of the island, Goderich immigrated to the U.S. in 1961, and worked in non-legal positions to support his family until 1966, when he graduated from the University of Miami School of Law. Soon after becoming an American citizen, The Florida Bar admitted him in 1969.

Around this time, Goderich was one of the founding members and the first president of the Cuban American Bar Association.

A. Dax Bello, a former president of CABA and a shareholder at Stewart, Tilghman, Fox, Bianchi & Cain, said Goderich, along with others, like Osvaldo Soto and Luis Figueroa, made it a mission to do what they loved, at all costs.

"Goderich and his fellow CABA founders understood that the best shot at a regime change in Cuba was through the law," Bello said in an email. "They organized and worked together to help overcome the challenges people like him faced."

In 1975, Goderich became the first Cuban American to hold a position at the Court of Industrial Claims, also known as workers' compensation court, after an appointment by then Florida Gov. Reubin Askew. Three years later, Askew appointed Goderich to the circuit bench, again becoming the first Cuban-born attorney to hold that title.

Emas recalled spending a summer working for Goderich soon after the judge rose to the circuit court criminal division.

"I like to say that we both learned a lot," Emas said while laughing. "The only difference is he knew he didn't know criminal law, and I thought I knew everything about criminal law because I was a 1L who grew up on Perry Mason."

After unopposed elections in 1980 and 1986, then Gov. Bob Martinez elevated Goderich to the Third DCA in 1990. Goderich was the first Cuban American to sit on the industrial claims, circuit and appellate courts. The former judge was the author of several works on international law, legal research and comparative law, while also receiving numerous honors and awards.

Goderich retired from the bench in 2005 upon reaching mandatory retirement age. He later joined Gunster & Yoakley, and became a Florida Supreme Court-certified mediator.

The former judge is survived by his children, grandchildren, and a great-granddaughter. His family reflected in an obituary: "Mario will be remembered as the trailblazer he was, and his memory will continue to pave the way for others."

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years, specializing in disputes involving entertainment, video games, and sports betting.

Co-managing director Gerry Greenspoon said Rothstein's hiring complemented the firm's recently formed innovation and technology practice group, which targets startups, cryptocurrency and blockchain-based companies, and other emerging tech ventures. The group launched in December when Los Angeles emerging technologies lawyer Eric Galen moved to Miami to join the firm.

"To the extent that dispute situations will arise out of the corporate side, we have Glen in place who understands that area and can handle disputes that do arise," Greenspoon said. Rothstein's hiring brings that office to 14 attorneys.

And Greenberg Traurig expanded its corporate capabilities with shareholders Ron Grace and Emily Stephens. Grace arrived from the Los Angeles headquarters of midsize national firm Nossaman while Stephens came from Am Law 100 firm Vinson & Elkins.

Greenberg global corporate practice co-chair Mark Kelson said the firm's roughly 120-lawyer Los Angeles office has grown by a factor of 10 since launching in 2000. The Los Angeles corporate group now contains 25 attorneys, and Kelson said he sees health care and private equity as major demand drivers in 2022.

"I think health care is going to grow regardless of the economy, and I think there's going to be a tremendous amount of money remaining in private equity regardless of the economy," he said. "If things contract significantly and there's a slowdown, private equity is going to continue to grow because there's so much money to invest."

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

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list and was asked to start a trial in less than a week.

"I tell my clients that if you're on trial docket, then you can expect to be called to trial, which gives them information. We try to provide our clients with all of the knowledge and information we have available," Gamm said. "So the perceived 'no-continuance' rule provides different information about trial dockets than clients were accustomed to in the past. However, I feel the 'no-continuance' rule might make it more stressful for both the lawyers and the courts. It might unintentionally cause some additional friction or argument on the issue of continuances."

Kenyetta Alexander, Boca Raton partner and shareholder of Osherow, said the courts are understaffed, as circuits do not have the full amount of judges provided for by the legislature.

"At my firm, Mark Osherow and I work hard to assist judges by highlighting and sending important case law referenced in the documents we filed to judges, along with an index of the case law, to make it easier and quicker for a judge to review the case law and our arguments as he or she prepares for a hearing," Alexander said. "The more that attorneys assist judges in preparing for a hearing, the more time judges will have to prepare for all of the hearings on their docket and will not feel so overwhelmed."

'PREPARATION IS KEY'

Fort Lauderdale attorney Harsh Arora, partner at Kelley Kronenberg, said attorneys who aren't ready to proceed at anytime during the court-ordered trial period are definitely going to have an issue. But those who have planned, and are prepared to move forward, should not have any problems, he said.

"As litigators, we are faced with problems on a routine basis, and there are a lot of unpredictable situations that we find ourselves in. However, preparation is key. And if we know that we have a case that was filed prior to the start of the pandemic and we are heading close to a trial period, then we have to be ready for trial even if the case is called early on during the trial period," Arora said. "Law firms with multiple attorneys on a case should also not have the expectation of getting a last-minute continuance, due to an expected unavailability of one attorney who may be the lead trial counsel in another trial with conflicting dates, as courts have an expectation that such scheduling matters should be brought before the judges timely in the case-management conferences that are held before the trial period commences."

PRESSURE ON PLAINTIFFS?

Hinshaw & Culbertson Miami partner Peter Hernandez thinks the changes will require parties to commit to certain deadlines, and place immense pressure on plaintiffs to move their cases.

"Defendants are less willing to settle because they want plaintiffs to invest the required time, money and effort to prepare their cases for trial," Hernandez said. "These deadlines place a lot of the burden on plaintiffs to prepare their cases for trial earlier than they used to. On the other hand, the deadlines cut off the ability for either party to engage in protracted discovery or other delay tactics, which is helpful for plaintiffs that are ready for trial."

But in the bigger picture, proposed changes to the Rules of Civil Procedure and the Rules of General Practice and Judicial Administration, will likely change the way civil lawyers practice, some attorneys said.

"The Supreme Court has released a report recommending procedural rule changes that would impose more judicial control on civil cases, tighten rules with tougher sanctions for discovery, depositions, continuances of trial and have reports to the Supreme Court when judges don't expeditiously rule on motions and decide cases," Arora said. "The chief judge will have to attempt to rectify any reported delays and, if the delay cannot be rectified and no just cause for the delay exists, to report the matter to the chief justice of the Supreme Court. There will most likely be a comment period for different interest groups to provide comments to the Supreme Court on these proposed changes. Most likely, these changes will be passed and implemented soon."

Robin I. Bresky, Boca Raton founder and president of Bresky Law, believes these changes will make cases move more quickly.

"I do know that we only have so many resources in the state system, and I think it's always important to be concerned with the amount of judges on staff to push these things through quickly. Therefore, I think it may push things to settle quickly. For the most part litigators want to have their case settled."

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

FLORIDA LEGAL REVIEW

Florida Lawmakers Grapple With Insurance 'Catastrophe'

by Jim Saunders

Offering a grim picture of Florida's property-insurance system, senators backed proposals Wednesday aimed at bolstering the private market while slowing a flood of policies to the state-backed Citizens Property Insurance Corp.

"The word might be 'catastrophe' is where we are right now," said Senate Banking and Insurance Chairman Jim Boyd, a Bradenton Republican who is sponsoring a bill (SB 1728) to try to address the issues.

The Senate Agriculture, Environment and General Government Appropriations Subcommittee approved Boyd's bill and another measure (SB 186), sponsored by Sen. Jeff Brandes, R-St. Petersburg, that focuses on making changes in Citizens Property Insurance.

Lawmakers are grappling with a market in which financially troubled private insurers are dropping policies, declining to write new coverage and seeking massive rate hikes. Part of the fallout has been thousands of homeowners a week seeking coverage from Citizens, which had about 777,000 policies as of Jan. 1 — an increase of more than 222,000 policies from a year earlier.

The latest evidence of problems came Tuesday when St. Johns Insurance and Lighthouse Property Insurance Corp. told agents that they would stop writing new business.

But the complexity of finding solutions was evident during Wednesday's meeting, as senators discussed part of Boyd's bill that would allow insurers to sell policies that would not offer replacement coverage for roofs when the roofs are at least 10 years old.

Senate Banking and Insurance Chairman Jim Boyd pointed to soaring premiums as he tried to refute arguments about effects on low-income people.

Instead, such policies would reimburse homeowners for roof damage based on depreciated values or the "actual cash" values of roofs. An exception would be that insurers would have to pay replacement costs when roofs are damaged in named hurricanes.

The insurance industry blames questionable — if not fraudulent — roof claims for driving up costs. But Boyd's proposed change likely would force homeowners with older roofs to pick up more of the tab when their roofs are damaged.

"I'm worried about the disproportionate impact that this has on lower-income families, seniors, veterans, those in rural areas, that are more likely to have older homes with older roofs," Sen. Loranne Ausley, D-Tallahassee, said.

Boyd, however, pointed to soaring premiums as he tried to refute arguments about effects on low-income people..

"In my view, what's going to be disproportionate is their prices are going to continue to go up if we do nothing," said Boyd, who is an insurance agent. "And it will hit them hard. Some of us can afford a 10, 15, 20 percent increase. Some can't. Those that can't are going to get hit with the same increases if we do nothing."

But even if the Senate passes the roof-claim changes, it might run into opposition in the House, where Speaker Chris Sprowls, R-Palm Harbor, has indicated he has concerns about the idea.

"I want to make sure people are compensated," Sprowls said Wednesday. "If you get a hurricane, and you've got a senior citizen on a fixed income, I am cognizant of the fact that they may not be able to go and get a huge roof. I totally understand the arguments, so we'll see how the conversation goes in the next several weeks."

State leaders have long sought to move policies from Citizens Property Insurance into the private market, at least in part because of financial risks if Florida gets hit with a major hurricane or multiple hurricanes.

But residents in some areas have little choice but to turn to Citizens for coverage. Also, industry officials say Citizens often charges less than private insurers, giving an incentive for homeowners to obtain coverage from what was created as a state insurer of last resort.

Along with the roof-claims proposal, other parts of the Senate bills include:

— Addressing situations in which homeowners receive coverage offers from private insurers. Under the bill, such customers would not be eligible for renewal with Citizens unless the private insurers' premiums are more than 20 percent higher than what Citizens would charge.

— Eliminating limits on Citizens rate increases for properties such as second homes. The limits, known in Tallahassee as the "glide path," would only apply to primary residences. This year, for example, the glide path prevents Citizens rate hikes from being higher than 11 percent.

— Allowing surplus-lines insurers to take part in programs designed to remove policies from Citizens. Surplus-lines insurers don't face the same regulations as standard insurers.

News Service Assignment Manager Tom Urban contributed to this report.

Jim Saunders reports for the News Service of Florida.

Florida House Passes 15-Week Abortion Limit

by Ryan Dailey

Florida House members early Thursday morning passed a bill that would prohibit doctors from performing abortions after 15 weeks of pregnancy, one of the most hotly debated issues of the 2022 legislative session.

The Republican-dominated House approved the measure (HB 5) in a 78-39 vote along almost straight party lines after nearly six hours of debate.

Rep. Rene Plasencia, R-Orlando, crossed party lines to vote against the measure, while Rep. James Bush, D-Miami, voted for it.

The at-times tense floor session also saw a group of protesters removed from the House gallery for chanting in opposition to the bill.

The proposed 15-week limit on abortions resembles a Mississippi law that is under review by the U.S. Supreme Court — a case that is widely seen as a challenge to the landmark Roe v. Wade ruling on abortion rights.

Rep. Erin Grall, a Vero Beach Republican who is sponsoring the House bill, said Tuesday that the Supreme Court's weighing of the Mississippi law was a factor in the decision to propose the 15-week restriction.

"There's significant fetal development by the age of 15 weeks. But there is also a case in front of the U.S. Supreme Court, currently under consideration, at 15 weeks. And … working within that infrastructure of 15 weeks gives Florida its best opportunity to save a significant number of babies, very quickly, after the court's decision," Grall said.

Part of the debate on the bill Wednesday centered on arguments about stages of fetal development.

Rep. Kelly Skidmore, D-Boca Raton, disagreed with Republicans' arguments that fetuses can feel pain at 15 weeks.

"I don't believe a 15-week fetus can feel pain or anything else, because I believe the volume of experts who tell us that happens beyond 24 weeks gestation," Skidmore said.

Several House Democrats also criticized the measure as unconstitutional.

"Every time unconstitutional bans are passed, they have been challenged in the courts. Legislating unpopular and unconstitutional bans on abortion is an irresponsible diversion from real life," Rep. Yvonne Hinson, D-Gainesville, said. "Because real life is reality, not some figment of your imagination of what perfect life might look like."

But Rep. Cord Byrd, R-Neptune Beach, urged lawmakers to vote for the measure regardless of the unresolved U.S. Supreme Court case.

"We have the ability. We do not have to wait for the (U.S. Supreme) Court to decide and rule. When they do, we will be in a position to protect life in Florida, as guaranteed and enshrined in our Constitution," Byrd said.

Gov. Ron DeSantis last month said that he is "supportive of 15 weeks" and suggested that he would sign the measure if lawmakers pass it, adding that he finds the restriction "reasonable."

The bill would allow for exceptions if two doctors certify in writing that a fetus has what the proposal calls a "fatal fetal abnormality."

Such abnormalities are defined in the legislation as "a terminal condition that, in reasonable medical judgment, regardless of the provision of life-saving medical treatment, is incompatible with life outside the womb and will result in death upon birth or imminently thereafter."

But critics slammed the measure for not making an exception for victims of rape or incest. House members on Tuesday rejected more than a dozen proposed changes filed by Democrats, including one that would have made an exception for victims of rape or incest.

Rep. Kristen Arrington, D-Kissimmee, criticized Republicans for not accepting Democrats' proposed changes, saying that she is a victim of rape.

"We heard that an exception for an abortion wasn't needed for rape or incest because of the low amount of abortions that were performed on those that were victims," Arrington said. "I know that the number of 126 abortions performed due to rape or incest in 2021 isn't accurate, because victims aren't honest about being raped. Because of the shame and the stigmatism that surrounds it. When we pass legislation like this, it validates that perception."

But Rep. Dana Trabulsy, R-Fort Pierce, shared with her colleagues that she is a victim of rape and had an abortion in the past.

"I was always pro-life, until I had a choice. And then I had a choice, and I selfishly made the choice to have an abortion. Not because something was wrong with my baby, not for any other reason than it just wasn't convenient for me. It didn't fit my narrative, it didn't fit my lifestyle. I didn't want a baby, so I had an abortion. It's something that I have regretted every day since," Trabulsy said.

The Senate Appropriations Committee likely will take up the House bill Monday, according to a Senate calendar. Appropriations Chairwoman Kelli Stargel, R-Lakeland, has sponsored a Senate version (SB 146) of the bill.

Ryan Dailey reports for the News Service of Florida.

FROM THE COURTS

Civil Rights Groups Want End to 'Insular Cases'

by Marcia Coyle

Civil and human rights organizations are ramping up pressure on the U.S. Justice Department to end any reliance in their litigation on the much-criticized, century-old line of Supreme Court decisions known as the Insular Cases.

Thirteen organizations recently sent a letter to Attorney General Merrick Garland and U.S. Solicitor General Elizabeth Prelogar that said the six cases, first decided in 1901, are based on racist assumptions like *Plessy v. Ferguson*, which endorsed "separate but equal" racial segregation, and *Korematsu v. United States*, upholding the mass internment of Japanese Americans during World War II.

The *Insular Cases* generally concerned the status of U.S. territories acquired by the United States in the Spanish-American War. The issues before the court related to equality, citizenship and sovereignty, or basically whether "the flag followed" the territories. The rulings contain such language as "alien races" and "savage tribes" in decisions concerning Guam, Puerto Rico and other territories.

"We call on the Justice Department to help dismantle this egregious example of systemic racism by publicly condemning the *Insular Cases* and bringing an end to any reliance on them in future court filings," the letter stated.

The Supreme Court has said it will not extend the *Insular Cases*, but it has never expressly overruled or repudiated them. It has that opportunity in the current term in United States v. Vaello-Madero which concerns whether the denial of supplemental security income to residents of Puerto Rico, based solely on where they live, violates the equal protection guarantee. Several amicus briefs have urged the justices to use that case to overrule the *Insular Cases*.

During arguments in the Puerto Rico case, both Chief Justice John Roberts Jr. and Justice Neil Gorsuch pressed the Justice Department's lawyer on whether the *Insular Cases* were involved. The government lawyer, however, said the court did not need to address those cases in order to decide the issue in the Puerto Rico case.

When the government's lawyer said the court has repeatedly declined to extend the *Insular Cases*, Gorsuch said, "Counsel, if that's true, why shouldn't we just admit the *Insular Cases* were incorrectly decided?"

But the civil rights groups' letter said the department is expressly relying on those cases in a case recently ruled on by the U.S. Court of Appeals for the Tenth Circuit: *Fitisemanu v. United States*. A circuit panel, reversing a district court decision, held that American Samoa, a U.S. territory since 1900, is not "in the United States" for purposes of the Fourteenth Amendment's citizenship clause and its native residents have no guarantee of U.S. citizenship. The circuit court denied en banc review.

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

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PARALEGAL

Guzman's brief included exhibits, and was more than 200 pages long.

DISBARMENT, FORECLOSURE

Guzman's practice of more than 28 years came crashing down in early 2019, when he learned that a former client had sued him and filed a grievance with the State Bar of Texas over an allegation of improperly withheld funds.

Guzman relied on Szymonek to contact his malpractice carrier to get an attorney to represent him, according to court documents. Unbeknownst to Guzman, Szymonek had allowed his insurance to lapse and no attorney was retained, even as she was assuring him that he had representation, according to the opinion, which refers to the briefs.

Guzman later learned and alleged that Szymonek knew there was insufficient funds in the IOLTA, or Interest on Lawyer Trust Account, because she was drawing from it for her personal gain, according to the court filings. She also deceived him into believing she had submitted Guzman's responses to his non-existent counsel and to the State Bar.

Guzman was disbarred Feb. 26, 2020, but did not learn of it until weeks later when a tenant in his building, attorney Case Darwin, told him. Guzman "seemed genuinely surprised" to hear he had been disbarred, Darwin said.

Guzman's evidence alleges that at every turn in his affairs, Szymonek had been using her position as gatekeeper to mishandle his affairs.

For instance, Guzman was of the impression his taxes were up to date, but Szymonek hadn't given his records to his accountant for years, he alleged, and she had not kept up the mortgage payments on the office building, which had gone into foreclosure without his knowledge, he alleged.

When Guzman sought an appeal at the State Bar, Szymonek assured him the appeal was in process, but he claimed every hearing date kept getting rescheduled.

The fifth alleged reset was for April 29, 2020.

But on April 28, Guzman left home for the office and never returned.

SUSPECTED POISONING

Guzman's wife testified for the record that she texted and called throughout the day but found his responses short and out of character. She spoke with Szymonek, who told her he was very upset about closing the office, but was "OK, but probably just tired."

The morning of the 29th, the day of the hearing, the wife could not contact Guzman. She called the ex-wife, Valarie Guzman, who had an equity interest in Guzman's affairs. The daughter, Madison Guzman, traveled to the office and called Szymonek.

Madison stated that Szymonek said she was "completely blind-sided" when Guzman told her she would need to find a new job. But Guzman later learned that Szymonek had already accepted a job with another firm and was to start work April 27, he stated.

Once at the office, Madison Guzman found all of the locks had broken keys in them, and her father didn't respond to her knocking. Only after Szymonek texted her the key code was she able to enter, according to court records.

She found her father asleep, but with a bloated face and vomit on his face. She couldn't shake him awake and called 911. At the hospital, doctors found his organs were failing and suspected poisoning, likely from ingesting a large amount of antifreeze. He was in a coma for days.

While Guzman was recovering, his ex-wife examined the office records and found thousands of files deleted, including the State Bar grievance records. She found about 80 filters and blocks in the office email system that captured all traffic from his banks, accountants, the State Bar and former client, according to her account in court records.

In the days leading up to the law firm's collapse and during Guzman's hospitalization, Szymonek was allegedly disparaging his character to attorneys in the building, claiming he was suicidal, using drugs and drinking alcohol heavily. According to an attorney's statements, this seemed out of character.

'I Probably Would Be Working at Home Depot'

In the amended complaint at issue, Guzman alleged claims for assault and battery, invasion of privacy, libel and slander, common law fraud and conversion, and breach of contract.

Szymonek appealed a denial from the 22nd District Court, Hays County, on her motion to dismiss under the Texas Citizens Participation Act.

Chief Justice Darlene Byrne wrote in the opinion that dismissal under TCPA requires a showing that the non-movant's lawsuit is a response to a party's exercise of the right to free speech. Szymonek's counsel argued that the act, as it addresses "a matter of public concern," encompasses Guzman's claims.

"Guzman has not alleged that Szymonek made any statements to the State Bar … or to any other individual or entity that might have been involved in those earlier proceedings. Instead, Guzman's claims are largely based on his allegations of criminal conduct and of Szymonek's repeated lies about how she was handling the business of his office," Byrne wrote.

Szymonek was arrested Feb. 11 on a property theft charge, according to Hays County Sheriff's Office records.

Guzman told Law.com he is happy with the court decision, but is more interested in Szymonek being brought to justice in the criminal system:

"She actually stole about $800,000," he said.

Guzman recovered his license, and he said his practice is flourishing, but he believes his poisoning was never investigated, despite San Marcos Police Department claims to the contrary.

"I was also very lucky that Mark Cusack, San Marcos attorney, and Tonya Rolland, Houston attorney, have assisted me," Guzman said. "Without their help, I probably would be working at Home Depot.

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FROM THE COURTS

Ho No! Judge's Comments Spark Debate Among Legal Academics

by Avalon Zoppo

A federal appeals court judge's speech supporting a Georgetown Law professor's critical tweet about the nomination of a Black woman to the U.S. Supreme Court has sparked debate among legal academics about whether it could raise recusal issues in the future.

Judge James Ho, of the U.S. Court of Appeals for the Fifth Circuit, appeared before the Georgetown Law's chapter of the Federalist Society on Tuesday and defended professor Ilya Shapiro, who is currently on paid leave from the law school. Shapiro in January was widely criticized after tweeting that Chief Judge Sri Srinivasan of the U.S. Court of Appeals for the D.C. Circuit is "objectively" the best pick for the U.S. Supreme Court, and that any nominee President Joe Biden selects will be a "lesser black woman."

Ho defended Shapiro's view that race shouldn't factor into Biden's Supreme Court nomination, and said policies that aren't color-blind are "offensive and un-American."

Some law professors said Ho's lecture, which initially was slated to be about the doctrine of originalism, inappropriately opined on a larger debate surrounding affirmative action policies, the idea of color blindness. The U.S. Supreme Court is preparing to hear two cases challenging Harvard University and the University of North Carolina's policies that use race as a factor in admissions. Those cases challenge previous Supreme Court precedent allowing race to be used as part of a holistic examination of a student applicant, and it must be narrowly tailored to achieve the diversity goal.

Ho's speech could give rise to recusal concerns if Ho is assigned to cases in the future related to policies aimed at remedying historic discrimination, said Hofstra Law professor James Sample. Under federal statute, a judge must disqualify from hearing a case if their impartiality "might reasonably be questioned."

Sample said given Ho's strong backing of color-blind policies in his talk, it would be reasonable for someone to question his ability to follow existing law that protects against racial discrimination in various contexts.

DIEGO M. RADZINSCHI

Judge James Ho of the U.S. Court of Appeals for the Fifth Circuit, in defending an embattled Georgetown Law professor, said policies that aren't color-blind are "offensive and un-American."

"The question isn't whether he subjectively believes he is impartial… When Judge Ho is speaking the way he was speaking, he's advocating for a position that is not the law. And that's his personal prerogative as a citizen to have those views, but it runs headlong into his responsibilities," Sample said. "We have federal law that's been on point for decades that protects against racial discrimination in voting practices. That's not colorblind."

Eric Segall, a law professor at Georgia State University, agreed, saying Ho "prejudged all future affirmative action cases" with his comments. But he added that if Ho has already expressed those views in written opinions or dissents, ethics concerns may be less heightened.

"Once Justices Scalia and Thomas set out their views on affirmative action, in a sense, we knew how they were going to vote for the rest of their lives. Is that the same thing? I don't know if Judge Ho has an affirmative action case out there where he said these things… If he does, it's less bad. But if he doesn't, it's terrible," said Segall, who also called for Justice Elena Kagan's recusal in an Affordable Care Act case in 2012 because, when she was solicitor general, her office litigated the case.

While not an affirmative action case, Ho wrote about disregarding race in policies to promote equality in a concurrence last year. Agreeing with a decision to dismiss a Black property owner's claims that a Texas city violated the Civil Rights Act by using discriminatory tactics to purchase land, Ho wrote that "prohibiting racial discrimination means we must be blind to race" and criticized disparate impact theory.

On Tuesday, Ho said that hiring and admissions policies should be blind to race.

"If there is any racial discrimination in statements like these, it's not coming from the speaker—it's coming from the policy that the speaker is criticizing… If you asked Ilya, I am sure he would say that he's the one standing up for racial equality, and that his opponents are the ones who are supporting racial discrimination. You don't have to agree with him—but it's obvious that's where he's coming from. And yet I don't hear Ilya trying to punish others for taking a different view on racial equality," he wrote, according to a transcript of the lecture.

"I stand with Ilya on the paramount importance of color-blindness," he continued. "And that same principle should apply whether we're talking about getting into college, getting your first job, or receiving an appointment to the highest court in the land."

Not everyone believes Ho's comments raise ethical issues.

"Judge Ho's position is consistent with that of the Supreme Court. The purpose of his remarks was to explain how academic culture is so far removed from what federal law requires—color-blindness and equality under the law," said Josh Blackman, a professor at the South Texas College of Law Houston. "I see no basis for his recusal."

In the late 1990s, around the time he was in college, Ho wrote several opinion pieces against using race-conscious considerations in admissions, a coalition of civil rights groups said in a letter opposing Ho's nomination in 2017. The group noted, however, that Ho also served as lead counsel for the University of Texas defending the school in a dispute over its affirmative action program while he was Solicitor General of Texas.

Charles Geyh, a professor at the Mauer School of Law at Indiana University, said he doesn't believe a judge's impartiality could reasonably be questioned every time they express a legal view outside of written opinions on an issue they later must decide on the bench.

But Ho may have crossed a line with his talk on Tuesday, Geyh said.

"Judge Ho has expressed his views in opposition to racial preferences of any and all kinds so forcefully (and on multiple occasions) that if an affirmative action case was assigned to his court, a reasonable person could be forgiven for wondering if Judge Ho has it in him to set those views aside and resolve the case with reference to Supreme Court precedent, rather than his own strongly held beliefs," Geyh said.

In an email, Shapiro said he appreciated Ho's speech.

"I'm grateful that Judge Ho chose to devote his speech to defending me. He's a mensch."

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

Jones Day Lands 7 Highly Prized US Supreme Court Clerks

by Bruce Love

Jones Day continues to cement its reputation as a go-to destination for U.S. Supreme Court clerks entering private practice, with the arrival of seven of these highly prized and highly skilled lawyers from the court's October 2020 term.

All seven are headed to Jones Day's issues and appeals practice, led by Traci Lovitt. Since the court's October 2011 term, Jones Day has recruited a total of 71 SCOTUS clerks.

Two of Justice Neil Gorsuch's clerks, two of Justice Amy Coney Barrett's and one each of Justices Clarence Thomas, Brett Kavanaugh and Samuel Alito's have come to the firm from the October 2020 term. The new recruits all come from the conservative side of the court, with no former clerks coming from Justices Stephen Breyer, Sonia Sotomayor or Elena Kagan's chambers. Also, no clerks came from Chief Justice John Roberts' chambers.

Lovitt said Jones Day always seeks to hire clerks from a variety of chambers, and as in prior years, this year recruited clerks from all chambers.

"We value the diversity of perspectives that comes from the different Justices' chambers. We consider ourselves as successful in having hired clerks from five different chambers—that's a majority of the Court," said Lovitt, adding she was "not sure" Jones Day "shared that honor" this year with any other law firm. "But every year, the chambers from which we hire is luck of the draw. Every year, the mix of chambers is different."

Last year, two clerks were recruited from the liberal side of the court—both from the late Justice Ruth Bader Ginsburg's chambers. Previous years have had a greater mix of Republican- and Democrat-appointed justices.

Among the latest recruits were three University of Chicago Law School grads, two Harvard Law alumni, an NYU Law grad and a Northwestern University School of Law alumni.

This term's class is smaller than some previous years. Last year, Jones Day managed to recruit nine from the high court's 2019-20 term. Its record recruitment year was from the 2017-18 term, when it lured 12 recruits from the Supreme Court. From the 2018-19 term, it hired five.

Five of the new recruits are men, while two are women.

Noel Francisco, a former U.S. solicitor general and the partner-in-charge of Jones Day's Washington office, noted that the firm's lawyers who have served as U.S. Supreme Court clerks are "an important part of our Supreme Court practice."

Chicago Law grad and former Gorsuch clerk James Burnham joins as a partner in Washington. Also joining in Washington, as associates, are fellow Chicago Law alumni Krista Perry Heckmann (who also clerked for Gorsuch, as well as Justice Anthony Kennedy in the October 2017 term), Northwestern grad Brendan Duffy from Coney Barrett's chambers, and Harvard grad Harry Graver from Kavanaugh's chambers.

The third Chicago grad, Madeline Lansky, joins Jones Day in Chicago after clerking for Coney Barrett and Thomas in October 2018.

Jack Millman joined as an associate in New York from Thomas' chambers, while in San Diego David Phillips has joined as a law clerk from Alito's chambers. Millman will become an associate when he gains admission to the bar.

Bruce Love writes about the legal community and the business of law. Contact him at blove@alm.com. On Twitter: @loveonlaw.

FROM THE COURTS

Varsity Blues Lawyer Can Practice Law After 2-Year Suspension

by Jason Grant

CARMEN NATALE

Gordon Caplan, the former Willkie Farr & Gallagher co-chairman, was the most prominent attorney swept up as a defendant in the college admissions bribery scandal.

Gordon Caplan, the former Willkie Farr & Gallagher co-chairman and the most prominent attorney swept up as a defendant in the college admissions bribery scandal, has been reinstated to the New York state bar after a two-year suspension.

Caplan's reinstatement was ordered Tuesday by an intermediate appellate court based in Manhattan that issued an order saying he was "reinstated as an attorney and counselor-at-law." The order also noted that both a court-system attorney grievance committee and the state Lawyer's Fund for Client Protection had not opposed Caplan's reinstatement.

In an email sent to the New York Law Journal on Wednesday, Michael Ross, the lawyer for Caplan in his attorney disciplinary matter before the state court system, said, "Mr. Caplan is deeply humbled by the Court's decision to reinstate him to the practice of law. He is committed to working every day to earn the trust placed in him by the Court."

Ross declined to comment when asked by phone about Caplan's professional plans and whether Caplan intends to practice law again.

Caplan had been suspended for two years in the wake of him pleading guilty inside a Massachusetts federal courtroom to a felony that was based on him paying a consultant $75,000 to rig his daughter's ACT college admissions score. The felony to which he pleaded guilty in 2019 was mail fraud conspiracy, and Caplan later served one month in prison for the crime.

The suspension from practicing law that Caplan received from the Appellate Division, First Department court, which is the same appeals court that reinstated him Tuesday, for his role in the much-publicized scandal was not without controversy.

Many had expected Caplan to be disbarred, given that he'd committed a felony.

New York law makes disbarment automatic when a lawyer is convicted of a state felony or a crime "essentially similar" to a state felony. And Caplan was the most prominent lawyer swept up in the 2019 scandal that included other notable defendants such as actors Lori Loughlin and Felicity Huffman and a raft of wealthy and influential parents across America who used bribery and cheating to push their children through the "backdoor" into some of the nation's best universities. The scandal produced national outrage.

But when Caplan had pleaded guilty to a crime in May 2019, he'd admitted to mail fraud conspiracy, which is a federal felony that has no direct, or "mirror-image," analog to a New York state felony. Moreover, according to several ethics and attorney discipline-focused lawyers and professors, it appeared Caplan had carefully worded his allocution in the Massachusetts court, such that he didn't list wrongful acts that clearly demonstrated his crime had mirrored a particular New York felony.

In addition, New York State Judiciary Law allows lawyers to argue that their actions don't meet the standard for an automatic disbarment. And in August 2019, Caplan and his ethics attorney, Ross, requested a hearing to present mitigating evidence that would weigh against a disbarment sanction.

In the Appellate Division, First Department's later decision suspending Caplan, a panel of five justices laid out the history of Caplan's wrongdoing along with numerous factors that it said "mitigated" in his favor.

The justices wrote in the Feb. 18, 2021, decision that "a two-year suspension retroactive" to an earlier 2019 interim suspension of Caplan, "properly balances [Caplan's] criminal conduct with the substantial evidence in mitigation, the protection of the public, maintaining the honor and integrity of the profession and as a deterrence to others from committing similar misconduct."

And both the Appellate Division, First Department's grievance committee and the referee who heard evidence and argument about Caplan's matter recommended to the appeals court that Caplan be suspended from practicing law for two years, but not be disbarred.

The appellate justices in their opinion, and the referee, focused heavily on Caplan's remorse for what he'd done, his long history of charitable work, his contrition in prison and the good work he did there, and the notion that he is unlikely to commit a bribery or cheating crime again.

"The referee noted that the record itself showed that respondent's [Caplan's] criminal actions were 'out of character with his professional life and his desire to make amends,'" the panel of justices wrote in their decision.

Caplan "presented his pre-sentencing memorandum with some 70 letters of support from, among others, family, friends, former colleagues and Greenwich[, Connecticut] policemen, all of which showed 'the breadth and depth of Caplan's extensive pro bono activities, his help to others in need, his millions of dollars in financial contributions and hours of personal service to Fordham Law School and Cornell University and his numerous acts of generosity and kindness throughout his career,'" the justices also wrote while in part quoting the referee.

"At the [referee's] hearing, the former chairman of [Willkie] where [Caplan] worked testified that, inter alia, he had worked with respondent for nearly 20 years and knew him quite well due to their management positions, and there was 'universal respect and affection' for him," the justices further wrote.

The former Willkie chairman, who was not named in the opinion, "explained that anybody who knows [Caplan] saw his misconduct as 'a real aberration, understood by everyone to be an act of zealousness and protectiveness for his daughter. But it doesn't change anybody's views who know him as to his reputation,'" the justices wrote.

"In considering a proper sanction, the referee noted that, as [Caplan] admitted before the sentencing judge, '[t]his was not a victimless crime. The real victims are the kids and the parents who played by the rules in the college admissions process,'" the justices noted.

Still, the 2021 Appellate Division, First Department opinion also made clear that Caplan had gone forward with his crime despite being fully aware that he was cheating to get his daughter into a chosen college. In laying out the facts of the matter, the opinion further made clear that when the ACT organization at one point rejected Caplan's daughter's ACT score, Caplan had another chance to back out of the scandal but instead went after ACT and used his power to try to force it to accept the score.

Some ethics law experts criticized the First Department justices' choice not to disbar Caplan.

"The truth is if Mr. Caplan had not been someone who had a great lawyer, and if he hadn't been from a white-shoe law firm, he may not" have ended up with a retroactive two-year suspension but rather could have received a harsher punishment, said Leslie Levin, a University of Connecticut law professor whose university biography notes she is an expert in lawyer discipline who has examined the topic in scholarly articles and as co-editor of the book, "Lawyers in Practice: Ethical Decision Making in Context."

"I think the First Department court was a little more sympathetic to [Caplan] than the public would be," Levin also said. The justices "may have underplayed the extent to which Caplan was involved in an ongoing effort to fraud," she added.

But Richard Maltz, counsel to Frankfurt Kurnit Klein + Seltz's legal ethics group, said that he didn't view Caplan's matter as "ever being a disbarment case" because of "the nature of the misrepresentation he committed and the fraud he committed" in the admissions scandal.

What he did "was a kind of personal conduct, and there was a rationale, and a lot of mitigation there," Maltz said.

And Ross said at the time of the 2021 suspension decision, "The First Department has been historically recognized as a court that considers all of the evidence, good and bad, and renders a decision that's just. And while some people may have been surprised by the decision in this case, someone who read the full record would have understood that the court here rendered a fair and just decision."

In their suspension decision, the justices quoted Caplan as having testified during his criminal case: "This was hubris. It was arrogant. It was about me, not about my child. That took a lot of self-realization. It was deep insecurity, I think. I frankly think a lot of people in my former [legal] profession have this notion of having to prove yourself all the time. It overwhelmed me and it destroyed my life. I destroyed my life."

Jason Grant covers legal stories and cases for the New York Law Journal, an ALM affiliate of the Daily Business Review. Contact him at jgrant@alm.com. On Twitter: @JasonBarrGrant.

FOCUS LATIN AMERICA

Businessman Close to Maduro Was DEA Informant, Records Show

by Joshua Goodman

A businessman described as the main conduit for corruption in Venezuela was secretly signed up by the U.S. Drug Enforcement Administration as a source in 2018, revealing information about bribes he paid to top officials in President Nicolás Maduro's socialist government.

As part of his multiyear cooperation, Alex Saab also forfeited millions of dollars in illegal proceeds he admitted to earning from corrupt state contracts, new records in a closely watched criminal case show. But his contact with U.S. law enforcement ended abruptly after he missed a May 30, 2019, deadline to surrender to or face criminal charges, according to prosecutors.

The stunning revelation was made public following a heated closed-door hearing Wednesday in Miami federal court in which an attorney for Saab argued his family in Venezuela could be jailed or physically harmed by Maduro's government if his interactions with U.S. law enforcement became known.

"They are basically under the thumb of the government," attorney Neil Schuster argued in the hearing, a transcript of which was later unsealed by Judge Robert Scola. "If the Venezuelan government finds out the extent of what this individual has provided, I have no doubt that there will be retaliation against his wife and his children."

U.S. officials have presented Saab as a close associate of Maduro, someone who reaped huge windfall profits from dodgy contracts to import food while millions in the South American nation starved. The Maduro government considers him a diplomat who was kidnapped during a refueling stop while on a humanitarian mission to Iran made more urgent by U.S. sanctions.

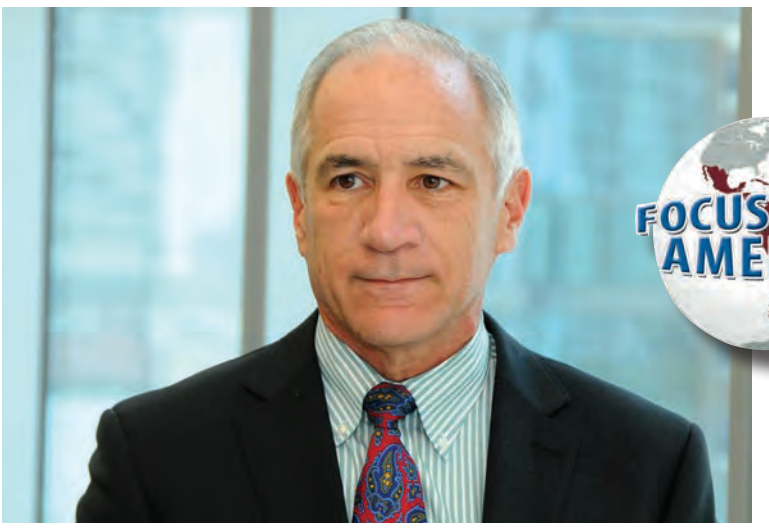
"Saab was playing with fire," said Gerard Reyes, a Miami-based author of a recent book on Saab, including his past dealings with U.S. officials. "He believed that he could work as a snitch for the prosecution and at the same time pretend he was being persecuted by Yankee imperialism, without any consequences. But in the end he got burned."

The Associated Press in November reported that Saab has held several meetings with U.S. law enforcement in his native Colombia as well as Europe. As part of his cooperation, he wired three payments to a DEA-controlled account containing nearly $10 million obtained through corruption.

However, he was deactivated as a source after failing to surrender as had been previously agreed during meetings in which he was represented by U.S. and Colombian attorneys. Two months later, he was sanctioned by the Trump administration and indicted in Miami federal court on charges of siphoning millions from state contracts to build affordable housing for Venezuela's government.

Saab, shackled and wearing a beige jumpsuit, attended Wednesday's hearing. The public was briefly barred from the courtroom as the two sides haggled over whether or not to make public two documents filed by prosecutors nearly a year ago, while Saab was fighting extradition from Cape Verde, detailing his past cooperation..

With the courtroom sealed, Schuster asked for Saab to be released on bond in light of his four years of assistance to the U.S. government — cooperation that other attorneys for Saab have always denied.



JILL KAHN

U.S. District Judge Robert Scola said the public's right to access criminal proceedings outweighs any concerns about the safety of Alex Saab's family in Venezuela.

Scola immediately rejected the idea, citing Saab's past attempts to evade extradition, according to the transcript of the closed proceedings.

"So you are going to have all this evidence that this guy is a flight risk, he's involved in this humongous crime, he's tried it, he fought extradition, and the judge inexplicably grants him a bond?" Scola said.

Prosecutors a year ago had sought to keep secret those meetings with U.S. law enforcement out of concern for Saab's safety and that of his family, some of whom are still in Venezuela.

But they downplayed any such dangers on Wednesday, saying Saab's legal team hadn't taken them up on an offer to assist his family in leaving Venezuela. Scola agreed, saying the public's right to access criminal proceedings outweighs any concerns about his family's safety.

The details of Saab's outreach to U.S. law enforcement surfaced in a related case involving a University of Miami professor who served as an intermediary for payments Saab was making to his U.S. attorneys.

Another Saab attorney, who is fighting to get Saab's status as a Venezuelan diplomat recognized by the U.S. Court of Appeals in Atlanta, vehemently rejected claims that the businessman had been cooperating with U.S. investigators.

New York-based David Rivkin, who was not present in court Wednesday, said the sole purpose of Saab's meetings with U.S. law enforcement officials was to clear his name and were undertaken with the "full knowledge and support" of Maduro's government. He said the release of the document, at the request of the Department of Justice, is no more than an attempt to harm Venezuela's interests, its relationship with Saab, and illustrates the weakness of the government's case.

"Alex Saab remains a loyal citizen and diplomat of the Bolivarian Republic of Venezuela and will never do anything to harm the interests of the country and people that have given him so much," Rivkin said in a statement.

Meanwhile, Saab's Italian-born wife, Camilla Fabri, said on social media that the U.S. was "brazenly lying, like it did with Russia and Iraq" and that her husband would never cause harm to Venezuela.

As part of U.S. criminal investigations, it's common for targets to meet with U.S. law enforcement agents to sniff out information about the probe and explore a possible plea deal.

However, the documents unsealed Wednesday described Saab's cooperation as "proactive" and more extensive and meaningful than previously believed.

According to prosecutors, the first debriefing with agents from the DEA and Federal Bureau of Investigation took place in Colombia's capital of Bogota over two days in August 2016. Other meetings ensued and in 2018 he was signed up as a cooperating source after stating to agents that he had paid bribes to Venezuelan officials, none of whom have been named in the court records.

At the last meeting, in Europe in April 2019, he was warned that if he didn't surrender by the May deadline he would be sanctioned and criminally charged, something that indeed happened in July 2019.

Joshua Goodman reports for the Associated Press.

Mexican President Expands Criticism of Local, Foreign Press

Associated Press

Mexico's president broadened his campaign against the mainstream press, demanding information on the incomes of several prominent journalists, including Univision's Jorge Ramos.

President Andrés Manuel López Obrador has accused journalists who publish critical stories of being "mercenaries" and "sellouts."

Suspicion is growing that the president is using confidential government information like tax receipts to track and publish journalists' income.

Mexican law only requires government employees to report their salaries and property, but López Obrador said journalists should be forced to as well. "Their income has to do with the budget, public property and politics," he said.

The Inter American Press Association has called on López Obrador to halt the series of verbal attacks on Mexican journalist Carlos Loret de Mola, who reported that López Obrador's adult son had lived in a luxury home in Houston, Texas, owned by an executive of a company that got contracts from Mexico's state-owned oil company.

The president has referred to questions on that issue to his son, who he claims has no role in the government.

But instead of directly addressing the issue, López Obrador started Friday publishing a chart showing how much Loret allegedly earns. The president showed the chart again Monday at his daily news briefing, and called Loret de Mola and others who publish critical articles "thugs, mercenaries, sellouts."

The president had said he gets the information — which Loret de Mola says is wrong — "from the people," but on Wednesday he said he based the chart in part on a tax receipts, which would have been available only to the party who wrote them or the government tax agency.

The president on Wednesday expanded his attacks to include journalists Carmen Aristegui and Ramos.

The Inter American Press Association said the president's attacks are harmful amid an unprecedented upswing in killings of journalists in Mexico. Five reporters or photographers have been murdered in the space of a month.

The IAPA called on the president to "immediately suspend the aggressions and insults, because such attacks from the top of power encourage violence against the press."

A group of reporters tried to protest the string of killings at Wednesday's daily news briefing, telling the president they would not ask questions. But one reporter broke ranks, allowing the president to start an hour-long diatribe against many media outlets, including The New York Times and The Washington Post.

López Obrador has had an adversarial relationship with the press during his first three years in office, and largely limits its questions at his daily news briefing to sympathetic social media sites.

Speaking of journalists who have criticized him, the president has said: "How many of them are against me? The majority!"

"No, all of these news media have to do with the public sphere, all of them are public-interest entities, concessions awarded by the government," he said Monday in explaining why he could reveal private salaries.

Loret de Mola works for a private newspaper, a radio chain and some international publications.

He responded to the president's attack on Twitter, writing: "What's this! Using tax information to persecute a journalist." Loret de Mola said the president had "false" information, noting the president claimed he earned about a third of his income in 2021 from a television network where he hasn't been employed since 2019.

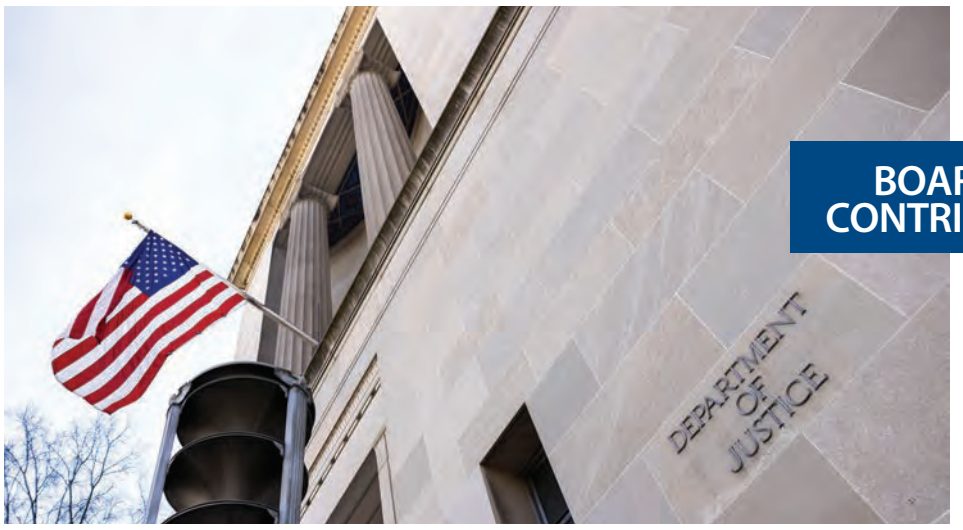

PRACTICE FOCUS / WHITE COLLAR LAW

White-Collar Enforcement: Predictions for 2022

Commentary by Ron Herman


Herman

With 2021 behind us, what can clients expect in terms of white-collar prosecutions in 2022? Drawing on what the last year taught us, here are the predictions for the near future, and tips on how to avoid and handle government inquiries.



DIEGO M. RADZINSCHI

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ALL EYES ON FRAUD

If you or your clients work in health care, real estate or financial sectors, these industries can expect increased prosecutions. The Biden administration announced sending a "surge" of resources to combat corporate fraud. How serious is this commitment? An entire new FBI squad was created to support fraud prosecutions by the Department of Justice (DOJ). This redoubling of efforts to weed out perceived fraud in healthcare, financial institutions, securities, and cryptocurrencies also includes tech-heavy, data-driven programs aimed at predicting corporate violations. Authorities are also hinting at increased interagency data sharing, such as between civil compliance investigators and criminal prosecutors. Professionals working in the following industries and areas should particularly take heed:

• COVID-19 pandemic-related transactions, including business owners and other applicants seeking, using, or obtaining forgiveness of loans from the Paycheck Protection Program (PPP), the Small Business Administration (SBA), or relief from the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and related government programs are the low hanging fruit. Fraud investigations can also be expected to extend into conduct by banking executives and other employees who processed loan applications.

• In real estate, cash transactions are more likely to raise red flags for investigators. As of this writing, the U.S. Treasury Department is evaluating new regulations for cash-based real estate deals. Prosecutions of violations of these new regulations should be expected to follow.

• Cryptocurrencies frequently make headlines, and as federal and state lawmakers consider cryptocurrency regulations, expect additional resources into crypto and cyber fraud.

• Cooperation credit, which the current administration says was too leniently granted in the past, is now expected to be more challenging to obtain. To receive this sought-after credit, corporate clients should expect to deliver to the DOJ all nonprivileged information about anyone involved in the misconduct at issue, not just persons who the client believes to be "substantially involved."

HEALTH CARE FRAUD

Health care, including telemedicine and telehealth fraud deserves its own section. Almost daily, the government publicizes another major health care fraud takedown with numerous doctors, labs, pharmacies, and other health care executives getting arrested and charged with Medicare/Medicaid fraud and conspiracy. With its large senior population, South Florida has especially been the focus of major takedown operations. Anyone working in the industry should pay close attention to the clear message coming out of the DOJ and the Department of Health and Human Services (HHS). Who are the authorities targeting and how can you protect yourself? The federal government, through the Attorney General and Office of Inspector General, announces its annual list of priorities. These priorities provide a good indicator of who is targeted and where government resources are focused. Recently, telehealth (as well as PPP fraud) have been at the top of the priority list for criminal enforcement actions. In the telemedicine context, prosecutors seem to consider marketing companies as a red flag for patient brokering and illegal kickbacks. Many major strike force operations have also focused on overprescribed durable medical equipment (DME), such as the infamous Operation Brace Yourself, and unscrupulous cancer and genetic testing. Now, the DOJ is charging for alleged criminal conduct in the telemedicine consultation itself, as opposed to the prior arrests for "telefraud," where telemedicine was used to perpetuate another type of health care fraud.

THE TAKEAWAYS

As federal and state authorities pledge and deliver additional resources to combat the perceived rampant white-collar fraud, professionals working in or advising clients in the industries mentioned above should stay on top of the latest regulations, news and trends. Documenting available information and support for actions taken could serve you well in the future. Unfortunately, over the past two years, we've seen many well-meaning doctors, bankers, and business owners who have been thrust into the fast-paced web of changing regulations and guidelines, end up being investigated or prosecuted for violating these complex laws.

Ron Herman owns Herman Law in West Palm Beach. He represents business and health care professionals facing white-collar charges, has served on various boards, and frequently provides media commentary on high profile criminal cases. He may be reached at RHerman@RHLawFL.com.

FROM THE COURTS

Plaintiffs Firms File More Big Tech Data Privacy Lawsuits

by Christine Schiffner

As the U.S. Department of Justice pushes for more aggressive antitrust enforcement against Big Tech and the Senate Judiciary Committee earlier this month advanced bipartisan legislation called the Open Markets Act to rein in technology companies, plaintiffs firms are leveraging the momentum with an eye toward increased litigation.

On Feb. 14, Texas Attorney General Ken Paxton filed a lawsuit against Meta Platforms Inc., formerly known as Facebook, for allegedly violating the Texas Capture or Use of Biometric Identifier Act and deceiving consumers by repeatedly capturing biometric identifiers without users' consent. Paxton tapped an attorney team of McKool Smith and Keller Lenkner to file the complaint.

"The magnitude of the potential liability stemming from [Attorney] General Paxton's allegations is staggering," Keller Lenkner's partner Zina Bash said. Texas alleges three violations related to the record of face geometry, disclosing these records to another entity and keeping them beyond reasonable time. "That is a penalty of up to $75,000 for every face ever captured in any photo or video ever uploaded in Texas since the launch of Tag Suggestions in 2010/2011," Bash added.

As Law.com reported previously, recent privacy settlements in class actions against TikTok and Facebook resulted in $92 million and $650 million in awards for the plaintiffs.

"The tide is turning," according to Hagens Berman Sobol Shapiro partner Thomas E. Loeser. "Big Tech has gotten away with a lot over the last 15 to 20 years because regulation has been lax," he added. As technology companies have been ahead of regulators and consumers in terms of understanding the system, Big Tech has been able to "take advantage of users" when it comes to the privacy of personal data as well as antitrust issues, he said.

Plaintiffs firms are closely watching the upcoming lawsuit in *District of Columbia v. Facebook*, brought by Washington, D.C., Attorney General Karl Racine against the tech giant for its role in the Cambridge Analytica data scandal first revealed in 2018. The trial is expected to begin later this year and will once again bring Facebook's Big Data strategies into the center of legal and public discourse.

"The last 10 to 15 years have been a Wild West of companies using private data with little regulation," Loeser said. With regulators and the plaintiffs bar alike making efforts to hold companies accountable for their alleged misuse and profiteering of personal data, it is easy to see more litigation coming — "but it's hard to predict how much more," he said. That's why the Facebook-Analytica case is so important, serving as an early signal of how these cases will go and what they may be worth.

Many of these kinds of lawsuits have been filed in California, not only because most Big Tech corporations are headquartered there, but also due to the fact that the state has one of the most progressive regulatory environments related to data privacy after the establishment of the California Privacy Protection Agency (CPPA) in 2020. In addition, in Illinois, the Biometric Privacy Act (BIPA) has been a driver of litigation related to digital people searches and unwanted "tagging" of individuals on apps such as Facebook.

In *ACLU et al. v. Clearview AI*, several nonprofit organizations are seeking an injunction against Clearview to prevent the tech company from collecting biometric data from Illinois residents in violation of BIPA. "Clearview amassed an enormous database of faceprints by scraping information from Facebook and other websites and then has allegedly been selling them to private businesses and law enforcement," Jay Edelson, founder of the Chicago-based plaintiffs boutique Edelson, explained. His firm was the plaintiffs side lead in the $650 million Facebook settlement. Edelson also won a major privacy case against Spokeo in the U.S. Supreme Court in 2016. "Our privacy cases have returned over $3 billion in settlements and verdicts," Edelson said.

One of the main culprits is location tracking of personal movements through smartphones or apps. "Google and Facebook created something called a software development kit," Labaton Sucharow partner Carol Villegas explains. The kits offer basic functionalities for smaller technology firms that can then be customized for a variety of smartphone apps. However, the kits also offer a backdoor entry to personal information, which can include location data, by tracking movements of consumers that can ultimately provide clues on income, shopping behavior and other personal information.

"Through these software development kits, the app developers willingly or unwillingly are sending information to Facebook and Google," Villegas said. "It's huge business" with personal data "being monetized, being packaged and sold. It's really dizzying if you think about it."

As consumers are left with navigating phones, apps, email and cookie settings on their personal computer and have to "figure out how to limit the information that is being sent—it's impossible for anyone, even for the most sophisticated person," she said.

"Big Tech relies on confusing, incomplete and misleading disclosures about third-party use of data," Loeser said. One approach for plaintiffs is to show that "if the provision of data to third parties goes beyond the scope of disclosure, then the user cannot have consented to the sharing." As a result, the harm can take many forms, "including loss of control of user's information about him or herself," Loeser said.

"A lot of people are not informed that this is happening, they are not well-versed in the technology that is being used," Jordan Fischer, director of the Center of Law and Transformational Technology at Drexel University, explained. Users can only "turn off geo tracking if you opt out, if you affirmatively opt out," she said.

As a result, plaintiffs firms, as well as state attorneys general, have filed several lawsuits against Big Tech and its data-harvesting strategies. In late January, four state attorneys general filed a suit against Google over allegedly tracking consumers' behavior.

Another privacy class action filed in the New York Southern District Court against the video-sharing and social-networking app Triller involves alleged abuse of biometric information related to video viewing histories without consent, as uncovered by Law.com/Radar.

Meanwhile, Google was also recently hit with a privacy class action in California Northern District Court over the alleged collection of user data without consent via an "Android Lockbox" program. Another lawsuit over harvesting personal data involves the dating app Bumble.

"All these cases boil down to two things: disclosure and consent," Villegas said. Labaton Sucharow as well as two other firms—Lowey Dannenberg and Spector Roseman—are representing a class of plaintiffs whose medical information, such as details about their menstrual cycle, was allegedly harvested and used by some of the largest advertisers. "Being pregnant is huge business. Advertisers really want to know, because having kids means there's so much to sell."

DIEGO M. RADZINSCHI

Texas Attorney General Ken Paxton filed a lawsuit against Meta Platforms Inc., formerly known as Facebook, for allegedly violating the Texas Capture or Use of Biometric Identifier Act and deceiving consumers by repeatedly capturing biometric identifiers without users' consent.

While Villegas also expects an increase in data privacy litigation, the question about damages ultimately awarded to the plaintiffs depends on several factors, including the class size. "Some of the violations with statutory damages—so, say $750 per violation, multiplied by the number of class members—which in many cases can be hundreds of thousands—or even millions," Villegas said.

"We need a federal solution towards privacy," Fischer said. She believes that defining federal privacy protection guidelines would be the "most user friendly as well as business friendly approach" as 50 different state privacy laws create a lot of complexity for businesses.

At the same time, plaintiffs attorneys, as well as scholars, point out that the United States has been much less aggressive when it comes to regulating Big Tech than European lawmakers.

"Europe is strongly taking an opt-in requirement," Fischer said. That means it takes an affirmative "opt in" consent for personal data to be tracked in the digital space. "The GDRP [Europe's data privacy and security law] is an example of a privacy-centric regime, including the 'right to disappear' from the online world. We do not have that here, but progress is being made," Loeser explained.

"Europeans have a lot more protection in place than we do. And it's not that Big Data can't fix it, it's just that they choose not to," Villegas said.

Christine Schiffner is the bureau chief for the National Law Journal, an ALM affiliate of the Daily Business Review. Contact her at cschiffner@alm.com. On Twitter: @CSchiffnerNLJ.

Cop Sues Law School Over Faculty's 'Discriminatory' Emails

by Christine Charnosky

John Cannon, a police officer who graduated from the University of Illinois Chicago School of Law in August, has filed a complaint against his alma mater alleging discrimination and emotional distress over emails school officials allegedly sent disparaging law enforcement.

The complaint, filed in the Circuit Court of Cook County, Illinois County Department, Law Division on Feb. 9, also names former Dean Darby Dickerson, Assistant Dean for Diversity, Equity and Inclusion Tania Luma, Assistant Dean for Student Life and Leadership Jennifer Pope and professor Wesley Townsend as defendants.

Darby became dean of Southwestern Law School Los Angeles in June, after having served as dean at University of Chicago Law from December 2016, according to her bio on Southwestern's website.

Cannon, a lieutenant with the Chicago Police Department, is represented by Dan Herbert of Herbert Law Firm in Chicago.

A dispatcher at the Chicago Police Department said Cannon is currently on furlough.

According to the 97-page complaint, the events allegedly began to unfold in May 2020 following the murder of George Floyd by white police officers. Cannon, who is white, alleges the university allowed the dissemination of emails that discriminated against white police officers.

"On or about May 31, 2020, defendant, Dean Darby Dickerson, as an operator, employee and agent of the defendant, UIC JMLS, sent an email to the entire UIC JMLS community entitled, 'Urgent message to the community' in which she made a series of hateful, derogatory comments asserting unsupported and discriminatory statements regarding specific sexes, racial and ethnic groups," according to the complaint.

Dickerson's email, according to the complaint, stated that "'white men' and 'police officers' in particular, 'kill black people.'"

Christine Charnosky reports for Law.com, an ALM affiliate of the Daily Business Review. Contact her at ccharnosky@alm.com.

REAL ESTATE

Investors Are Buying a Record Share of US Homes

by Paul Bergeron

Homeownership continues to be a popular investment, especially for investor groups.

Real estate investors bought a record 18.4% of the homes that were sold in the U.S. during the fourth quarter of 2021, according to a new report from real estate brokerage Redfin. That's up from 12.6% a year earlier and a revised rate of 17.4% in the third quarter.

Although investor market share hit a record in the fourth quarter, the number of homes bought by investors declined 9.1% from the third-quarter peak—but it's up significantly from pre-pandemic levels.

Investors bought 80,293 homes in the fourth quarter, up 43.9% from a year earlier. The housing-supply crunch constrained home sales for all homebuyers, including investors. The drop from the third quarter is also due partly to seasonality.

The number of homes bought by investors jumped throughout 2021 as home prices rose rapidly–they were up 15% year over year in December–alongside a shortage of homes for sale. Investors are taking advantage of intense demand for rentals and increasing prices, with the average monthly rental payment for a new lease up 14% in December.

Just over three-quarters (75.3%) of investor home purchases were paid for with all cash in the fourth quarter.

Investors' Biggest Market Share: Atlanta, Charlotte, Jacksonville

Investors had the biggest market share in relatively affordable Sun Belt metros. In Atlanta, 32.7% of homes that sold in the fourth quarter were bought by investors, the biggest share of the 40 U.S. metros in Redfin's analysis, and in Charlotte it was 32.1%. They're followed by Jacksonville, Fla. (29.8%), Las Vegas (29.2%) and Phoenix (28.4%).

Investor purchases more than doubled from last year in Jacksonville, with a 157% year-over-year increase, the biggest jump of the metros in this analysis. It's followed by Las Vegas (105.5% year-over-year increase), Charlotte (92.8%), Baltimore (83%), and Atlanta (74.4%). Investor purchases increased from the year before in all but four of the metros in this analysis (Seattle; Nassau County, N.Y.; Newark, N.J.; and Warren, Mich.).

Just over 6% of Providence, R.I., homes that sold in the third quarter were bought by investors, the smallest share of the metros in this analysis. It's followed by Washington, D.C. (7.8%), Warren, Mich. (8.2%), Virginia Beach (8.6%) and Montgomery County, Pa. (8.6%).

Single-family homes made up about three-quarters (74.8%) of investor purchases in the fourth quarter. That's near the highest level on record, essentially tied with the third quarter (75%), and up from 72.2% a year before.

iBuyer Sales Doubled in 2021

This follows the trend GlobeSt reported recently based on CoreLogic's report that iBuyer (or Instant Buyer) transactions doubled in 2021 compared to pre-pandemic levels.

As CoreLogic's recent analysis showed, investor purchases accounted for about a quarter (26%) of all home purchases in Q3 2021, up from 16% seen in 2019.

iBuyers use technology to buy and resell homes quickly. When selling a home to an iBuyer, the seller gets a cash offer for the home "as is" and avoids the uncertainty of knowing when and if their home will sell and if repairs are needed.

While iBuyers have been around since about 2015, in 2021 their purchase activity doubled compared to 2019 levels and currently account for about 1% of total home purchases.

Investors Chasing Rising Prices

While record-high home prices are problematic for individual homebuyers, they're one reason why investor demand is stronger than ever, Redfin economist Sheharyar Bokhari said.

"Investors are chasing rising prices because rental payments are also skyrocketing, incentivizing investors who plan to rent out the homes they buy," Bokhari said. "The supply shortage is also an advantage for landlords, as many people who can't find a home to buy are forced to rent instead. Plus, investors who 'flip' homes see potential to turn a big profit as home prices soar."

"Investors buying up a record share of for-sale homes is one factor making this market difficult for regular homebuyers," Bokhari continued. "It's tough to compete with all-cash offers, and rising mortgage rates have a smaller impact on investors because they often don't use mortgages at all. If home-price growth slows in the coming year, investor demand may cool down because rental price growth will slow, too."

In dollar terms, investors bought $49.9 billion worth of homes in the fourth quarter, up from $35 billion a year earlier. The typical home investors purchased sold for $432,971, up nearly 10% from a year earlier.

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Some 18.4% of homes were purchased in Q4, worth a total of nearly $50 billion.

Mid-priced homes are gaining popularity with investors, representing 32.3% of their purchases in the fourth quarter, a record high and up from 24.1% a year earlier.

Low-priced homes are still more popular than more expensive options for investors, but not by much. Low-priced homes made up 37% of investor purchases in the fourth quarter, a record low and down from 44.5% a year earlier.

Meanwhile, high-priced homes represented 30.7% of investor purchases, up slightly from 30% in the third quarter but down slightly from 31.4% a year earlier.

"Lower price points are still popular with investors, and I don't expect that to change. One of their main goals is still to buy low and sell high," Bokhari said. "But investors are also increasingly interested in higher-priced properties, partly because there's a lack of low-priced inventory and partly because they're betting on rising demand for high-end rentals."

Paul Bergeron reports for GlobeStreet.com

69% of Households Now Priced Out of Home Market

by Paul Bergeron

A near-staggering seven out of 10 households lack the income to qualify for a mortgage under standard underwriting criteria, according to the National Association of Homebuilders.

The report said that rising home prices and interest rates "are taking a terrible toll" on housing affordability, with 87.5 million households—or roughly 69% of all US households—unable to afford a new median priced home.

These "staggering statistics" are part of NAHB's recently released 2022 priced-out estimates, which further show that if the median new home price goes up by $1,000, an additional 117,932 households would be priced out of the market. These 117,932 households would qualify for the mortgage before the price increase, but not afterward.

Criterion: No More than 28% of Income for Housing

The underwriting criterion used to determine affordability is that the sum of mortgage payments, property taxes, home owners and private mortgage insurance premiums (PITI) during the first year is no more than 28% of the household's income.

Key assumptions include a 10% down payment, a 30-year fixed rate mortgage at an interest rate of 3.5%, and an annual premium starting at 73 basis points for private mortgage insurance.

Among all the states, California registered the largest number of households that would be priced out of the market. A $1,000 price increase would push 12,411 households out of the market in the Golden State, followed by Texas (11,108), and Florida (6,931). It should be noted that these are the country's three most populous states.

The metropolitan area with the largest priced out effect, in terms of absolute numbers, is New York-Newark-Jersey City, N.Y.-N.J.-Pa., where 4,734 households would be squeezed out of the market for a new media-priced if the price increases by $1,000.

Paul Bergeron reports for GlobeSt.com.

Adaptive Reuse Expected to Surge This Year

by Jack Rogers

A perfect storm of market conditions—including a shortage of multifamily housing, high rents and downsizing offices—combined with a massive inventory of aging, underused buildings in America's largest cities are expected to turbocharge adaptive reuse this year.

Apartment conversions doubled last year, to more than 20,000 units, with more than a third of the adaptive reuse projects involving old office buildings, according to data firm Yardi Matrix. The hottest markets for adaptive reuse were in Philadelphia, Washington DC, Cleveland and Chicago.

A new market for apartment conversion developed in Detroit last year, Yardi Matrix reported. Motown, which had no conversions in 2020, converted 874 units in 2021.

Apartment conversions in 2019 and 2020 topped out at less than 12,000 in each year before surging to 20.122 units last year.

Hotel redevelopments have outpaced office building conversions during the pandemic as the hospitality industry collapsed, but that balance will likely shift as the pandemic ebbs, as more people start traveling while a significant portion of the workforce stays home.

With a massive surplus of outdated office buildings in some of the largest cities in the US and companies downsizing offices as up to a third of the workforce resists returning to offices, conditions are ripe for a steady stream of adaptive reuse projects this year.

According to JLL, more than three-quarters of the office space in New York, San Francisco and Chicago is more than 30 years old, while office occupancy rates remain low in major cities. As more and more companies are making remote work a permanent part of their corporate culture, they're also downsizing offices and cutting their real estate costs.

In New York, the trend toward adaptive reuse of old buildings into apartments predated the pandemic, as several office buildings in lower Manhattan that were nearly a century old were converted into residential buildings in the financial district.

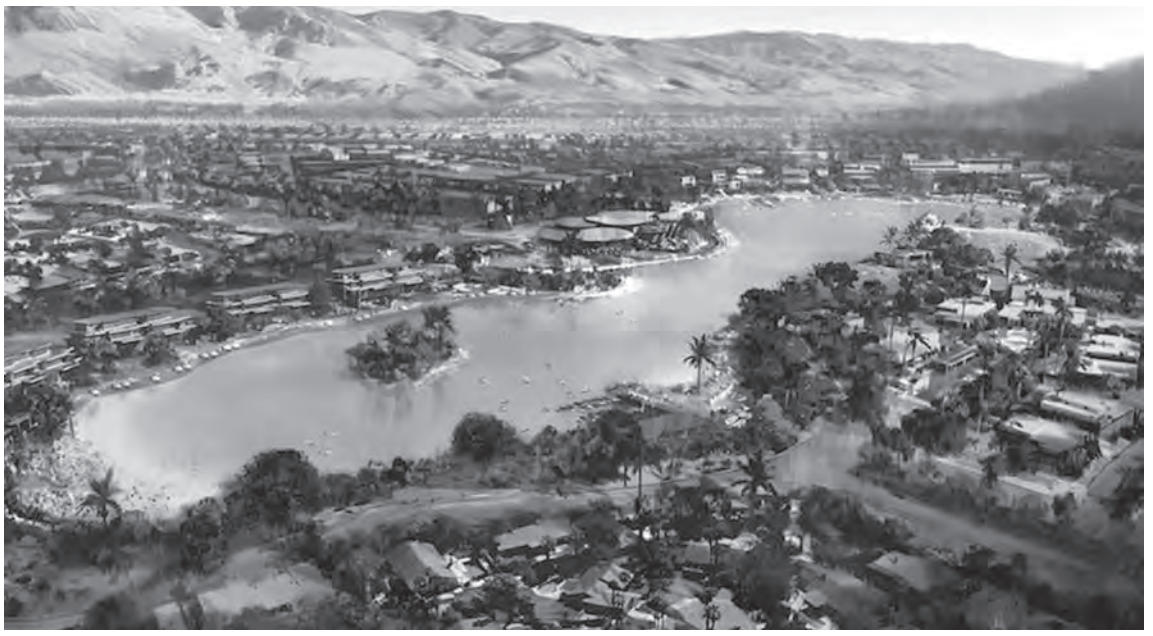
Adapting an old building into apartments rather than building new multifamily housing can be cost-effective, with renovations in some cases costing up to 40 percent less than new construction for the same number of units, according to a report in RentCafe, which has projected that more than 52,700 converted units are expected to become available this year.

Jack Rogers reports for GlobeSt.com.

COMMERCIAL REAL ESTATE

Disney Launches New Master-Planned Community Development Business

by Ingrid Tunberg



The company will develop the first Storyliving by Disney community in Rancho Mirage, California, with plans to launch additional locations throughout the US in the future.

Disney plans to launch a new development business to construct master-planned communities, titled Storyliving by Disney.

The company will construct the first new community in Rancho Mirage, CA and plans to develop additional locations throughout the US in the future.

According to Walt Disney Imagineering executive producer, Michael Hundgen, the Storyliving by Disney communities will offer residents indoor and outdoor spaces to explore and engage. "Disney Imagineers are exploring the richness of each local region to inspire the theme of Storyliving by Disney communities," states Hundgen.

Each community association will be operated by Disney Cast Members, who are trained through the company's guest service. Disney will also offer a club membership at each location that will grant residents access to curated experiences, such as wellness programming, philanthropic endeavors, seminars and entertainment including live performances to cooking classes.

"For nearly 100 years, Disney has shared stories that have touched the hearts and minds of people all around the world," says Josh D'Amaro, chairman of Disney Parks, Experiences and Products. "As we prepare to enter our second century, we are developing new and exciting ways to bring the magic of Disney to people wherever they are, expanding storytelling to storyliving. We can't wait to welcome residents to these beautiful and unique Disney communities where they can live their lives to the fullest."

Disney Imagineers will work in conjunction with developers and homebuilders and will be instrumental in developing the creative concept for the communities.

Certain Storyliving by Disney neighborhoods will be designated for residents aged 55 and up.

Located outside of Palm Springs, CA in Coachella Valley – where Walt Disney once owned a home – the first Storyliving by Disney, named Cotino, will offer residential homes, a hotel, retail and entertainment options and a crystalline lagoon.

Cotino will offer a range of home types, including estates, single family homes and condominiums. The Rancho Mirage community will be available to homeowners of all ages and will include at least one section solely designated for 55+ residents.

The community will surround a 24-acre grand oasis that will feature clear turquoise waters with Crystal Lagoons technology, according to the development's specific plan approval. The Crystal Lagoons technology enables crystalline lagoons to be built sustainably, with low water consumption while using a minimum amounts of additives and energy.

The Cotino community's specific plan approval additionally includes a retail, dining and entertainment district, a beachfront hotel and a professionally-managed beach park that can be accessed by the public through the purchase of a day pass.

Disney will offer Cotino residents a voluntary club membership that will allow access to a waterfront clubhouse, a club-only beach area, recreational water activities and Disney programming, entertainment and activities.

Cotino will be developed in collaboration with DMB Development.

"Cotino represents the creativity and operational excellence of Disney combined with the extensive community development expertise of DMB Development," says Brent Herrington, CEO of DMB Development. "We are delighted to collaborate with Disney in this groundbreaking new concept."

Ingrid Tunberg sits on the editorial team as a coordinator and reporter for Real Estate Forum and GlobeSt.com.

Blackstone to Buy Preferred Apartment Communities for $5.8B

by Erika Morphy

Blackstone Real Estate Income Trust has entered into a definitive agreement to acquire Preferred Apartment Communities in an all-cash deal valued at $5.8 billion, or $25 per share.

PAC's portfolio, which BREIT is acquiring, includes 44 multifamily communities totaling approximately 12,000 units concentrated largely in Atlanta, Orlando, Tampa, Jacksonville, Charlotte and Nashville, and 54 grocery-anchored retail assets comprising approximately six million square feet located mostly in Atlanta, Orlando, Nashville and Raleigh.

BREIT will also acquire the company's two Sun Belt office properties and 10 mezzanine / preferred equity investments collateralized by under construction and newly-built multifamily assets.

"We are pleased to acquire Preferred Apartment Communities and its portfolio of high-quality multifamily assets in key Sun Belt markets, which represents a significant majority of the company's value," Jacob Werner, co-head of Americas Acquisitions for Blackstone Real Estate, said in prepared remarks.

He also pointed to PAC's grocery anchored retail portfolio performance, describing it as strong and resilient. "We believe these types of necessity-oriented assets located in areas with growing populations are well-positioned for continued growth," Werner said.

The purchase price represents a premium of approximately 39% over the unaffected closing stock price on February 9, 2022, the date prior to a media article reporting that the company was exploring strategic options including a sale, and a premium of approximately 60% to the 90-day volume-weighted average price through that date.

When the transaction closes, PAC's common stock will no longer be listed on the New York Stock Exchange, and PAC will be owned by BREIT.

The transaction has been unanimously approved by PAC's Board of Directors and is expected to close in the second quarter of 2022, subject to approval by PAC's stockholders and other customary closing conditions. The merger agreement also includes a 30-day "go-shop" period that will expire on March 18, 2022.

Jones Lang LaSalle Limited, BofA Securities, Lazard Frères & Co. LLC and Wells Fargo Securities LLC are serving as BREIT's financial advisors, and Simpson Thacher & Bartlett LLP is acting as BREIT's legal counsel.

Goldman Sachs & Co. LLC is serving as PAC's lead financial advisor. KeyBanc Capital Markets, Inc., is also serving as financial advisor to PAC. King & Spalding LLP and Vinson & Elkins LLP are serving as the company's legal counsel.

Erika Morphy reports for GlobeSt.com.

New FCC Rule Will Promote Broadband Service Competition in Multifamily

by Erik Sherman

The Federal Communications Commission has adopted a new rule aimed at improving competitive broadband service offerings for tenants in multifamily buildings. The mechanism: prohibiting profitable revenue-sharing agreements between providers and property owners.

The direction has been clear since 2021 when President Joe Biden asked the FCC to stop such arrangements, as Bloomberg reported at the time.

Bloomberg noted that Biden's plan faced opposition from business groups, with cable companies and landlords saying exclusivity deals help spread broadband investment.

In 2019, when such plans were first in discussion, a filing presented by a number of multifamily industry groups stated that "the typical apartment community today has at least two broadband vendors available to residents, in markets where such competition exists." The last phrase was critical, though, as broadband providers frequently have negotiated monopolies with areas of cities, entire towns, or individual properties, claiming they needed sole access to offset the cost of wiring a building.

"In addition, whether under a complete or partial ban on compensation, basic economic principles suggest that any new regulation could have the effect of discouraging owner investment in facilities," the industry filing said. "If owners are unable to earn any compensation for investments in broadband infrastructure, they will spend less on that infrastructure."

But in current market conditions, a lack of full-featured and economically competitive broadband service, which a monopoly doesn't encourage, would lose the interest of consumers who would normally be the markets for residences with modern amenities.

"One third of this country live in multi-tenant buildings where there often is only one choice for a broadband provider, and no ability to shop for a better deal," agency chair Jessica Rosenworcel said in prepared remarks. "The rules we adopt today will crack down on practices that prevent competition and effectively block a consumer's ability to get lower prices or higher quality services."

The final rule states: "No common carrier shall enter into or enforce any contract regarding the provision of communications service in a multiunit premise, written or oral, in which it receives the exclusive right to provide the multiunit premise owner compensation in return for access to the multiunit premise and its tenants" This part takes effect 30 days after publication in the Federal Register.

Furthermore, 180 days after publication, common carriers will not be able to enforce any existing arrangement with a multi-unit residential building.

Erik Sherman reports for GlobeSt.com.

BANKING/ FINANCE

Florida House OKs Budget That Punishes Mask Mandate Schools

by Brendan Farrington

School districts that ignored Republican Gov. Ron DeSantis' order banning mask mandates will face a $200 million penalty under a budget bill passed by the Florida House. The funding stripped from those districts would be spread among the state's other districts.

Republican Rep. Randy Fine angrily defended the proposal to punish the 12 districts, saying they broke the law.

"Following the law is not optional. ... These school districts broke the law," Fine said. "And they were broken for nothing.

Fine also said school districts being punished are still getting more money than they did last year because of an overall $1.2 billion increase in public school spending. He also admonished Democrats who accused Republicans of taking $200 million from the disobedient districts out of retribution.

"You want to talk about punitive, I'll take about punitive," Fine said. "I think of the first grader who wasn't able to learn how to speak and read without looking at the face of the colleague across the way. I think of the deaf child … who had to learn how to read lips without seeing the lips of the other children."

The $105 billion budget passed on a 102-14 vote. Many of the Democrats cited the money shift from the 12 districts among the reasons to oppose it.

Republican Rep. Randy Fine said school districts being punished are still getting more money than they did last year because of an overall $1.2 billion increase in public school spending.

"I don't think we should use our budget to bully municipalities or school boards, or anybody," said Democratic Rep. Dotie Joseph, whose district is in Miami-Dade County, which has the largest school district in the state and is one of the 12 the House wants to punish.

The 12 districts implemented mask mandates at the beginning of the current school year as the delta variant of COVID-19 was still ravaging the state. The districts have since lifted the mandates. In November, the Legislature held a special session to put DeSantis' order into law.

Some Democrats supported the bill, but expressed hope that the punishment provision will be taken out when the House and Senate negotiate differences in their spending proposals. The Senate will take up its nearly $109 billion proposal on Thursday.

DeSantis supports the idea of shifting the $200 million away from the 12 districts.

Democrats also criticized the budget for not providing enough money to hospitals that treat Medicaid recipients and not doing more to help people find affordable housing as rents and housing prices skyrocket.

Republicans praised the bill for boosting salaries for state law enforcement and corrections officers and for providing money to help manatees and other environmental projects.

Lawmakers must work out differences in the budget by March 8 if they want to end their session on time. Once an agreement is reached, the chambers can't vote on it for 72 hours.

Brendan Farrington reports for the Associated Press.

Florida House Offers Tax 'Holidays,' But No Gas Tax Break

by Jim Turner

A House panel took up a package that would provide a wide range of tax breaks but does not include Gov. Ron DeSantis' big-ticket proposal to suspend the state's gasoline tax for five months.

The House Ways & Means Committee considered a bill (PCB WMC 22-01) that includes 14-day sales tax "holidays" in May on gear for the hurricane season and in late July on back-to-school items such as clothes, school supplies and personal computers.

The bill also would bring back a "Freedom Week" tax holiday around Independence Day. During that period, shoppers could avoid paying sales taxes on tickets to music events, sporting events, movies, theaters, parks, fairs and museums, purchases of items for camping, fishing and boating and purchases of surfboards, canoes, kayaks and bicycles.

A new tax holiday would go for seven days around Labor Day for purchases of items such as work boots, power tools, toolboxes for vehicles and LED flashlights.

With the state's coffers brimming from federal stimulus money and higher-than-expected tax collections, the House and Senate ultimately will have to agree on a final package of tax cuts. But both chambers, at least so far, have not embraced DeSantis' proposal to suspend the 25-cent-a-gallon gas tax for five months starting in July.

SHUTTERSTOCK

Economists recently estimated a Freedom Week, with many of the items included in the House proposal, could save Floridians about $57.7 million, up from $54.7 million in 2021.

During an appearance Tuesday in Fort Walton Beach, DeSantis said his office was "working with the Legislature" on the gas-tax proposal, which has an estimated cost of $1 billion. Legislative leaders last week expressed concerns the gas-tax break would go to too many non-Floridians who visit the state.

Lawmakers last year passed an estimated $196.3 million package that included 10-day tax holidays for disaster-preparedness supplies, back-to-school shoppers and a first-time Freedom Week.

A House staff analysis said the new proposal would have "significant negative indeterminate impacts" on state general revenue, but economists have not projected the costs of many parts of the bill.

Economists recently estimated a Freedom Week, with many of the items included in the House proposal, could save Floridians about $57.7 million, up from $54.7 million in 2021.

Other aspects of the House proposal include a reduction in the sales tax for new mobile homes from 6% percent to 3%, an exemption from the sales tax on admissions to Formula One Grand Prix races, and relief for homestead property made unlivable for 30 days or more by future catastrophic events.

The House also would provide a tax break to what are known as Class II and Class III "short line" freight railroads. They could get tax credits against corporate income taxes equal to 50 percent of the investment in maintaining or improving tracks and based on the total miles of track.

The state has two Class II lines: Florida East Coast Railway, with 351 miles, and the Alabama Gulf Coast Railway, running from Pensacola north to the state line, according to House staff analysis. Florida also has less than a dozen Class III rail operations covering 819 miles.

The package also includes temporary tax exemptions for impact-resistant windows, doors and garage doors for residential properties; children's books; baby and toddler clothing, shoes and diapers; and Energy Star certified refrigerators, water heaters and washers and dryers.

State Chief Financial Officer Jimmy Patronis called the proposal for impact-resistant windows, doors and garage doors "a practical way of saving folks money while incentivizing homeowners to better protect their homes from hurricanes" that "in some cases" could reduce insurance costs.

Jim Turner reports for the News Service of Florida.

Defendant's Former Boss Takes Stand in Malaysia Bribery Trial

by Jane Wester

Timothy Leissner, a former leader of Goldman Sachs' operations in Southeast Asia, began testifying in the jury trial of his former employee Roger Ng, explaining how he and Ng hid illegal behavior from Goldman Sachs as they conspired to launder money and violate the Foreign Corrupt Practices Act in a massive scheme centered on a Malaysian economic development fund.

Leissner pleaded guilty in 2018 to conspiring to launder money and conspiring to violate the Foreign Corrupt Practices Act and is testifying as part of his cooperation agreement with prosecutors in the U.S. Attorney's Office for the Eastern District of New York.

Ng's lead counsel is Marc Agnifilo of Brafman & Associates, who warned jurors in his opening statement to be skeptical of Leissner's motives for testifying.

Leissner testified that he and Ng were "best friends" whose lives revolved around their work for Goldman Sachs. He said they were constantly in touch throughout their $6.5 billion deal involving the economic development fund 1MDB, which he said received accolades from the highest levels of Goldman Sachs.

The 1MDB deal, which produced hundreds of millions of dollars in fees for Goldman Sachs through a series of three bond transactions, "made us heroes" at the firm, Leissner said.

Leissner testified that he and Ng hid the involvement of alleged co-conspirator Jho Low, a Malaysian national who remains a fugitive, from Goldman Sachs' internal controls, a violation of the firm's own rules.

STEPHANIE KEITH

Timothy Leissner, center, a former executive with Goldman Sachs, pleaded guilty in 2018 to conspiring to launder money and violate the Foreign Corrupt Practices Act and is testifying as part of his cooperation agreement with federal prosecutors.

Leissner said the disclosure of Low's role as a key decisionmaker for 1MDB would have sent up a red flag and likely torpedoed the deal, because Low's attempts to become a private banking client with Goldman Sachs had already been rejected "several times."

Leissner said the firm had concerns about the source of Low's money and tabloid reports about his lavish lifestyle. While Low's involvement was hidden from the "checks and balances" side of Goldman, Leissner said several of his and Ng's colleagues became aware of the well-connected young businessman's involvement.

But Leissner testified that he and Ng were more careful to conceal the side of the scheme that involved extensive bribery of government officials in Malaysia and Abu Dhabi and kickbacks for officials at 1MDB and Leissner and Ng themselves.

While their Goldman Sachs colleagues may have had suspicions about the scheme after hearing widespread rumors about Low, Leissner said he believed that "confirmation by myself or Roger" might have caused them to make a formal report.

Leissner described a meeting at Low's London apartment in the early stages of the 1MDB deal, in which he said Low pulled out a sheet of paper and divided it into two columns, one for Abu Dhabi and one for Malaysia.

In each country, Low said they would need to "buy approvals" from various government and business figures, including high-ranking officials, according to Leissner.

"Jho said that without payments, we can forget this transaction completely," Leissner said.

Low also told Ng and Leissner that they would be "taken care of," as part of the scheme, a process that was accomplished by transferring money through a series of shell companies, Leissner said.

Leissner said he understood the scheme would be illegal but "regrettably" was not particularly concerned about breaking the law.

"Being a partner at Goldman Sachs is a dream come true, however, that wasn't enough for me," Leissner said. "I also wanted to be a hero at Goldman Sachs."

Leissner said he grew up in a "very modest family," and his ambition was well-suited to the field of investment banking, but that ambition and greed eventually "destroyed" his life.

He has been ordered to forfeit $43.7 million along with shares of Celsius, an energy drink, worth as much as $200 million, he testified.

Leissner, who is a dual citizen of Germany and Brazil, was questioned on direct examination by assistant U.S. attorney Drew Rolle. U.S. District Chief Judge Margo K. Brodie of the Eastern District of New York is presiding.

Jane Wester is a litigation reporter for the New York Law Journal, an ALM affiliate of the Daily Business Review. Contact her at jwester@alm.com. On Twitter: @janewester.

Actor Sentenced to 20 Years in Prison Over $650M Ponzi Scheme

by Jeff Berman

Actor Zach Avery, whose real name is Zachary Joseph Horwitz, was sentenced to 20 years in federal prison on Monday for operating a Ponzi scheme that raised at least $650 million with bogus claims that investor money would be used to acquire licensing rights to films HBO and Netflix purportedly agreed to distribute abroad, according to the Justice Department.

In addition to sentencing Horwitz, 35, of the Beverlywood neighborhood of Los Angeles, to 240 months in prison, U.S. District Judge Mark C. Scarsi, also ordered Horwitz to pay $230.4 million in restitution to his victims.

Attorney Ryan S. Hedges of Vedder Price's Chicago office, and Anthony Pacheco, of the law firm's Los Angeles office, who represented Horwitz, did not immediately respond to a request for comment on Tuesday.

Horwitz was arrested in April and a criminal complaint charged him with wire fraud, a crime that carries a statutory maximum penalty of 20 years in prison.

'Fabricated Agreements and Fake Emails'

The Securities and Exchange Commission also said in April that it obtained an asset freeze and other emergency relief in an emergency enforcement action against Horwitz and his company, 1inMM (one in a million) Capital LLC, for conducting the alleged Ponzi scheme.

SHUTTERSTOCK

Actor Zach Avery was convicted of falsely telling investors their money would be used to buy rights to films HBO and Netflix had agreed to distribute abroad.

The actor and 1inMM allegedly told investors they were buying film rights, purportedly to resell them to Netflix and HBO, according to the SEC's complaint. In fact, 1inMM actually had no business relationship with either company.

From March 2014 until at least December 2019, Horwitz raised over $690 million from investors by selling promissory notes issued by 1inMM, "using fabricated agreements and fake emails" with Netflix and HBO, according to the SEC complaint.

In late 2019, Horwitz started defaulting on outstanding notes issued by 1inMM, leaving investors with more than $234 million in unreturned principal, the SEC complaint stated.

Horwitz, the SEC complaint stated, "falsely blamed his default on refusals by HBO and Netflix to pay for distribution rights they had licensed from 1inMM and claimed he was engaged in promising negotiations with them to obtain past-due payments."

Horwitz, who has appeared in films including The Devil Below, The White Crow and Farming, pleaded guilty in October to one count of securities fraud.

Hollywood 'Success Story'

"Horwitz portrayed himself as a Hollywood success story," prosecutors argued in a sentencing memorandum.

"He branded himself as an industry player, who, through his company … leveraged his relationships with online streaming platforms like HBO and Netflix to sell them foreign film distribution rights at a steady premium…. But, as his victims came to learn, [Horwitz] was not a successful businessman or Hollywood insider. He just played one in real life," according to the government's sentencing memorandum.

Instead of using the funds to acquire films and arrange distribution deals, Horwitz operated 1inMM Capital as a Ponzi scheme, using victims' money to repay earlier investors and to fund his own lavish lifestyle, including the purchase of his $6 million Beverlywood residence, luxury cars and travel by private jet, according to the memorandum.

Horwitz defrauded five major groups of private investors and, throughout the scheme, Horwitz raised at least $650 million from more than 250 individuals who invested directly or indirectly in 1inMM Capital, according to the Justice Department.

Jeff Berman reports for ThinkAdvisor.com, an ALM affiliate of the Daily Business Review. Contact him at jberman@alm.com.

BANKING/ FINANCE

Why Working With Strippers Makes Sense for Financial Planners

by Jane Wollman Rusoff

Who is giving sex workers solid financial advice about all the money they earn?

Not many financial advisers.

And that could be a big missed opportunity: "There's value to working with stigmatized groups and in markets that aren't overly saturated," argues Lindsey Swanson, founder of Stripper Financial Planning, whose clientele is exclusively sex workers, in an interview with ThinkAdvisor.

"There are millions of people doing sex work who need financial advice and aren't getting it," she says.

The fee-only certified financial planner, who charges a monthly flat fee of $350, plans for her clients "as if they're athletes," she explains.

Both groups typically have short-lived primary careers because demand for their services is greatest and revenue highest when they're in their 20s and 30s.

In addition to prostitutes, sex workers include people in the adult entertainment industry, such as strippers, actors and pornography creators; escorts; sugar babies — that is, paid sexual companions — and more.

Swanson's clients are all of the above — and all working legally. The majority are female or "female-presenting," as she puts it. Her clientele comprises gay, transgender and nonbinary people, and straight men, too.

For Swanson to acquire a prostitute as a client, they must work where prostitution is legal; in the U.S., that means only the state of Nevada.

In the interview, Swanson relates that when sex workers initially come to her, most are new to the concept of financial planning in general, much less tax planning, estate planning and investing.

The CFP, 29, covers all those aspects, plus the importance of accurately reporting income, which, she stresses, is critical for claiming Social Security later on.

The RIA also makes sure clients track every work-related expense allowable for tax deductions; and she informs them of ways to reduce taxable income, such as establishing an Individual 401(k) plan or an IRA.

After four years of employment as an investment analyst and financial adviser at traditional financial services firms, including Relevé Financial Group and TCI Wealth Advisors, Swanson opened her own virtual-only practice in 2020 for "people who are being discriminated against," she says.

Clients were largely in the highly profitable cannabis industry in Northern California.

The following year, she narrowed her niche to sex workers, many of whom she'd met through clients, and changed her firm's name from Shelter Cove Financial to one specific to sex workers so that prospects would feel comfortable approaching her.

Much of Swanson's focus is helping clients once they start aging out of sex work — because of its physical requirements and demands — to shift to an allied job in the industry, such as coaching.

But some clients use the money they've salted away to enter a totally different business, like fashion; many attend school to become nurses, according to Swanson.

Not surprisingly, the adviser, whose podcast sports the double-entendre title "A Scoop of Vanilla," has run into issues with a number of business contacts. Given her firm's focus, they no longer want to be "associated" with Swanson because they fear offending their "conservative clients."

"There's value to working with stigmatized groups and in markets that aren't overly saturated," says a certified financial planner.

But Swanson forecasts that in the future, it will be "pretty normal" for people in financial services to work with sex workers because "there's profit to be made there," she says.

ThinkAdvisor recently interviewed Swanson by phone from her base in a coastal town in Humboldt County, California.

Here are highlights of our conversation:

Why did you start Stripper Financial Planning?

Market demand. A lot of advisers and CPAs stay away from people in sex work because it's a gray area: They don't want to have to dig into what's legal and what's not.

I'm legitimizing something that exists legally but that people don't talk about publicly.

Do sex workers think they need financial advice?

A lot of them have a hard time talking to professionals because their work is stigmatized.

So there's no one for them to ask about things like taxes. So they aren't taking advantage of tax deductions because they don't want to be on the radar even if what they're doing is legal.

What does "sex work" encompass?

It's a wide spectrum and includes creators — like people working on OnlyFans [platform focused on creating pornographic content], strippers, escorts, sugar babies.

It's the porn industry in general. So I also work with actors and models in adult films.

Why would a sugar baby have need for a financial adviser?

A lot of sex workers don't have friends or family they can ask about their finances.

So if a 19-year-old [sugar baby] has a 50-year-old boyfriend that [pays] her X amount each month and she's spending it willy-nilly, she needs someone to say, "It's cool that he offered to buy you a Range Rover, but what if you asked him to pay your school tuition instead?"

Does your clientele include prostitutes?

Absolutely. But they have to do it legally.

In places where it's not legal, sex work looks like a lot of different things, such as escorting or being a paid girlfriend.

Why did you choose the sex worker client niche?

I had a history of working for traditional firms with older, retired clients that had millions of dollars.

[For my own firm], I wanted to work with stigmatized folks who weren't being served, and I was open to who that would be.

Do you create financial plans for clients?

I do comprehensive financial planning. We look at the big picture: Maybe you're making more than you would at an office job; but after you're paid, what does your profit actually look like?

The majority of sex workers are self-employed. They're reporting their income from multiple sources and have variable revenue.

How often do you have one-on-one meetings?

Every month, walking them through 12 different topics that cover the entire financial picture.

What do you do for them in the area of tax planning?

I tell them that throughout the year, they need to track how much they're making and from which sources, so they know how much to set aside to pay estimated quarterly taxes.

If they get cash tips, they need to keep track of those. The IRS requires a daily log. And they need to track all their expenses by the job.

Can they take tax deductions for, say, special clothing or such?

If it's specific to the job, like if you're a stripper and buy a wig for the sole purpose of wearing it in a club, or buy sex toys for creating a video.

If you bought a dildo for that, you could deduct it. It's like needing something for your office.

Like a stapler.

Yeah, like a stapler.

What if a client feels they can't prepare their income tax returns on their own?

I refer them to CPAs that are either sex workers or sex worker-friendly.

That's because if you're talking to a CPA who you're uncomfortable with, you're probably not going to ask if you can deduct for dildoes.

Please tell me more about CPAs who are also sex workers.

Lots of times people want to go into law or become a CPA but don't have the finances to fund college.

So [to earn money], they become strippers, or they do OnlyFans, which has a million creators. There are lots of people making porn online.

To what extent do you discuss 401(k) plans and IRAs with your clients?

I really get into the nitty-gritty of sex workers needing to make sure their business is profitable after paying taxes and expenses — and how they can reduce taxable income by putting it into an i401k [individual 401(k)] or an IRA.

Do you get into health care?

I tell them that having the attitude of "I hope I don't break my arm, but [everything will be] OK if I do," is a good way to completely derail your financial health.

So we try to figure out health care [insurance] options.

I'm not motivated to sell insurance, but [I make clients aware of the importance] of it should an emergency come up and they don't have a safety net, like a parent who can pay for their medical care.

They need to create their own stability.

Do you talk about Social Security?

We discuss the need to accurately report income because that's going to benefit them later when they're taking Social Security.

Usually they're creating some sort of nest egg during their 20s and 30s. Sometimes that's in an i401(k) or a SEP IRA account.

How long, on average, is sex work sustainable as the sole source of income? Can it be counted on long term?

Assuming it [can't be], many sex workers turn it into something that will be. The demand for sex work is for people in their 20s and 30s.

I plan for them as if they're athletes because they're very similar [highest earning years limited to their youth].

Some of my clients are reaching 35, and the demand isn't what it once was.

What do they transition to that will be a long-term revenue producer?

If you're a stripper, say, it might mean moving away from in-person sex work and into coaching other sex workers.

Usually, people transition into a different type of job that's related to sex work but that doesn't have as much physical and mental strain.

Depending on how financially savvy they are, they can use [their savings] to pursue a different career.

A lot of sex workers are paying for nursing school and becoming nurses.

You have a CFP certification and were an adviser and analyst for a number of years. To what extent do you invest your clients' money?

Investing is absolutely something I touch on, but it's usually [just recommending] and helping to set up a robo account at Charles Schwab, which I audit for them and see if it makes sense for their current goals.

They either have pretty simple investments they want to do on their own, or investing isn't a large part of their financial picture.

Jane Wollman Rusoff is a contributing editor to ThinkAdvisor.com, an ALM affiliate of the Daily Business Review. Contact her at jwollman@ix.netcom.com.

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Metaverse Marriages Pushing Attorneys to Think Outside the Box About Contract Law

by Isha Marathe

The technological evolution born out of the pandemic is not leaving much unchallenged—including weddings and prenups. Shirking the tradition of a chicken-or-fish option, a Phoenix couple tied the knot on a virtual reality metaverse, Decentraland, in a first for such ceremonies in the country on Feb. 4.

Backed by Ethereum blockchain technology, the virtual reality-based ceremony was packed with 2,300 guests, the bride and groom, and an associate justice from the Arizona Supreme Court to officiate. The couple, Ryan and Candice Hurley, had already been married 14 years ago "in person," and sought to cement the evidence of their union in blockchain.

The marriage certificate came in the form of a non-fungible token, and the prenuptial agreement was recorded into blockchain. Both contracts were crafted by Rose Law Group, an Arizona-based firm that owns property on Decentraland and is able to host events there.

The question remains, however, if such a metaverse wedding on its own can ever be legally binding under any state's marriage statutes. If not, then will it at least pave the way into a future where virtual weddings might be recognized under the law?

"It's really interesting both socially and technologically," said Falcon Rappaport & Berkman attorney Moish Peltz. "I suspect that finding the legal jurisdiction to accept it as legally binding will be the biggest barrier. But eventually, you could really use the blockchain technology to document and memorialize with innovative legal writing that was not happening before."

Peltz likens the Hurley wedding to that of other weddings in "real life" that are "performances," while the codifying of a certificate takes place in private in City Hall.

"The idea here is, how can we streamline that and make the metaverse wedding the same as a legal wedding by finding a legal process to enable that," he said. "For me, this indicates a future potential not just for evolving marriage contracts, but all kinds of contracts that are implicated in blockchain and tokenization technology."

Peltz also pointed out that the Decentraland wedding is not the first one to take place in a digitalized world. While the social-distancing component might have accelerated the idea of a virtual marriages, he sees it as a trend that started with weddings that took place in massively multiplayer online game (MMO)-type games like World of Warcraft, Everquest, and Second Life years ago.

American Marriage Ministries (AMM) executive director Lewis King sees marriage law as walking a tightrope between "playing catch-up" with technology, and legitimately trying to codify unions responsibly to keep them socially intact.

"Marriage law is a relatively recent artifact, only about 100 to 150 years old," King said. "With the pandemic, I think something has changed and peoples' expectations of a wedding have changed."

The newness of marriage law, first recognized by the federal government in 1913 and expanded in 1929, makes it primed for potential changes, "especially in certain states," King said.

The couple, Ryan and Candice Hurley, had already been married 14 years ago "in person," and sought to cement the evidence of their union in blockchain.

New York, Ohio, Hawaii, Utah and California, among other states, amended their regulations in 2021 to allow for online marriage certification that did not require any in-person component. However, most have walked back from that since, going back to requirements of a physical appearance.

In King's view, Utah might be the first state where state marriage law could potentially be evolved so as to work with a blockchain marriage contract in the metaverse. Utah County within the state is the only jurisdiction where a marriage can be officiated online and the marriage license can be applied for online.

The certificate looks the same for both an online wedding or in-person, and the county has not shown any indication of going back.

He credits the county's Mormon population to this flexibility, viewing marriage from a more "global" and "missionary" perspective.

Of course, a metaverse marriage is even further from a wedding on Zoom or Skype.

At the Hurley's metaverse ceremony, virtual guests adorned avatars of their choosing, with some wearing rainbow flag shirts or fluorescent wings to hover above the party, while others were in more conservative tuxes and vests in the fully digitalized reality. Like the marriage certificate, the presents that the avatars gifted the happy couple were also in the form of NFTs.

Whether a similar ceremony will be legal in the future, however, is an open question.

"I think it comes down to the question of does it meet the fundamental principles of online law," said Berkman Bottger, Newman & Schein marriage attorney Evan Schein. "In terms of online marriages and contracts encoded in the metaverse, I don't even think we have scratched the surface yet. We are in the infancy stage."

Still, Schein said the virtual marriage trend might work to change some other forms of contracts rooted in the idea of physical presence. "It isn't something that has been universally accepted," Schein said. "But it has tremendous possibility for how attorneys view contracts."

Whether marriage law evolves to accommodate our technology or not, it won't be swift, King stressed.

"Logistically, bureaucratic requirements will have to be met," he said. "We would have to get lawmakers on board, and then eventually find a way to integrate the new laws with the county clerk and state office. It is a very slow process."

However, couples are already pacing past the bureaucracy into the metaverse. Founder of Rose Law Group, Jordan Rose, said her firm has received 700 contracts since the Hurley wedding inquiring about metaverse marriage and preparing NFTs. Outside of the U.S. a couple in Tamil Nadu, India, is planning a Harry Potter-themed metaverse wedding to accommodate over 2,000 people.

"We are watching it all very closely," King said.

New York-based legal technology reporter, covering new things happening around privacy law, e-discovery and cybersecurity. Meanwhile, attempting to hit everay hole-in-the-wall restaurant from Brooklyn to at least South of Houston.

The Newest Hotspot? The Middle East Is Poised for a Legal Tech Boom

by Isha Marathe

The pandemic-spurred transition to remote work hasn't just accelerated legal tech adoption in the U.S. Across the world in the Gulf Cooperation Council (GCC) countries, it's also sparked burgeoning demand for Arabic-based legal tech tools, creating a legal tech market bolstered by a strong entrepreneurial spirit.

Over the past four months, for instance, recruiters from the legal tech branch of consultancy firm Jameson Legal saw a sharp spike in the number of legal tech startups from GCC countries reaching out to access their hiring services.

"At the beginning, most approaches for our services were coming out of legal tech companies in North America and Europe," said Jon Bartman, the London-based head of Jameson Legal Tech. "Now, we get approached nearly two or three times a week from new startups with innovative products and a vision, anywhere from Saudi Arabia to Bahrain to Kuwait to the UAE, all reaching out for our services."

Bartman added that while clients from North America have maintained their numbers, the innovation coming from GCC countries signals a shift in the global legal tech market, creating an environment for more of a bilingual approach to legal tech and automation. Such an approach might give companies an advantage in parts of the world that are predominantly Arabic-speaking.

"A lot of Western technologies cater to a mostly English-speaking audience," said Jameson Legal's consultant operations executive, Bernie Sugano. "Something unique coming from the technologies in the Middle East—specifically the UAE and Saudi Arabia, the biggest players—is that we will have technologies which will cater to the Arab world, which be able to read Arab contracts and be compatible with the workflow here."

Sugano, based in Dubai, has seen the evolution of legal technology from the ground up, and she believes the coming months will only continue the upswing in this tech-savvy part of the world.

Still, in a region of the world that embraces technological innovation—for instance, parking tickets are paid and police reports are filed via smartphones in the UAE—why has legal tech evolution lagged behind not only the Western world but other sectors booming within the Gulf states, like fintech?

Entrepreneurs and attorneys in the region blame an older generation, the bureaucracy of the legal profession, and lawyers' fears of losing billable hours due to automation.

The founder of a case management software company based in the UAE called CaseEngine, Abdul Hakim Manattil said his company targets the "newer generation," owing to a rather stubborn legal landscape among veteran attorneys. He believes the resistance to legal tech tools and automation is shortsighted, because while lawyers he speaks to fear being "replaced by robots," they don't see how many more cases they could tackle in the time they save automating and streamlining manual tasks.

"Through the CaseEngine solution, we have managed to digitize only 5% of UAE law firms," Manattil said. "There is a huge chance to scale up, but our product is for the future generation, not the traditional lawyers."

He likens the current legal tech situation to the fintech explosion that emerged in 2017, and within a few years, took hold of the Gulf region to create a hotbed of innovation and competition.

"Those who are born in 1980 still want to go to the store to enjoy shopping, but the new generation is on the apps, they save time with convenience, they can change easily," Manattil pointed out. "That is how legal tech will be here. We entrepreneurs have to be patient because the new generation of lawyers will use this technology at fast rates."

New York-based legal technology reporter, covering new things happening around privacy law, e-discovery and cybersecurity. Meanwhile, attempting to hit every hole-in-the-wall restaurant from Brooklyn to at least South of Houston.